

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.101.413 renewal dates and) PROPOSED AMENDMENT,
requirements, 24.156.501 definitions,) ADOPTION, AND REPEAL
24.156.503 medical student's)
supervision and permitted activities,)
24.156.504 internship, 24.156.601 fee)
schedule, 24.156.625, 24.156.626)
revocation or suspension proceedings,)
24.156.1005, 24.156.1307,)
24.156.1412, and 24.156.1625)
unprofessional conduct, 24.156.1304)
and 24.156.1404 application for)
licensure, 24.156.1306 professional)
conduct and standards of professional)
practice, 24.156.1617 application for)
physician assistant license,)
24.156.1622 supervision of physician)
assistant, 24.156.1623 chart review,)
24.156.2718 continuing education and)
refresher requirements, and)
24.156.2732 medical direction; the)
adoption of NEW RULE I application for)
temporary non-disciplinary physician)
license, NEW RULE II application for)
physician licensure in another state via)
interstate compact, NEW RULE III)
application for licensure, and NEW)
RULE IV post-graduates—supervision)
and permitted activities; and the repeal)
of ARM 24.156.203 board meetings,)
24.156.502 medical schools,)
24.156.505 intern's scope of practice,)
24.156.506 residency, 24.156.507)
resident's scope of practice, 24.156.605)
temporary license, 24.156.627)
reinstatement, 24.156.803 license)
requirement, 24.156.804 application for)
a telemedicine license, 24.156.805)
fees, 24.156.806 failure to submit fees,)
24.156.807 issuance of a telemedicine)
license, 24.156.808, 24.156.1004,)
24.156.1305, 24.156.1411, and)
24.156.1619 renewals, 24.156.809)

effect of determination that application)
 for telemedicine license does not meet)
 requirements, 24.156.811 sanctions,)
 24.156.812 obligation to report to board,)
 24.156.1602 board policy, and)
 24.156.1616 maintaining NCPPA)
 certification)

TO: All Concerned Persons

1. On February 3, 2017, at 1:00 p.m., a public hearing will be held in room B-07, basement conference room, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal 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 no later than 5:00 p.m., on January 27, 2017, 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 dlibsdmed@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY: In 2015, the Montana Legislature enacted Chapter 154, Laws of 2015 (Senate Bill 77), an act revising licensure and other regulations for physicians and physician assistants, creating a resident physician license, repealing specialized, telemedicine, and temporary physician licenses, and providing the board with rulemaking authority for telemedicine guidelines and short-term licenses. The bill was signed by the Governor on March 30, 2015, and became effective July 1, 2015.

Additionally, the 2015 Montana Legislature enacted Chapter 203, Laws of 2015 (House Bill 429), an act enacting the interstate medical licensure compact and providing for interstate licensure of physicians. The bill was signed by the Governor on April 8, 2015, became effective October 1, 2015, and is codified at 37-3-356 and 37-3-357, MCA.

Following passage of the legislation, board counsel and the Laws and Rules Committee thoroughly reviewed the rules and made numerous recommendations to the board. The board determined it is reasonably necessary to amend several existing rules to align board processes and terminology with the statutory changes and further implement the legislation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The department proposes to amend the following rule. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(r)

remain the same.

(s)	Medical Examiners	Acupuncturist	Biennially	October 31
		<u>Emergency Medical Technician</u> <u>Emergency Care Provider: AEMT, EMR, EMT, Paramedic</u>	Biennially	March 31
		Nutritionist	Biennially	October 31
		Physician	Biennially	March 31
		Physician Assistant	Biennially	October 31
		Podiatrist	Biennially	October 31
		<u>Telemedicine Practitioners</u> <u>Resident Physician</u>	Biennially <u>Annually</u>	<u>March 31</u> <u>June 30</u>

(t) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: Because Senate Bill 77 removed the telemedicine practitioner license and added the resident physician license type to the same statute, the department is amending this rule to reflect those changes. The department is also amending this rule to align with 37-3-307, MCA, that resident licenses are limited to one year, but may be renewed. Finally, it is reasonably necessary to amend the designations for emergency care provider licenses in this rule to coincide with the changes previously made in board rule.

5. The board proposes to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.156.501 DEFINITIONS For the purpose of these rules, the following definitions shall apply:

~~(1) Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender may be applied to females.~~

(1) "ABMS" means American Board of Medical Specialties.

(2) "ACGME" means the Accreditation Council for Graduate Medical Education.

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

(4) "AOA" means American Osteopathic Association.

(3) and (4) remain the same but are renumbered (5) and (6).

