

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.156.508 approved residency,)	AMENDMENT AND ADOPTION
24.156.606 examination, 24.156.607)	
graduate training requirements,)	
24.156.611 occasional case)	
exemption, 24.156.625, 24.156.1005,)	
24.156.1307, 24.156.1412,)	
24.156.1625, and 24.156.2705)	
unprofessional conduct, 24.156.1301)	
definitions, 24.156.1304 initial)	
license, 24.156.1306 professional)	
conduct and standards, 24.156.1620)	
physician assistant license renewal,)	
and the adoption of NEW RULE I)	
podiatry postgraduate training)	

TO: All Concerned Persons

1. On August 1, 2014, at 1:30 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption 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 Medical Examiners (board) no later than 5:00 p.m., on July 25, 2014, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsmed@mt.gov (board's e-mail).

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

24.156.508 APPROVED RESIDENCY (1) and (1)(a) remain the same.
 (b) has been approved by the ~~American~~ Accreditation Council ~~on~~ for
 Graduate Medical Education or the American Osteopathic Association.
 (2) and (2)(a) remain the same.
 (b) carries malpractice insurance; and
~~(c) has been approved for certification by the American Board of Medical~~
Specialties;

~~(d) (c)~~ requires residents to have sufficient fluency in spoken and written English to practice medicine with reasonable skill and safety;₂

~~(e) has an internal examination process (if written examinations are conducted, the residency will provide the board with reports or access to examination results); and~~

~~(f) provides that residents are supervised by a mentor who:~~

~~(i) is a licensed physician; and~~

~~(ii) provides written evaluations and/or reports to the training program, and to the board upon request.~~

AUTH: 37-1-131, ~~37-3-202~~, 37-3-203, MCA

IMP: 37-3-102, 37-3-203, MCA

REASON: The board determined that it is reasonably necessary to amend this rule to accurately reflect the current environment of graduate medical education. The board discovered the incorrect or outdated provisions in early 2014 following review of a physician applicant's residency.

Authority citations are amended to accurately reflect the board's rulemaking authority.

24.156.606 EXAMINATION (1) remains the same.

(a) an M.D. or D.O. degree;₁ ~~and~~

(b) completion₇ or near completion₇ of one year of postgraduate training in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;₂ ~~and~~

(c) remains the same.

(i) National Board of Medical Examiners examination ("NBME") Parts I and II, taken before January 1, 2000; or

(ii) Federation Licensing Examination ("FLEX") Component I, taken before January 1, 2000; or

(iii) USMLE Steps I and II;₁ and

(d) remains the same.

(2) USMLE Step III must be taken within seven years of the applicant's first examinations under (1)(c)₁ unless the applicant is or has been a student in a recognized M.D./Ph.D. program in a field of biological sciences tested in the Step I content. Applicants seeking an exception to the seven-year rule shall present a verifiable and rational explanation for being unable to meet the seven-year limit.

(3) If an applicant fails to obtain a score ~~of~~ of 75 or more in the first attempt at USMLE Step III, the applicant may be reexamined no more than ~~two~~ five additional times.

(4) remains the same.

(a) NBME Parts I, II₁ and III; or

(b) through (e) remain the same.

(5) For exams taken after January 1, 2000, the board will accept only USMLE Steps 1, 2₁ and 3, passed with a score of 75 or more for each step.

(6) remains the same.

AUTH: 37-3-203, MCA

IMP: 37-3-306, 37-3-307, 37-3-308, 37-3-311, MCA

REASON: After learning that the current limit on reexaminations for the United States Medical Licensing Examination (USMLE) Step III is out-of-date with the USMLE's own rules, the board is amending this rule to increase the number of allowed reexaminations from two to five to match USMLE rules.

24.156.607 GRADUATE TRAINING REQUIREMENTS FOR FOREIGN MEDICAL GRADUATES (1) remains the same.

(a) the graduate has had three years of postgraduate training education in a postgraduate institution that has been approved by the ~~Council on Medical Education of the American Medical Association~~ Accreditation Council for Graduate Medical Education or the American Osteopathic Association or successors; or

(b) the graduate has had three years of postgraduate training education in a program approved by or affiliated with the World Health Organization and has sufficient fluency in spoken and written English to practice medicine with reasonable skill and safety; or

(~~b~~) (c) the graduate has been granted ~~board certification~~ board certification by a specialty board which is approved by, and a member of, the American Board of Medical Specialties or the American Osteopathic Association, or provides verification of being a certificant of the College of Family Physicians of Canada, a fellow of the Royal College of Physicians, or a fellow of the Royal College of Surgeons.

