

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

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|---------------------------------------|---|----------------------|
| In the matter of the amendment of |) | NOTICE OF AMENDMENT, |
| ARM 24.156.1401, 24.156.1403, |) | ADOPTION, AND REPEAL |
| 24.156.1404, 24.156.1406, and |) | |
| 24.156.1412 acupuncturist licensure |) | |
| and unprofessional conduct, |) | |
| 24.156.1622 and 24.156.1623 |) | |
| physician assistant supervision and |) | |
| chart review, the adoption of New |) | |
| Rules I through V acupuncturist |) | |
| discipline reporting and continuing |) | |
| education, and New Rule VI |) | |
| physician assistant performing |) | |
| radiologic procedures, and the repeal |) | |
| of 24.156.1405 acupuncture school |) | |
| approval |) | |

TO: All Concerned Persons

1. On August 25, 2011, the Board of Medical Examiners (board) published MAR notice no. 24-156-75 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1591 of the 2011 Montana Administrative Register, issue no. 16.

2. On September 27, 2011, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the October 5, 2011, deadline.

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

COMMENT 1: Numerous commenters generally supported the proposed amendments to ARM 24.156.1622. One commenter stated that the requirement in (5) that even experienced physician assistants (PAs) from out-of-state have an interview when entering into their first supervision and duties and delegation agreements in Montana is burdensome. The commenter suggested that experienced PAs should be treated differently from PAs new to practice and further objected to the requirement for board approval of PA agreements.

Board staff discovered an inadvertent typographical error within this rule in that the term "delegation and duties agreement" should read "duties and delegation agreement" to align with the term as used in statute at 37-20-301(2), MCA.

One commenter requested clarification in (5)(d) as to the appropriate percentage of PA charts to be reviewed by a physician.

RESPONSE 1: The board agrees and is amending (5) and (6) to utilize the correct term, "duties and delegation agreement," as set forth in statute.

The board is further amending (5)(d) to reference ARM 24.156.1623, the rule governing chart review, and address any confusion about the required appropriate levels of chart review.

COMMENT 2: Numerous commenters opposed the proposed amendments to ARM 24.156.1622(7) and (8) and requested that the board strike the sections from the rule. The commenters stated that board approval of agreements would set Montana back, pose a barrier to physicians hiring PAs, and cause delays in hiring PAs. Generally, commenters characterized the requirement of board approval as a form of micromanagement that would undermine local decision-making of physicians and facilities, and requested the board delete the approval requirement. One commenter suggested that the board's review of duties and delegation agreements, which are in the form of a contract, might be beyond the statutory authority of the board.

RESPONSE 2: The board appreciates all comments made in the rulemaking process. After a thorough review and discussion, the board is amending (7) to delete the requirement for board approval of supervision agreements and duties and delegation agreements. The board is deleting (8) to align with the changes to (7).

COMMENT 3: Numerous comments were received regarding proposed New Rule VI(1) and (2), to include the following:

Two commenters thanked the board for addressing training for PAs performing radiologic procedures and expressed approval for this new rule.

Thirteen commenters supported the education and/or licensing requirement for routine radiologic procedures.

Two commenters supported the idea of appropriate training for PAs performing routine radiologic procedures, but stated that requiring a second license to perform routine x-rays that are already being done by PAs would be burdensome.

Three commenters asked the board to consider "grandfathering" PAs who have been performing routine radiologic procedures under the supervision of a physician.

Two commenters asked that the board allow education and/or direct supervision, until competency could be demonstrated for taking plain films.

One commenter suggested that a certificate of education could be granted in place of requiring a second license.

Three commenters noted that requiring two licenses would be confusing.

Two commenters suggested that the board set up alternative training for PAs performing routine radiologic procedures such as one- or two-day preceptorship, in a radiology department.

One commenter noted that to meet the critical needs of rural and frontier settings, it is appropriate for PAs to perform procedures as delegated.

One commenter suggested amending New Rule VI(1) to provide for course and/or completion of training.

RESPONSE 3: The board appreciates all comments made in the rulemaking process. After careful consideration and discussion, the board is amending New Rule VI(1) in response to the comments received by the board. The board is amending (2) to be consistent with the further amendments to (1).

COMMENT 4: Numerous commenters requested that the board amend New Rule VI(3) to refer to the Fluoroscopy Education Framework for the Physician Assistant created through the collaboration of the American Academy of Physician Assistants and the American Society of Radiologic Technologists, as the educational standard for PAs performing fluoroscopy or advanced radiologic procedures.

Two commenters indicated that PAs are currently utilizing fluoroscopy when the PA assists the operating physician by providing fluoroscopic guidance during procedures in hospitals' and clinics' operating rooms and radiology departments. During these procedures, the physician is directing the PA in how and when to "shoot" the fluoroscopic images.

RESPONSE 4: The board appreciates all comments made during the rulemaking process. The board reviewed the suggested fluoroscopy education framework and recognizes that this framework has been found to be thorough and complete by the Society for Interventional Radiology, and that it is adopted or being adopted by California, Connecticut, and Massachusetts. Board members also discussed the comments regarding physician-physician assistant teams operating together. The board is amending New Rule VI(3) to address the concerns of the commenters.