(7) "Direct supervision" means the supervising physician is:

(a) physically present in the same building as the person under supervision;

or

(b) in sufficiently close proximity to the person under supervision to be quickly available to the person under supervision.

(8) "ECFMG" means the Educational Commission for Foreign Medical Graduates.

(5) remains the same but is renumbered (9).

~~(6) (10) "Intern" means a person who has graduated from an approved medical school, and is enrolled in a program of training approved for first year post-graduates. The intern may also be referred to as "in post-graduate year 1" or ("PGY-1"), or "first year resident." who:~~

~~(a) An intern has graduated from an approved medical school;~~

~~(b) is enrolled in a training program approved for first year post-graduates;~~

~~(c) has passed USMLE Steps 1 and 2, or the AOA equivalent; and~~

~~(d) is preparing for, or awaiting the results of, USMLE Step 3, or the American osteopathic AOA equivalent;~~

~~(b) An intern is not:~~

~~(i) yet eligible for licensure;~~

~~(ii) required to obtain a license for medical practice performed while in Montana; and~~

~~(iii) monitored by the board.~~

~~(c) The board may extend the time of internship beyond one year for good cause shown.~~

~~(7) (11) "Medical student" means a person currently enrolled in or who has graduated from a school of allopathic or osteopathic medicine approved by the Council on Medical Education of the American Medical Association, the Bureau of Professional Education of the American Osteopathic Association, or the board an approved medical school who has not yet entered PGY-1.~~

~~(a) A medical student is not:~~

~~(i) yet eligible for licensure;~~

~~(ii) required to obtain a license for medical practice performed while in Montana; and~~

~~(iii) monitored by the board.~~

~~(b) A person is not a medical student if the person:~~

~~(i) has been awarded a doctorate degree and successfully completed the United States Medical Licensing Examination (USMLE) Steps 1 and 2, or the equivalent level of testing by the American Osteopathic Association; or~~

~~(ii) has passed USMLE Step 3, or the equivalent level of testing by the American Osteopathic Association.~~

~~(8) (12) "Proceeding" shall include:~~

~~(a) a formal complaint alleging violation of any provision of the act or any regulation or requirement made pursuant to a power granted by such act; or~~

~~(b) a hearing before the board pursuant to the provisions of 37-3-321 through 37-3-324, MCA.~~

~~(9) (13) "Resident" means a person who is educationally eligible for licensure as a physician, that is:~~

~~(a) has the degree of medical doctor, or doctor of osteopathy or an equivalent degree from an approved medical school;~~

~~(b) for purposes of licensure only;~~

- ~~(i) prior to October 1, 2001, has completed post-graduate year 1; or~~
- ~~(ii) on or after October 1, 2001, has completed post-graduate year 2;~~
- (b) is in "post-graduate year 2" or "PGY-2" or above;
- (c) has completed the USMLE Steps 1 and 2 or the AOA equivalent; or
- ~~(e) (d) holds a certificate from the Educational Commission for Foreign Medical Graduates (ECFMG) where applicable; and~~
- (d) (e) is enrolled in a residency training program approved by the Accreditation Council for Graduate Medical Education (ACGME) or the equivalent American Osteopathic Association credentialing body; an approved residency program.
- ~~(e) a resident may apply for licensure:~~
 - ~~(i) if the resident is enrolled in an ACGME-approved residency or a residency approved by the American Osteopathic Association, the resident need not have an existing, active license to practice as a physician in a state or territory of the United States;~~
 - ~~(ii) if the resident is not enrolled in an ACGME-approved residency, the resident must have an existing, active license to practice as a physician in a state or territory of the United States in order to obtain resident registration.~~
- ~~(10) "Secretary" means the executive secretary of the Montana state Board of Medical Examiners.~~
- ~~(11) remains the same but is renumbered (14).~~
- (15) "USMLE" means United States Medical Licensing Examination or its successor.

AUTH: 37-3-203, MCA

IMP: 37-3-102, 37-3-201, 37-3-305, ~~37-3-306~~, 37-3-307, 37-3-325, 37-3-326, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with statutory changes in Senate Bill 77, define names and terms used frequently in rule, relocate definitions from other rules, and simplify or clarify existing definitions. Implementation citations are being amended to delete reference to a repealed statute.

24.156.503 MEDICAL STUDENT'S SUPERVISION AND PERMITTED ACTIVITIES (1) All medical student practice must shall be under the direct supervision of a Montana-licensed physician, ~~who must be aware of the limitations on the medical student's scope of practice. Either the medical student's medical school or the supervising physician must carry malpractice insurance covering the medical student's practice during the training process~~ except patient care in an emergency room shall occur only in the physical presence of the supervising physician.