AUTH: 37-3-203, MCA

IMP: 37-3-305, MCA

REASON: The board has determined that this rule is out of date and incomplete regarding organizations that approve graduate training programs. The board is amending this rule to accurately reflect current programs.

24.156.611 OCCASIONAL CASE EXEMPTION (1) remains the same.

(a) ~~submits a written request~~ an application to the board, describing the date, place, and the scope of practice and/or the procedure to be performed, and a statement detailing the need for the physician's expertise in Montana, at least 15 days prior to such service;

(b) through (d) remain the same.

(2) An occasional case is defined as not more than two cases per year. A single case may include rendering medical services to multiple patients on no more than five consecutive or nonconsecutive days.

(3) An occasional case exemption is valid for two months from the date of issuance.

AUTH: 37-3-203, MCA

IMP: 37-3-103, MCA

REASON: After staff noticed confusion among Montana hospitals about what constitutes a written request, the board is amending (1)(a) to require information on a standardized, board-approved application form and help eliminate the confusion. To document that hospitals bring specialists in for certain procedures because no licensed physician in Montana has the required expertise, the board is proposing to require a statement as to why an unlicensed physician is needed to perform services under an exemption. Lastly, the board is removing the 15-day advance notice requirement in response to hospitals stating that the requirement is not feasible and because the board has previously granted exemptions outside the time frame.

The board determined it is reasonably necessary to implement a more limited time frame for the occasional licensure exemptions. Concerned that the definition of "case" is overly vague and open to abuse, and to clarify the board's conclusion that an occasional case may go beyond single cases, the board is amending (2) and (3). The board concluded the amendments will also address questions on specialists treating patients for a full year, and using an exemption to keep unlicensed specialists "on call" whether or not an immediate need for services exists.

24.156.625 UNPROFESSIONAL CONDUCT (1) and (1)(a) remain the same.

(b) fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; ~~as~~ As used herein, "material" means any false or misleading statement or information;

(c) conduct likely to deceive, defraud, or harm the public;

(d) remains the same.

(e) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

(f) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(g) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 3, MCA, or these rules; ~~a~~ A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(h) willful disobedience of a rule adopted by the board, or an order of the board, regarding evaluation or enforcement of discipline of a licensee;

(i) habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally;

(j) and (k) remain the same.

(l) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

(m) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(n) remains the same.

(o) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of medicine. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of medicine;

(p) administering, dispensing, prescribing, or ordering a controlled substance, as defined by the federal Food and Drug Administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(q) conviction or violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by the federal Food and Drug Administration or successors, whether or not an appeal is pending;

(r) remains the same.

(s) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(t) except as provided in this subsection, practicing medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(i) and (ii) remain the same.

(iii) the organization of a professional limited liability company under Title 35, chapter 8, MCA, for the providing of professional services as defined in Title 35, chapter 8, MCA; or

(iv) practicing medicine as the partner, agent, or employee of, or in joint venture with, a hospital, medical assistance facility, or other licensed health care provider; however,

(A) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine; and

(B) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(C) remains the same.

(u) failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative; or failing to make appropriate arrangements to transfer or secure patient medical records when closing or selling a practice;

~~(v)~~ (ad) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct;

~~(w)~~ (v) failing to comply with an agreement the licensee has entered into with the program established by the board under 37-3-203(4), MCA;

~~(x)~~ (w) failing, as a medical director, to supervise, appropriately direct, and train emergency medical technicians (EMTs) practicing under the licensee's supervision, according to scope of practice and current board-approved USDOT

curriculum standards, including revisions and board-approved statewide protocols for patient care;

~~(y)~~ (x) failing to supervise, manage, appropriately delegate, and train medical assistants under the licensee's supervision, according to scope of practice and generally accepted standards of practice;

~~(z)~~ (y) failing to supervise, appropriately delegate, and train physician assistants-certified practicing under the licensee's supervision, according to board-approved utilization plans, scope of practice, and generally accepted standards of practice;

~~(aa)~~ (z) failing to supervise and appropriately train residents, as defined in 37-3-305, MCA, practicing under the licensee's supervision, according to scope of practice and generally accepted standards of practice; ~~or~~