COMMENT 5: One commenter suggested the board offer a jurisprudence examination to PAs. The commenting entity requested the board provide them with lists of all PAs seeking licensure or new supervision agreements, so that the entity could review the supervision and duties and delegation agreements. The entity requested that links to the board web site and information about board PA rules and keeping board agreements up-to-date, be placed on its web site. This commenter suggested that it collaborate with the board to offer instruction and education to PA students prior to graduation.

RESPONSE 5: The board appreciates all comments received in the rulemaking process and notes that the board has previously offered pregraduation training to PA students with great success. The board discussed the commenter's proposal for a jurisprudence examination, but determined the request is beyond the scope of this rule notice. The board would welcome having its web site and information about the board's PA rules linked on the commenter's web site.

4. The board has amended ARM 24.156.1401, 24.156.1403, 24.156.1404, 24.156.1406, 24.156.1412, and 24.156.1623 exactly as proposed.

5. The board has adopted NEW RULE I (24.156.1407), II (24.156.1408), III (24.156.1409), IV (24.156.1410), and V (24.156.1411) exactly as proposed.

6. The board has repealed ARM 24.156.1405 exactly as proposed.

7. The board has amended ARM 24.156.1622 with the following changes, stricken matter interlined, new matter underlined:

24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT (1) through (4) remain as proposed.

(5) The supervision agreement and ~~delegation and duties~~ and delegation agreement for nonroutine applicants must assure the safety and quality of physician assistant services, considering the location, nature, and setting of the practice and the experience of the physician assistant, and shall provide for:

(a) through (5)(c) remain as proposed.

(d) an appropriate percentage of physician assistant charts that must be reviewed by the supervising physician in accordance with ARM 24.156.1623.

(6) The supervision agreement and ~~delegation and duties~~ and delegation agreement for nonroutine applicants may provide for periodic changes in the type of supervision, scope of delegation, practice limitations, frequency, and duration of face-to-face meetings, and percentage of charts reviewed, based upon the duration and nature of experience gained by the physician assistant, the supervising physician's written assessment and evaluation of the physician assistant's experience and judgment, and other factors relevant to the nature and degree of supervision appropriate to assure the safety and quality of physician assistant services.

(7) ~~A supervising physician and physician assistant must submit the proposed supervision agreement and delegation and duties agreement to the board for approval, and as a condition of approval, must demonstrate to the board:~~ The duties and delegation agreement must be submitted, if requested, to the board or its designee during the interview required pursuant to ARM 24.156.1601(3).

~~(a) that the supervision agreement and delegation and duties agreement comply with this rule and all other applicable requirements; and~~

~~(b) that the supervising physician and physician assistant have a complete and functional understanding of their respective responsibilities under the agreements and applicable laws and rules.~~

~~(8) A physician assistant may not practice as a physician assistant in this state prior to board approval of the supervision agreement and delegation and duties agreement.~~

8. The board has adopted NEW RULE VI (24.156.1701) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE VI PHYSICIAN ASSISTANT PERFORMING RADIOLOGIC PROCEDURES – ROUTINE AND ADVANCED PROCEDURES (1) A physician assistant performing routine radiologic procedures must maintain an active limited technologist permit issued by the Montana Board of Radiologic Technologists or provide proof of completion of the coursework required for a limited technologist permit, or provide proof of completion of a course equivalent to that required for a limited technologist permit, or be able to provide proof of adequate training or experience in the clinical setting to assure safe use of ionizing radiation in

~~performance of delegated routine procedures. Such proof must be presented to the board that he or she has completed the United States Army MOS-68P radiologic training course, or a course equivalent to that required for a limited technologist permit. The board shall verify completion of a course different from but equivalent to that required for a limited technologist permit and document, in board minutes, acceptance of such course completion before a physician assistant may perform routine radiological procedures.~~

(2) A physician assistant performing routine radiologic procedures who holds a limited technologist permit or whose education or training meets the requirements of (1) ~~has been accepted by the board as equivalent to that of a limited technologist permit holder~~ may not perform procedures that exceed the scope of practice of a limited technologist permit holder. Routine radiologic procedures, within the scope of practice of a limited technologist permit holder, are set forth in rule and adopted by the Montana Board of Radiologic Technologists.

(3) A physician assistant performing fluoroscopy or advanced radiologic procedures, without the direct supervision and guidance of a physician, must meet the education requirements established by the Board of Radiologic Technologists for a Radiology Practitioner Assistant license or have completed the Fluoroscopy Education Framework for the Physician Assistant created through the collaboration of the American Academy of Physician Assistants and the American Society of Radiologic Technologists. ~~The board shall verify completion of such educational requirements and document acceptance of such educational requirements in board minutes.~~

(4) remains as proposed.

BOARD OF MEDICAL EXAMINERS
ANNA EARL, MD, PRESIDENT

/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 February 13, 2012