~~(2) As used herein, "direct supervision" means that the supervising physician is physically present in the same building as the medical student, or is within 20 minutes of the physical presence of the patient being cared for by the medical student.~~

~~(3) The~~

(2) A medical student may:

(a) assist the licensed physician in medical procedures ~~(for example, suturing wounds)~~ in an office or hospital;

(b) ~~scrub and~~ assist the licensed physician in surgery;

(c) participate in educational and patient conferences; and

(d) participate in medical research;

~~(4) The medical student may not practice independently; for example, among other things, the medical student may not:~~

~~(a) perform surgery;~~

~~(b) care for a patient in an emergency room without the physical presence of the supervising physician;~~

~~(c) (e) prescribe medications without with the supervising physician's co-signature of the medical student's supervising physician;~~

~~(d) (f) write or issue orders without with the supervising physician's co-signature of the medical student's supervising physician; or and~~

~~(e) (g) sign hospital records or patient charts without with the supervising physician's co-signature of the medical student's supervising physician.~~

(3) Either the medical school or the supervising physician shall carry malpractice insurance covering the medical student's practice during training.

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

IMP: 37-1-131, 37-3-102, 37-3-203, MCA

REASON: The board is amending this rule for better organization, ease of use, and to clarify the extent to which medical students may be directly involved in patient care. Additionally, the board is amending the catchphrase to align with the title of NEW RULE IV. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.504 INTERNSHIP (1) An internship which is not an "approved internship" as defined ~~not approved as required by 37-3-102(1), MCA,~~ may be approved upon investigation by the board ~~through its executive secretary or some other regularly licensed physician or any other representative which the board may choose,~~ at the expense of the applicant ~~requesting approval of the internship.~~

(2) The board may extend the time of internship beyond one year.

AUTH: 37-3-203, MCA

IMP: 37-3-102, MCA

REASON: The board is relocating ARM 24.156.501(6)(c) to (2) in this rule.

24.156.601 FEE SCHEDULE (1) The following fees will be charged:

(a) remains the same.

(b) ~~Temporary Resident~~ license fee 100

(c) and (d) remain the same.

(e) ~~Physician renewal fee (inactive-retired)~~ 65

~~Until March 31, 2016. After that date, physicians no longer may renew as inactive-retired under the provisions of ARM 24.156.615 and ARM 24.156.617.~~

(f) (e) Resident physician renewal	100
(f) Application for licensure in another state via interstate compact	100
(g) Initial license fee for physician granted a Montana license via interstate compact	500

(2) and (3) remain the same.

AUTH: 37-1-134, 37-1-319, 37-3-203, 37-3-356, MCA

IMP: 37-1-134, 37-1-141, ~~37-3-304~~, 37-3-305, 37-3-308, 37-3-309, ~~37-3-311~~, 37-3-313, 37-3-356, MCA

REASON: Senate Bill 77 eliminated temporary licenses and clarified the provisions for resident licensure. The board is amending this rule to utilize correct terminology.

The board is striking (1)(e) as March 31, 2016 has passed and the "inactive-retired" physician license status is no longer renewable. The board is adding (1)(f) and (g) to establish licensure fees associated with the passage of House Bill 429 and Montana's 2015 entry into the Interstate Medical Licensure Compact. The board concluded that a physician obtaining a Montana license via the compact should pay the same fee as one who is licensed under the traditional "by application" method. The board estimates that the proposed fee changes will affect approximately 74 persons and increase annual revenue by \$14,740.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete references to repealed statutes.

24.156.625 UNPROFESSIONAL CONDUCT (1) through (1)(n) remain the same.

(o) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation by the licensee, 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) through (ab) remain the same.

(ac) failing to make appropriate arrangements to transfer and place patient medical records in a secure location preceding, during, or following a change in a practice location; sale of practice; 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~~

(ad) prescribing medication to a patient based solely on a questionnaire; or

(ad) remains the same but is renumbered (ae).

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

IMP: 37-1-131, 37-1-316, 37-3-202, 37-3-305, 37-3-309, 37-3-323, MCA

REASON: The board is amending (1)(o) to remove the language regarding chaperones and accommodate a request from department counsel. Department

counsel advised that the language sets a standard of conduct that is not appropriate for this rule. The board is also amending (1)(o) to clarify the intent that the provisions apply only to conduct by licensees.