~~(ab)~~ (aa) having voluntarily relinquished or surrendered a license or privileges, or having withdrawn an application for licensure or privileges, while under investigation or prior to the granting or denial of an application in this state, or in another state or jurisdiction;

(ab) terminating an existing relationship with a patient, for whatever reason, without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other medical care to be secured;

(ac) failing to place patient medical records in a secure location preceding, during, or following a change in a practice location; or termination of a patient relationship or a medical practice; or knowingly breaching the confidentiality of patient medical records with an individual unauthorized to receive medical records;
or

AUTH: 37-1-319, 37-3-203, MCA

IMP: 37-1-131, 37-3-202, 37-3-305, 37-3-309, 37-3-323, MCA

REASON: Following advisement by department and legal staff, the board directed staff to draft rule language to address chaperone use, patient abandonment, and protection of medical records, conduct that was previously included in board position papers and advisories that were rescinded in fall of 2013. The board is now amending all unprofessional conduct rules to clearly establish in rule the board's intent that such conduct is unprofessional and subject to licensure discipline.

The board is amending the rule throughout to update punctuation and grammar in compliance with the ARM formatting rules of the Montana Secretary of State.

24.156.1005 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 6, MCA:

~~(1)~~ (a) ~~Conviction~~ conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

~~(2)~~ (b) ~~Fraud~~ fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an

examination required for licensure; ~~as.~~ As used herein, "material" means any false or misleading statement or information;

(3) ~~(c)~~ Conduct conduct likely to deceive, defraud, or harm the public;

(4) ~~(d)~~ Making making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(5) ~~(e)~~ Resorting resorting to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

(6) ~~(f)~~ Use use of a false, fraudulent, or deceptive statement in any document connected with the practice of podiatric medicine;

(7) ~~(g)~~ Having having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice podiatric medicine, based upon acts or conduct by the licensee, similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 6, MCA, or these rules; ~~a.~~ A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(8) ~~(h)~~ Willful willful disobedience of a rule adopted by the board, or an order of the board regarding evaluation or enforcement of discipline of a licensee;

(9) ~~(i)~~ Habitual habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally;

(10) ~~(j)~~ Failing failing to furnish to the board or its investigators or representatives information legally requested by the board;

(11) ~~(k)~~ Failing failing to cooperate with a lawful investigation conducted by the board;

(12) ~~(l)~~ Failing failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

(13) ~~(m)~~ Obtaining obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(14) ~~(n)~~ Abusive abusive billing practices;

(15) ~~(o)~~ Commission commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of podiatric medicine. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of podiatric medicine;

(16) ~~(p)~~ Administering administering, dispensing, prescribing, or ordering a controlled substance, as defined by the federal Food and Drug Administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(17) ~~(q)~~ Conviction conviction or violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by the

federal Food and Drug Administration or successors, whether or not an appeal is pending;

~~(18)~~ (r) ~~Testifying~~ testifying in court on a contingency basis;

~~(19)~~ (s) ~~Conspiring~~ conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

~~(20)~~ (t) ~~Except~~ except as provided in this subsection, practicing podiatric medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice podiatric medicine within this state; however, this does not prohibit:

(a) and (b) remain the same, but are renumbered (i) and (ii).

~~(e)~~ (iii) practicing podiatric medicine as the partner, agent, or employee of, or in joint venture with, a hospital, medical assistance facility, or other licensed health care provider; however,

(i) through (iii) remain the same, but are renumbered (A) through (C).

~~(21)~~ (u) ~~Failing~~ failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(v) terminating an existing relationship with a patient, for whatever reason, without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other medical care to be secured;

(w) failing to place patient medical records in a secure location preceding, during, or following a change in practice location or termination of a patient relationship or a podiatric medical practice; or knowingly breaching confidentiality of patient medical records with an individual unauthorized to receive medical records;
or

~~(22)~~ (x) ~~Any~~ any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-319, 37-6-106, MCA

IMP: 37-6-311, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

24.156.1301 DEFINITIONS (1) remains the same.

(2) "~~Association~~ Academy" means the ~~American Dietetic Association~~ Academy of Nutrition and Dietetics or its successor.

(3) remains the same.

(4) "Standards of dietetic practice" means ~~American Dietetic Association~~ the Academy of Nutrition and Dietetics Standards of Practice and Standards of Professional Performance for Registered Dietitians.

(5) Further, for the purpose of this subchapter, the definitions contained in subchapter ~~5~~ five of the administrative rules of the Montana State Board of Medical Examiners apply.

