

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.165.401 fees, 24.165.404	)	PROPOSED AMENDMENT AND
applications for licensure, 24.165.407	)	ADOPTION
examinations, 24.165.501	)	
supervision-general statement,	)	
24.165.502 supervision-methods,	)	
24.165.507 standards of practice,	)	
24.165.511 documentation of	)	
instruction and training, 24.165.514	)	
qualifications to apply topical	)	
medications-clinician defined,	)	
24.165.604 inactive status,	)	
24.165.2101 continuing education	)	
and 24.165.2102 continuing	)	
education-waiver, and the adoption of	)	
NEW RULE I definitions and NEW	)	
RULE II deep modality endorsement	)	

TO: All Concerned Persons

1. On September 11, 2014, at 1:00 p.m., a public hearing will be held in the Small 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 Occupational Therapy Practice (board) no later than 5:00 p.m., on September 5, 2014, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdotp@mt.gov (board's e-mail).

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

- 24.165.401 FEES (1) through (1)(f)(i) remain the same.
- (ii) sound and electrical ~~(deep)~~ 35
- (iii) topical medications (iontophoresis and phonophoresis) 20
- (2) and (3) remain the same.

AUTH: 37-1-131, 37-24-201, 37-24-202, 37-24-310, MCA

IMP: 37-1-134, 37-1-141, 37-24-306, 37-24-310, MCA

REASON: The board is amending this rule to align with the terminology used in board statutes on modality applications. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.165.404 APPLICATIONS FOR LICENSURE (1) through (6) remain the same.

(7) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, ~~42 USC sections 12101, et seq.,~~ (ADA) must be made on forms provided by the board and submitted in advance of the requested accommodation.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-131, 37-24-302, 37-24-303, MCA

REASON: The board is deleting the full citation to the Americans with Disabilities Act since the citation will change with amendments to the Act. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.165.407 EXAMINATIONS (1) through (4) remain the same.

(5) Examinations will be given ~~two times a year~~ as set by the NBCOT.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-24-303, ~~37-24-304~~, MCA

REASON: The board is amending (5) since the NBCOT sets examination schedules, and exams may not occur two times a year. The board is amending the implementation citations to delete reference to a repealed statute and accurately reflect all statutes implemented through the rule.

24.165.501 SUPERVISION - GENERAL STATEMENT (1) ~~(Adapted from the American Occupational Therapy Association Position Statement on Supervision, 1993). The supervisor shall determine the degree of supervision to administer to the supervisee based on the supervisor's estimation of the supervisee's clinical experience, responsibilities, and competence at a minimum. A supervising occupational therapist may supervise no more than two occupational therapy assistants.~~

(2) through (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-24-201, 37-24-202, MCA

IMP: 37-1-305, 37-24-103, 37-24-106, 37-24-107, MCA

REASON: The board determined it is reasonably necessary to amend (1) regarding licensee supervision of occupational therapy assistants. The board discussed the

common complaint among occupational therapists of being assigned too many assistants to adequately supervise, and noted this was a topic at a 2013 National Board for Certification in Occupational Therapy (NBCOT) conference. The board determined the current rule does not provide enough specific guidance to licensees and concluded that limiting supervision to two assistants will help ensure adequate standard of care and compliance with documentation requirements.

24.165.502 SUPERVISION - METHODS (1) through (3) remain the same.

AUTH: 37-1-131, ~~37-1-319~~, 37-24-202, MCA

IMP: 37-1-131, ~~37-1-305~~, 37-24-103, 37-24-105, 37-24-106, 37-24-107, MCA

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

24.165.507 STANDARDS OF PRACTICE (1) The board adopts by reference the 2010 American Occupational Therapy Association's Standards of Practice, ~~dated March 1992~~. A copy of these standards is available from the office of the Board of Occupational Therapy Practice.

AUTH: 37-24-202, MCA

IMP: 37-24-105, 37-24-106, MCA

REASON: The board is amending this rule to refer to the most current version of the AOTA Standards of Practice, as these were updated in 2010.

24.165.511 DOCUMENTATION OF INSTRUCTION AND TRAINING

(1) remains the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-105, 37-24-106, 37-24-107, MCA

REASON: The board is amending the implementation citations to accurately reflect all statutes implemented through the rule.