The board determined it is reasonably necessary to add (1)(ad) following preliminary discussions about opioid prescribing as well as prescribing via telemedicine. Ultimately, the board decided that the provision should apply to all physicians and all medications and is adding it to those acts the board considers as unprofessional conduct.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.626 REVOCATION OR SUSPENSION PROCEEDINGS (1) In those cases brought pursuant to the provisions of 37-3-323, MCA, such proceedings may be initiated by any person or a member of the board by the filing of a written, signed complaint in which the charge or charges against the licensee are stated separately and with particularity. Such a complaint may be delivered to and filed with the board by any person of legal age or may be delivered to and filed with the board by the executive ~~secretary~~ officer of the board or by the attorney for the board.

AUTH: 37-3-203, MCA
IMP: 37-3-323, MCA

REASON: The board is amending this rule to align with a terminology change in Senate Bill 77.

24.156.1005 UNPROFESSIONAL CONDUCT (1) through (1)(n) remain the same.

(o) commission of an act of sexual abuse, misconduct, or exploitation by the licensee, whether or not 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;~~

(p) through (x) remain the same.

AUTH: 37-1-319, 37-6-106, MCA
IMP: 37-1-316, 37-6-311, MCA

REASON: The board is amending (1)(o) to remove the language regarding chaperones and accommodate a request from department counsel. Department counsel advised that the language sets a standard of conduct that is not appropriate for this rule. The board is also amending (1)(o) to clarify the intent that the provisions apply only to conduct by licensees, whether or not the misconduct is related to the practice of podiatry.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1304 INITIAL LICENSE APPLICATION FOR LICENSURE (1) Each application for an initial license as a nutritionist under the act must be accompanied by:

- (a) remains the same.
- (b) the initial license fee; and
- (c) a copy of the registration by the commission; and
- (d) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report.

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

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

REASON: In 2015, a joint review of licensure applications by the executive officer and the Licensing Bureau found that, while the nutritionist application requested an unopened National Practitioner Data Bank self-query report, no rule included the requirement. The board is amending the rule accordingly, and is also amending the catchphrase to better reflect the purpose of the rule.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1306 PROFESSIONAL CONDUCT AND STANDARDS OF PROFESSIONAL PRACTICE (1) A licensee shall conform to generally accepted principles and the standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the ~~association~~ Academy or commission, and other professional or governmental bodies.

(2) and (3) remain the same.

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

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

REASON: In a previous rules project, the board changed other references to "association" (as in American Dietetic Association) to "Academy" to reflect the organization's current name (Academy of Nutrition and Dietetics). The reference in this rule was inadvertently missed and is being amended now. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1307 UNPROFESSIONAL CONDUCT (1) through (1)(n) remain the same.

(o) ~~commission of an act of sexual abuse, misconduct, or exploitation by the licensee, whether or not 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;~~

(p) through (x) remain the same.

AUTH: 37-1-319, 37-25-201, MCA
IMP: 37-1-316, 37-25-308, MCA

REASON: The board is amending (1)(o) to remove the language regarding chaperones and accommodate a request from department counsel. Department counsel advised that the language sets a standard of conduct that is not appropriate for this rule. The board is also amending (1)(o) to clarify the intent that the provisions apply only to conduct by licensees, whether or not the misconduct is related to the practice of dietetics-nutrition.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1404 APPLICATION FOR LICENSURE (1) through (1)(b) remain the same.

~~(c) three written character references, two of which are licensed acupuncturists;~~

~~(d) (c) applicant's clean needle exam results from the Council of Colleges of Acupuncture and Oriental Medicine or its successor;~~

~~(d) acupuncture certification and examination results provided by the National Commission for the Certification of Acupuncture and Oriental Medicine; and~~

~~(e) recent photograph of the applicant which has been signed by the applicant and dated as to when taken;~~

~~(f) (e) copy of birth certificate or driver's license; and~~

~~(g) copy of DD214 military discharge, if applicable.~~

(2) through (6) remain the same.

AUTH: 37-13-201, MCA
IMP: 37-13-201, 37-13-302, MCA

REASON: In 2015, a review of board licensure applications by the executive officer and the licensing bureau revealed discrepancies between what is requested on the acupuncturist application and that required in administrative rule. The board is amending this rule to align the application requirements with the rules.

The board is striking (1)(c) to reflect a 2012 board decision to no longer require character references for any applicant. The board is amending (1)(c) and (d) to separate the requirements for CCAOM clean needle exam and NCCAOM certification exam to avoid confusion about which organization provides which exam. Because standardized department record keeping procedures have replaced paper documents with electronic records, the board is striking the photograph requirement from (1)(e) as outdated and unnecessary. Lastly, the board is eliminating the DD214 requirement as it is neither requested, nor required, for licensing. The board will only request military documentation if an applicant reports a discharge other than "honorable."