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-25-201, 37-25-302, MCA

REASON: The board is amending this rule to reflect that the American Dietetic Association is now known as the Academy of Nutrition and Dietetics.

24.156.1304 INITIAL LICENSE (1) and (1)(a) remain the same.

(b) the initial license fee; and

(c) a copy of the registration by the commission;

~~(d) a copy of the diploma or a complete transcript from an accredited college or university in the field of dietetics, food and nutrition or public health;~~

~~(e) a recent photograph, taken within one year of application.~~

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-25-302, MCA

REASON: The board has determined that the requirement in (1)(c) for registry by the Commission for Dietary Registration is sufficient to verify the educational credentials of nutritionist license applicants. The board has determined that a photograph is no longer necessary for applications since it is not needed for identification, and forces applicants to spend additional time and money to obtain and submit them. Additionally, all application documents are scanned and maintained electronically, which renders photographs nearly unrecognizable.

24.156.1306 PROFESSIONAL CONDUCT AND STANDARDS OF PROFESSIONAL PRACTICE (1) remains the same.

(2) A licensee who demonstrates appropriate education and experience may engage in the practice of diabetes education as defined and credentialed by the ~~American Dietetic Association~~ Academy and the American Association of Diabetes Educators.

(3) remains the same.

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-25-201, 37-25-301, MCA

REASON: In conjunction with the proposed change to ARM 24.156.1301, the board is amending this rule to correct a reference to the American Dietetic Association to the "Academy."

24.156.1307 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 25, MCA:

~~(4) (a) Conviction~~ conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude whether misdemeanor or felony, and whether or not an appeal is pending;

(2) ~~(b)~~ Fraud ~~fraud~~, misrepresentation, deception, or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; ~~as.~~ As used herein, "material" means any false or misleading statement or information;

~~(3)~~ ~~(c)~~ Conduct ~~conduct~~ likely to deceive, defraud, or harm the public;

~~(4)~~ ~~(d)~~ Making ~~making~~ a false or misleading statement regarding the licensee's skill or the effectiveness or value of the treatment, or remedy prescribed by the licensee, or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

~~(5)~~ ~~(e)~~ Resorting ~~resorting~~ to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

~~(6)~~ ~~(f)~~ Use ~~use~~ of a false, fraudulent, or deceptive statement in any document connected with the practice of dietetics-nutrition;

~~(7)~~ ~~(g)~~ Having ~~having~~ been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice dietetics-nutrition, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 25, MCA, or these rules; a. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

~~(8)~~ ~~(h)~~ Willful ~~willful~~ disobedience of a rule adopted by the board, or an order of the board regarding enforcement of discipline of a licensee;

~~(9)~~ ~~(i)~~ Habitual ~~habitual~~ intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally;

~~(10)~~ ~~(j)~~ Failing ~~failing~~ to furnish to the board or its investigators or representatives information legally requested by the board;

~~(11)~~ ~~(k)~~ Failing ~~failing~~ to cooperate with a lawful investigation conducted by the board;

~~(12)~~ ~~(l)~~ Failing ~~failing~~ to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

~~(13)~~ ~~(m)~~ Obtaining ~~obtaining~~ a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

~~(14)~~ ~~(n)~~ Abusive ~~abusive~~ billing practices;

~~(15)~~ ~~(o)~~ Commission ~~commission~~ of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of dietetics-nutrition. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of dietetics-nutrition;

~~(16)~~ ~~(p)~~ Conviction ~~conviction~~ or violation of a federal or state law regulating the possession, distribution, or use of any drug or any controlled substance, as defined by the federal Food and Drug Administration or successors, whether or not an appeal is pending;