24.165.514 QUALIFICATIONS TO APPLY TOPICAL MEDICATIONS - CLINICIAN DEFINED (1) Prior to the administration or use of topical medications on a patient, an occupational therapist ~~desiring to administer or use topical medications on a patient shall, in addition to the:~~

(a) successfully complete instruction or training provided ~~for~~ in 37-24-106, MCA, and ARM 24.165.513, for the use of sound and electrical physical agent modalities; and

(b) successfully complete five hours of instruction or training approved by the board in:

(a) (i) principles of topical drug interaction;

(b) (ii) adverse reactions and factors modifying response;  
(c) (iii) actions of topical drugs by therapeutic classes; and  
(d) (iv) techniques by which topical drugs are administered; and  
(2) (c) ~~In addition to the five hours of instruction required by (1), a licensee shall, pursuant to 37-24-107, MCA, prior to administering topical medication, perform one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner, as described in ARM 24.156.510(2) 24.165.510(2), and either:~~

(a) (i) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or

(b) (ii) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.

(3) (2) For the purposes of the rules related to application of topical medications by occupational therapists, the term "clinician" means an occupational therapy licensee who has been approved by the board to administer topical medications.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-106, 37-24-107, 37-24-108, MCA

REASON: The board determined it is reasonably necessary to amend this rule for better organization and clarity. The board is amending the implementation citations to accurately reflect all statutes implemented through the rule.

24.165.604 INACTIVE STATUS (1) and (2) remain the same.

AUTH: 37-1-131, 37-1-319, 37-24-201, 37-24-202, MCA

IMP: 37-1-319, ~~37-24-308~~, MCA

REASON: Implementation citations are being amended to delete reference to a repealed statute and accurately provide all statutes implemented through the rule.

24.165.2101 CONTINUING EDUCATION (1) ~~On a form provided by the department, all applicants for renewal of licenses~~ All licensees shall affirm on the renewal form that they have completed ten contact hours of continuing education as provided in this rule. The continuing education requirement will not apply until the licensee's first full year of licensure.

(2) The licensee shall maintain records and documentation of completion of continuing education activities such as verification of participation forms, conference brochures, certificates, college or university transcripts or grade reports, articles, book reviews, and apprenticeship evaluations.

(3) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of compliance if so requested during a random audit. A random audit of ten percent of renewed active licensees will be conducted on an annual basis.

~~(4) Up to ten contact hours earned in excess of the ten contact hours required in a licensing year may be carried over into the following year. Credit may be received for a course previously submitted on a biannual basis only.~~

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

~~(7) (6) Subject to board approval by the board, continuing education may be earned:~~

~~(a) through college course work, according to the following limitations:~~

~~(a) (i) the licensee must pass the course; ;~~

~~(b) (ii) one semester credit shall equal 15 contact hours of continuing education; ; and~~

~~(c) (iii) one quarter credit shall equal ten contact hours of continuing education.~~

~~(8) (b) Subject to approval by the board, continuing education may be earned by teaching courses or making professional presentations, according to the following limitations:~~

~~(a) (i) two contact hours shall be awarded for every hour of presentation; ;~~

~~(b) (ii) documentation must be submitted in the form of an agenda or outline listing showing the licensee as the instructor or presenter of the course; ;~~

~~(c) (iii) the course must be addressed to health professionals or a community service organization; ;~~

~~(d) (iv) credit for instruction of any course or topic of presentation may be submitted for continuing education only once; ; and~~

~~(e) (v) individuals employed by universities and colleges may not claim credit units in this category for conducting courses that are a part of the regular course offering of those institutions, even if those courses are offered in the evening or summer.~~

~~(9) (c) Subject to approval by the board, continuing education may be earned for apprenticeships involving supervised clinical experience aimed at return to practice or developing specialized skills in occupational therapy, according to the following limitations:~~

~~(a) (i) ten contact hours shall be credited for each 40 hour week; ;~~

~~(b) (ii) there is no limit to the amount of contact hours that can be earned under this category; ;~~

~~(c) (iii) documentation must be submitted in the form of a signed letter from the clinical supervisor describing the length and type of educational experiences, and an evaluation of the practitioner's performance; ; and~~