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

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) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of acupuncture failure to maintain professional boundaries in relationships with patients, or in any way exploiting the practitioner/patient trust;~~

~~(b) engaging in sexual contact with a current patient if the contact commences after the practitioner/patient relationship is established;~~

~~(c) 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) through (w) remain the same but are renumbered (b) through (u).

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: Following a request from department counsel to review the sexual misconduct provisions in all the unprofessional conduct rules, the board is amending this rule to consolidate three sections into one and mirror similar provisions for other license types. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.156.1617 APPLICATION FOR PHYSICIAN ASSISTANT LICENSE

(1) An applicant for a physician assistant license shall submit an application on a form prescribed by the department. The application must be complete and accompanied by the appropriate fees and the following information and/or documentation:

~~(a) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report;~~

~~(b) (a) applicant's professional education and work experience since completing physician assistant training; and~~

~~(c) two written character references.~~

(b) verification of education as required by 37-20-402, MCA; and

(c) verification of passage of an exam as required by 37-20-402, MCA.

(2) through (6) remain the same.

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

IMP: 37-1-131, ~~37-20-202~~, 37-20-203, 37-20-302, 37-20-402, MCA

REASON: In 2015, a review of board licensure applications by the executive officer and the licensing bureau revealed discrepancies between what is requested on the acupuncturist application and that required in administrative rule. The board is adding (1)(b) and (c) to align the application requirements with the rules.

It is reasonably necessary to delete (1)(a) and remove the requirement for a NPDB self-query. In 2014, the board decided to seek NPDB information on physician assistants directly instead of requiring that applicants request a self-query. The board is striking (1)(c) to reflect a 2012 board decision to no longer require character references for any applicant.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT (1) and (2) remain the same.

(3) The supervising physician shall meet face-to-face with each physician assistant supervised a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues, and patient care, ~~and chart reviews in accordance with ARM 24.156.1623.~~

(4) remains the same.

(5) The supervision agreement 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) remains the same.

(b) an appropriate scope of delegation of practice authority and appropriate limitations upon the practice authority of the physician assistant; and

(c) appropriate frequency and duration of face-to-face meetings; and

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

(6) and (7) remain the same.

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

IMP: 37-1-131, 37-20-101, 37-20-301, 37-20-403, MCA

REASON: In 2014, the Montana Academy of Physician Assistants approached the board with suggestions to remove, or significantly amend the requirements for physician review of PA charts. The board is amending this rule now to align with substantive amendments to PA chart review in ARM 24.156.1623. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1623 CHART REVIEW ~~(1) The supervising physician shall review a minimum of 10 percent of the physician assistant charts on at least a monthly basis.~~

~~(2) (1) Chart review for a physician assistant having less than one year of full-time practice experience from the date of initial licensure must be 400 20 percent for the first ~~three~~ six months of practice, and then may be reduced to ~~not less than~~ 25 10 percent for the next ~~three~~ six months, on a monthly basis, for each supervision agreement.~~

(2) After twelve months, further chart review shall occur. The amount of chart review shall be at the discretion of the physician assistant and the supervising physician to determine in a duties and delegation agreement.

~~(3) Chart review for a physician assistant who has been issued a probationary license must be 100 percent on a monthly basis, unless the board terminates the probationary period.~~

~~(4) The supervising physician shall countersign and date all written entries that have been chart reviewed and shall document any amendments, modifications, or guidance provided.~~

~~(5) A supervising physician shall not be deemed out of compliance with the chart review percentage requirements of this section if the supervising physician demonstrates review of at least 95 percent of the required number of chart reviews.~~

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

IMP: 37-1-131, 37-20-101, 37-20-301, MCA

REASON: In 2014, the Montana Academy of Physician Assistants approached the board with suggestions to remove, or significantly amend the requirements for physician review of PA charts. Following discussion, the board is amending this rule to reduce the amount of chart review for new PAs and set no minimum for a PA with more than 12 months' experience. The board determined that a "one size fits all" percentage requirement does not make sense in all situations and that it is better left to the PA and the supervising physician to determine the amount of necessary chart review relative to the actual practice setting. It remains the supervising physician's duty to answer to the board related to problems with a PA's practice.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.1625 UNPROFESSIONAL CONDUCT (1) through (1)(j) remain the same.

~~(k) commission of an act of sexual abuse, misconduct, or exploitation by the licensee, 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;~~

~~(l) 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 (ag) remain the same but are renumbered (aa) through (af).~~

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

IMP: 37-1-316, 37-1-319, 37-3-202, 37-20-403, MCA

REASON: The board is amending (1)(k) to remove the language regarding chaperones and accommodate a request from department counsel. Department counsel advised that the language sets a standard of conduct that is not appropriate for this rule. The board is further amending the rule to clarify the intent that the provisions apply only to conduct by licensees, whether or not the misconduct is related to the practice of medicine by a physician assistant. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.156.2718 CONTINUING EDUCATION AND REFRESHER

REQUIREMENTS (1) All levels of licensed ECPs are required to complete ~~board-~~specified continuing education and refresher requirements prior to their expiration date.