- ~~(17)~~ (g) ~~Testifying~~ testifying in court on a contingency basis;
- ~~(18)~~ (r) ~~Conspiring~~ conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;
- ~~(19)~~ (s) ~~Except~~ except as provided in this subsection, practicing dietetics-nutrition as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice dietetics-nutrition within this state; however, this does not prohibit:
- (a) and (b) remain the same, but are renumbered (i) and (ii).
- ~~(e)~~ (iii) practicing dietetics-nutrition as the partner, agent, or employee of, or in joint venture with, a hospital, medical assistance facility, or other licensed health care provider; however,
- ~~(f)~~ (A) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the nutritionist's independent judgment in the practice of dietetics-nutrition; and
- ~~(g)~~ (B) the nutritionist's independent judgment in the practice of dietetics-nutrition must in fact be unaffected by the relationship; and
- (iii) remains the same, but is renumbered (C).
- ~~(20)~~ (t) ~~Failing~~ failing to transfer pertinent and necessary patient records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;
- ~~(21)~~ (u) ~~Practicing~~ practicing dietetics-nutrition as a registered or licensed nutritionist in this state without a current active Montana license; such unlicensed practice shall be grounds for denial of a license to that individual if the application is made subsequent to such conduct;
- (v) terminating an existing relationship with a patient, for whatever reason, without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other dietetics-nutrition care to be secured;
- (w) failing to place patient health records in a secure location preceding, during, or following a change in practice location or termination of a patient relationship or a dietetics-nutrition practice; or knowingly breaching confidentiality of patient health records with an individual unauthorized to receive health records; or
- ~~(22)~~ (x) ~~Any~~ any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-319, 37-25-201, MCA
IMP: 37-25-308, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

24.156.1412 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 13, MCA:

- (a) ~~Failure~~ failure to maintain professional boundaries in relationships with patients, or in any way exploiting the practitioner/patient trust;
- (b) ~~Engaging~~ engaging in sexual contact with a current patient if the contact commences after the practitioner/patient relationship is established;
- (c) ~~Engaging~~ engaging in sexual contact with a former patient, unless a reasonable period of time has elapsed since the professional relationship ended and unless the sexual contact does not exploit the trust established during the professional relationship;
- (d) ~~Failure~~ failure to utilize clean needle technique, as required by the National Commission for the Certification of Acupuncture and Oriental Medicine, or its successor;
- (e) ~~Conduct~~ conduct likely to deceive, defraud₁ or harm the public;
- (f) ~~Making~~ making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment₁ or remedy prescribed by the licensee or at the licensee's direction, in the treatment of a disease or other condition of the body or mind;
- (g) ~~Resorting~~ resorting to fraud, misrepresentation₁ or deception in the examination or treatment of a person₁; or in billing, giving₁ or receiving a fee related to professional services₁; or reporting to a person, company, institution₁ or organization, including fraud, misrepresentation₁ or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;
- (h) ~~Use~~ use of a false, fraudulent₁ or deceptive statement in any document connected with the practice of acupuncture;
- (i) ~~Having~~ having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice acupuncture, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 13, MCA, or these rules; ~~a.~~ A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;
- (j) ~~Willful~~ willful disobedience of a rule adopted by the board, or an order of the board regarding enforcement of discipline of a licensee;
- (k) ~~Failing~~ failing to furnish to the board or its investigators or representatives information legally requested by the board;
- (l) ~~Failing~~ failing to cooperate with a lawful investigation conducted by the board;
- (m) ~~Obtaining~~ obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury₁ or condition of a person can be cured;
- (n) ~~Abusive~~ abusive billing practices;
- (o) ~~Testifying~~ testifying in court on a contingency basis;
- (p) ~~Conspiring~~ conspiring to misrepresent or willfully misrepresenting a medical condition improperly to increase or decrease a settlement, award, verdict, or judgment;
- (q) ~~Except~~ except as provided in this subsection, practicing acupuncture as the partner, agent₁ or employee of, or in joint venture with, a person who does not hold a license to practice acupuncture within this state; however, this does not prohibit:

(i) through (iii) remain the same.

(r) ~~Failing~~ failing to transfer pertinent and necessary patient records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(s) ~~Misrepresenting~~ misrepresenting professional credentials (i.e., education, training, experience, level of competence, skills, and/or certification status);

(t) ~~Engaging~~ engaging in conduct that demonstrates a lack of knowledge of, or lack of ability in, or failure to apply the prevailing principles and/or skills of the profession in which the individual has been certified; ~~and~~

(u) terminating an existing relationship with a patient, for whatever reason, without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other medical care to be secured;

(v) failing to place patient medical records in a secure location preceding, during, or following a change in practice location or termination of a patient relationship or an acupuncture practice; or knowingly breaching confidentiality of patient medical records with an individual unauthorized to receive medical records;
or

~~(u)~~ (w) Any any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-134, 37-1-136, 37-1-319, 37-13-201, MCA

IMP: 37-1-308, 37-1-309, 37-1-310, 37-1-311, 37-1-312, 37-1-316, 37-1-319, 37-13-201, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

24.156.1620 PHYSICIAN ASSISTANT LICENSE RENEWAL (1) through (2)(a) remain the same.

~~(b) affirm that the physician assistant possesses a current National Commission on the Certification of Physician Assistants (NCCPA) certification;~~

(c) through (e) remain the same, but are renumbered (b) through (d).