(a) EMRs must complete ~~a board-specific~~ an EMR refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(b) EMTs must complete 48 hours of continuing education topics contained within the original EMT course and ~~a board-specific~~ an EMT refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(c) AEMTs must complete 36 hours of continuing education topics contained within the original EMT course and ~~a board-specific~~ an AEMT refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(d) Paramedics must complete 24 hours of continuing education topics contained within the original EMT course and a ~~board-specific~~ paramedic refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(2) ECPs must complete a ~~formal~~ refresher course in which a lead instructor or medical director validates knowledge and skills.

(a) The refresher course must assure the licensee's competency to function at the level of the ECP license in accordance with the scope of education and practice.

(b) The refresher may be a course of instruction or a combination of quality improvement and quality assurance activities coordinated by an active local medical director.

(i) The content must be structured to assure ongoing competency of the core knowledge and skills for the level of the ECP license.

(ii) The refresher need not be structured in a setting of traditional classroom sessions, but may be extended throughout the biennial renewal cycle. An ECP cannot build his or her refresher course by combining continuing education topics or offerings.

~~(3) All continuing educational requirements can be met by being currently registered and in good standing by the NREMT at a level equal to or greater than the level of Montana licensure. An ECP cannot build a refresher course by combining continuing education topics or offerings.~~

(4) The lead instructor is responsible for the refresher training at the EMR and EMT levels.

(5) The medical director is responsible for the refresher training at the endorsed EMT level and above.

(a) The medical director may assign duties as appropriate, but retains the overall responsibility for the refresher.

(6) The lead instructor conducting a refresher course must be able to provide an agenda and detailed student performances that document the licensee's ability to

function in accordance with knowledge and skills within the original scope of education.

(a) If audited by the board, the lead instructor must justify the content of the EMR and EMT refresher.

(b) The local medical director must justify the AEMT and paramedic refresher content to the board, if audited.

(4) through (6) remain the same but are renumbered (7) through (9).

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: Since the board last amended this rule in 2015, board staff who work closely with emergency care providers have received comments that the current rule is confusing and that more clarification is necessary to be effective. The board is amending this rule to address staff suggestions and provide more detail on what constitutes a refresher course, when a course can be offered, and who is responsible for the content of such courses at the various levels of ECP licensure.

24.156.2732 MEDICAL DIRECTION (1) through (9) remain the same.

(10) The medical director shall be responsible for and approve the system to assure the inventory, storage, and security of all the medications utilized by the ECPs to whom the medical director provides medical oversight. The medical director may delegate the day-to-day duties where appropriate, but retains the overall responsibility.

(10) remains the same but is renumbered (11).

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board's Statewide Medical Director for Emergency Care Providers has become aware of circumstances in which it was unclear who was ultimately responsible for medications stored in EMS facilities. The board is adding (10) to clarify that the medical director, and no other EMS employee of the service, is responsible. The board determined that this amendment will also assist in the board's consideration of complaints about the storage or security of medical inventories within an EMS program.

6. The board proposes to adopt the following new rules:

NEW RULE I APPLICATION FOR TEMPORARY NON-DISCIPLINARY PHYSICIAN LICENSE (1) A medical resident within six months of completing an approved residency program may apply for a physician license and must:

(a) submit a completed application on a form approved by the board;

(b) provide verification from an approved residency program that the applicant is in good standing and expected to complete the residency program within six months of the date of application;

(c) pay the physician license application fee as prescribed in ARM 24.156.601; and

(d) provide to the board any additional information the board or the board's designee deems necessary to evaluate the applicant's eligibility for licensure.

AUTH: 37-3-203, 37-3-301, 37-3-305, MCA

IMP: 37-3-301, 37-3-305, MCA

REASON: In the summer of 2015, hospitals complained to the board about the requirement for residency completion (i.e., date of graduation) before issuance of a physician license. The hospitals stated that that this requirement makes it difficult for hospitals to credential new physicians coming out of residency and creates unnecessary delays in bringing new physicians into the workforce. Because Senate Bill 77 allows the board to issue licenses for time periods less than a full license term for reasons other than discipline, the board is adopting this new rule to allow residents in the final year of residency to apply for licensure prior to graduation.

NEW RULE II APPLICATION FOR PHYSICIAN LICENSURE IN ANOTHER STATE VIA INTERSTATE COMPACT (1) A Montana-licensed physician who wishes to apply for expedited licensure in another state that is a member of the Interstate Medical Licensure Compact shall:

(a) submit a completed application on a form approved by the board;

(b) pay an application fee for licensure in another state via interstate compact per ARM 24.156.601; and

(c) designate Montana as the state of principal license in compliance with 37-3-356, MCA.

(2) Upon receiving an application for expedited licensure via the Interstate Medical Licensure Compact, the department shall:

(a) conduct a review of qualifications and a criminal background check as required by 37-3-356, MCA; and

(b) inform the Interstate Medical Licensure Compact Commission whether or not the applicant meets the qualifications of 37-3-356, MCA.

AUTH: 37-3-203, MCA

IMP: 37-3-356, MCA

REASON: Following passage of House Bill 429 and the subsequent formation of the Interstate Medical Licensure Compact Commission in 2015, the board assessed the need for rules regarding physicians who seek licensure in another state via the compact. The board is adopting NEW RULE II to create a simple licensure process that complies with the language of the compact as codified in 37-3-356, MCA.

NEW RULE III APPLICATION FOR LICENSURE (1) An applicant for a podiatrist license shall submit an application on a form prescribed by the board. The application must be complete and accompanied by the appropriate fees and the following information and/or documentation:

- (a) verification of the applicant's podiatric medical education, including graduate medical education;
- (b) verification of passage of an examination as required by 37-6-302, MCA;
- (c) a history of applicant's podiatry practice, including dates and locations and noting any periods of inactivity; and
- (d) a Federation of Podiatric Medical Boards disciplinary report, submitted directly to the board by the FPMB.

AUTH: 37-3-203, 37-6-106, MCA
IMP: 37-6-302, MCA

REASON: Following a 2015 review of board licensure laws, rules, and policies, the board discovered that no rule exists regarding applications for podiatrist licenses. The board is adopting NEW RULE III to set forth the process and align with current requirements in both statute and the actual application.

NEW RULE IV POST-GRADUATES—SUPERVISION AND PERMITTED ACTIVITIES (1) Physician supervision requirements and limitations on patient care by interns and residents shall adhere to the requirements set by the internship or residency program in which the post-graduate is enrolled.

(2) A resident who holds a Montana physician or resident license may practice outside of the residency program without the supervision of a Montana-licensed physician (i.e., "moonlight") with the permission of the residency program director.

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-102, 37-3-103, MCA

REASON: To align with the changes to the statutory definition of "practice of medicine" in Senate Bill 77, board counsel recommended revising both ARM 24.156.505 (Intern's Scope of Practice) and ARM 24.156.507 (Resident's Scope of Practice). Following discussion, the board decided to repeal the two rules and replace them with this unified and simplified rule that places the responsibility for overseeing interns and residents (i.e., graduates from medical school enrolled in post-graduate education programs) in the hands of the post-graduate program.

Additionally, at the request of Montana-based residency programs in 2016, the board is including a provision to allow "moonlighting" (the practice of medicine outside the boundaries and supervision of the residency program) by residents who hold Montana licenses as physicians or resident physicians. The board placed the responsibility for approving moonlighting with the residency program director.

7. The board proposes to repeal the following rules:

24.156.203 BOARD MEETINGS

AUTH: 37-3-203, MCA
IMP: 37-3-204, MCA

REASON: The board is repealing this rule as unnecessary, noting that the boards can follow parliamentary meeting procedures without specifying them in rule.

24.156.502 MEDICAL SCHOOLS

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

REASON: The board is repealing this rule upon board counsel's recommendation following passage of Senate Bill 77.

24.156.505 INTERN'S SCOPE OF PRACTICE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-3-102, 37-3-203, MCA

REASON: See REASON for NEW RULE IV.

24.156.506 RESIDENCY

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

REASON: The board determined it is reasonably necessary to repeal this rule following passage of Senate Bill 77 as board counsel advised there is no longer statutory authority supporting it.

24.156.507 RESIDENT'S SCOPE OF PRACTICE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-3-102, 37-3-203, MCA

REASON: See REASON for NEW RULE IV.

24.156.605 TEMPORARY LICENSE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-3-301, 37-3-304, 37-3-307, MCA

REASON: The board is repealing this rule because Senate Bill 77 eliminated the temporary license type.

24.156.627 REINSTATEMENT

AUTH: 37-3-203, MCA
IMP: 37-3-324, MCA

REASON: The board is repealing this rule as unnecessary and outdated, as all reinstatement petitions are reviewed individually.