(3) Inactive licensees shall comply with (2)(a), (b), (c), and (d), ~~and (e)~~ of this rule to renew an inactive license.

(4) remains the same.

~~(5) The board shall conduct a random audit of NCCPA certification following each renewal period.~~

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-141, 37-20-203, 37-20-302, 37-20-402, MCA

REASON: Following questions from a licensed physician assistant, the board concluded that failing NCCPA recertification has no impact on licensure. The board further determined that requiring recertification only at renewal has no meaning and notes that no other board licensee must prove national private sector certification at

renewal. The board is amending this rule accordingly, and will seek to remove the certification requirement from statute as well. Because the board is deleting the NCCPA certification, it is reasonably necessary to strike the requirement for the board to audit such certification.

24.156.1625 UNPROFESSIONAL CONDUCT (1) remains the same.

(a) conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

(b) conduct likely to deceive, defraud, or harm the public, including, but not limited to, practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in the practice of medicine;

(c) remains the same.

(d) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

(e) violation of any section in Title 37, chapter 20, MCA, and/or any rule adopted by the board to implement Title 37, chapters 1 or 20, MCA, any order of the board regarding enforcement of discipline of a licensee, or any term, condition, or limitation imposed on the licensee in a utilization plan;

(f) through (h) remain the same.

(i) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

(j) remains the same.

(k) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of medicine;

(l) through (p)(iii) remain the same.

(A) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine; and

(B) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(C) remains the same.

(q) failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative, in accordance with Title 50, chapter 16, MCA;

(r) promoting the sale of services, goods, appliances, or drugs in such a manner as to exploit the patient for the financial gain of the licensee or a third party;

(s) through (z) remain the same.

- (aa) commission of any act of sexual abuse, misconduct, or exploitation by the licensee, whether or not related to the practice;
- (ab) through (ad) remain the same.
- (ae) failing to submit to the board a completed supervision agreement prior to commencing physician assistant practice in the state of Montana;
- (af) and (ag) remain the same.

AUTH: 37-1-319, 37-20-202, MCA

IMP: 37-1-319, 37-3-202, 37-20-403, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

24.156.2705 UNPROFESSIONAL CONDUCT (1) through (1)(r) remain the same.

(s) commission of any act of sexual abuse, misconduct, or exploitation by the licensee whether or not related to the practice. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice;

(t) through (ac) remain the same.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

4. The proposed new rule provides as follows:

NEW RULE I PODIATRY POSTGRADUATE TRAINING (1) "Equivalent experience or training" per 37-6-302(2)(c), MCA, means:

(a) successful completion of a 12-month preceptorship in a jurisdiction that statutorily authorizes preceptorships and sets standards in rule for preceptor clinical affiliation, scope of preceptor practice, and standards for review and completion of the program;

(b) a minimum of three years of active clinical practice in another jurisdiction or in the armed forces with licensing standards substantially equivalent to or greater than the standards in this state;

(c) completion of at least one year of postdoctoral fellowship training;

(d) a minimum of two years of full-time teaching in a college of podiatric medicine subsequent to receipt of the degree of doctor of podiatric medicine; or

(e) successful evaluation of clinical competency in a program approved by the board prior to initiation of evaluation.

AUTH: 37-3-203, 37-6-106, MCA

IMP: 37-6-302, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule to address inquiries to the board about residencies or remedial education for podiatrists who have not completed the required one year of postgraduate training. The board currently has no rule addressing this subject and is proposing this rule to clearly describe the board's intent regarding this equivalent experience and training.

5. 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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., August 8, 2014.

6. An electronic copy of this notice of public hearing is available at www.medicalboard.mt.gov (department and board's web site). 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.

7. 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 that the person 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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsmed@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.1620 will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.508, 24.156.606, 24.156.607, 24.156.611, 24.156.625, 24.156.1005, 24.156.1301, 24.156.1304, 24.156.1306, 24.156.1307,

24.156.1412, 24.156.1625, and 24.156.2705 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsmed@mt.gov.

10. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
MARY ANNE GUGGENHEIM, PHYS,
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 June 30, 2014