24.156.803 LICENSE REQUIREMENT

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-343, MCA

REASON: The board is repealing the telemedicine rules (ARM 24.156.803, 24.156.804, 24.156.805, 24.156.806, 24.156.807, 24.156.808, 24.156.809, 24.156.811, and 24.156.812) as Senate Bill 77 eliminated the telemedicine license.

24.156.804 APPLICATION FOR A TELEMEDICINE LICENSE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-344, 37-3-345, MCA

24.156.805 FEES

AUTH: 37-1-134, 37-3-203, MCA
IMP: 37-1-134, 37-1-141, 37-3-344, 37-3-345, 37-3-347, MCA

24.156.806 FAILURE TO SUBMIT FEES

AUTH: 37-3-203, MCA
IMP: 37-3-347, MCA

24.156.807 ISSUANCE OF A TELEMEDICINE LICENSE

AUTH: 37-3-203, MCA
IMP: 37-3-343, MCA

24.156.808 RENEWALS

AUTH: 37-1-141, 37-3-203, MCA
IMP: 37-1-141, MCA

24.156.809 EFFECT OF DETERMINATION THAT APPLICATION FOR
TELEMEDICINE LICENSE DOES NOT MEET REQUIREMENTS

AUTH: 37-3-203, MCA
IMP: 37-3-347, MCA

24.156.811 SANCTIONS

AUTH: 37-3-203, MCA

IMP: 37-3-348, MCA

24.156.812 OBLIGATION TO REPORT TO BOARD

AUTH: 37-1-131, 37-1-319, 37-3-202, MCA

IMP: 37-1-131, 37-1-319, 37-3-323, 37-3-401, 37-3-405, MCA

24.156.1004 RENEWALS

AUTH: 37-1-131, 37-1-134, 37-1-141, 37-6-106, MCA

IMP: 37-1-134, 37-1-141, 37-6-304, MCA

REASON: The board is repealing ARM 24.156.1004, 24.156.1305, and 24.156.1411 as unnecessary since the department administers a standardized renewal process for all professional and occupational licensure boards, and these rules merely reference department rules on renewals.

24.156.1305 RENEWALS

AUTH: 37-1-131, 37-1-134, 37-25-201, MCA

IMP: 37-1-134, 37-1-141, MCA

24.156.1411 RENEWALS

AUTH: 37-1-131, 37-1-134, 37-1-141, 37-13-201, MCA

IMP: 37-1-134, 37-1-141, MCA

24.156.1602 BOARD POLICY

AUTH: 37-20-201, MCA

IMP: 37-20-202, MCA

REASON: The board is repealing this unnecessary rule because the board's purpose is adequately addressed in statute at 37-3-101, MCA, and should not be unnecessarily repeated in rule per the Montana Administrative Procedure Act.

24.156.1616 MAINTAINING NCCPA CERTIFICATION

AUTH: 37-20-201, 37-20-202, MCA

IMP: 37-20-202, 37-20-301, 37-20-302, 37-20-402, MCA

REASON: The board has eliminated all other requirements for NCCPA certification in statute and rule. This is the last rule that references certification and its repeal was inadvertently omitted from a previous rules project.

24.156.1619 RENEWALS

AUTH: 37-1-131, 37-1-134, 37-20-202, MCA
IMP: 37-1-134, 37-1-141, 37-20-302, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

8. 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., February 10, 2017.

9. 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.

10. 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.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Debby Barrett, primary bill sponsor for Senate Bill 77, was contacted on May 27, 2015, January 13, 2016, and October 12, 2016, by e-mail. Representative Ellie Hill, primary bill sponsor for House Bill 429, was contacted on September 20, 2016, by e-mail.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.101.413 will not 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 24.156.501, 24.156.503, 24.156.504, 24.156.601, 24.156.625, 24.156.626, 24.156.1005, 24.156.1304, 24.156.1306, 24.156.1307, 24.156.1404, 24.156.1412, 24.156.1617, 24.156.1622, 24.156.1623, 24.156.1625, 24.156.2718, and 24.156.2732 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 Rules I through IV will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.156.203, 24.156.502, 24.156.505, 24.156.506, 24.156.507, 24.156.605, 24.156.627, 24.156.803, 24.156.804, 24.156.805, 24.156.806, 24.156.807, 24.156.808, 24.156.809, 24.156.811, 24.156.812, 24.156.1004, 24.156.1305, 24.156.1411, 24.156.1602, 24.156.1616, and 24.156.1619 will not significantly and directly impact small businesses.

Documentation of the department and 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; telephone (406) 841-3205; facsimile (406) 841-2305; or to dlibsdmed@mt.gov.

13. Ian Marquand, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
NATHAN THOMAS, D.P.M.
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 December 27, 2016