~~(d) remains the same but is renumbered (iv).~~

~~(10) (d) Subject to approval by the board, continuing education may be earned for by reading books germane to the profession, according to the following limitations:~~

~~(a) remains the same but is renumbered (i).~~

~~(b) (ii) documentation must be maintained in the form of a book review written by the licensee noting the author, title, publisher, and publishing date of the book or article; ; and~~

~~(e) by attending and participating in a live presentation (workshop, seminar, conference, in-service education program) or other continuing education activity~~

requiring a formal assessment of learning (electronic or web-based courses, formalized self-study courses), according to the following limitations:

- (i) one contact hour shall be awarded for every hour awarded by the provider;
- (ii) there is no limit to the number of contact hours that can be earned under this category; and
- (iii) documentation must include a certificate of completion or similar document including course name, date, author/instructor, sponsoring organization, location, and number of hours attended.

AUTH: 37-1-131, 37-1-319, 37-24-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule throughout to more clearly set forth the continuing education (CE) requirements and comply with the formatting standards of the Montana Secretary of State.

The board is amending (3) to specify that ten percent of renewed active licensees are subject to annual random audit for CE compliance. The department administration has requested all boards to place their audit percentage in rule to assist the new audit unit in performing its functions.

It is reasonably necessary to strike (4) and eliminate the ability for licensees to carry over CE credits from one year to the next. The board notes that allowing carryover credits requires staff to manually track the credits and maintain records over several years, which results in higher costs to be paid through higher licensing fees. The board concluded that the administrative and cost burdens associated with carryover credits far outweigh any benefit to public safety.

The board is adding (6)(e) to allow licensees to obtain CE through live presentations, and electronic and self-study methods. The board notes that the high costs of CE and taking time away from work are often hardships to licensees. The board further acknowledges that electronic and self-study CE are now more accessible and of more consistent quality. Licensees have requested the board accept web-based CE formats, and the board is now amending this rule to allow this CE method while requiring formal learning assessment to ensure public safety.

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

24.165.2102 CONTINUING EDUCATION - WAIVER (1) The board may grant waivers or extensions of time within which to fulfill continuing education requirements in cases involving physical disability or undue hardship.

(2) To be considered for a waiver, an applicant shall submit a written application on forms provided by the board.

(3) Waivers may be granted for ~~a period~~ periods not to exceed two calendar years. ~~In the event the physical disability or undue hardship for which the~~ Should the reason for granting a waiver has been granted continues continue beyond the waiver period of ~~waiver~~, the licensee must ~~reapply~~ apply for an extension of the waiver.

(4) The board will not grant any waiver to applicants who:

- (a) have attested to meeting continuing education requirements at renewal;  
or  
(b) are currently subject to a random audit.

AUTH: 37-1-131, 37-1-319, 37-24-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-24-105~~, ~~37-24-106~~, MCA

**REASON:** In response to questions from the department audit unit, the board determined it is reasonably necessary to add (4) to specify the instances where the board will not grant a CE waiver. The board concluded that because CE is required to help ensure skilled, competent licensees, it is inconsistent to grant waivers to licensees who state their CE compliance at renewal, then request a waiver to obtain CE credits that they actually lack.

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

4. The proposed new rules provide as follows:

**NEW RULE I DEFINITIONS** For the purpose of this chapter the following definitions apply:

(1) "Deep modalities" means the use of a sound or electrical physical agent modality which penetrates past the subcutaneous layer of fat into the muscle through the application of heat, cold, ultrasound, phonophoresis, or iontophoresis.

(2) "Deep modality endorsement" means that a licensed occupational therapist has met the statutory requirements in the use of sound and electrical physical agent modalities and occupational therapy techniques involving topical medications.

(3) "Qualified occupational therapist" means that the supervising occupational therapist has been certified in the modality supervised.

(4) "Superficial modalities" means physical agent modalities including hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices used on the surface of the skin.

(5) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-24-108(2), MCA, for which a prescription is required under state or federal law.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-103, 37-24-105, 37-24-106, 37-24-107, 37-24-108, MCA

**REASON:** The board determined it is reasonably necessary to adopt New Rule I and define certain terms used in the board statutes and further clarify the meaning of physical agent modalities. During the updating of the application forms for modality endorsement, staff questioned the meaning of these terms, and the board is defining them now to provide clarity for staff and licensees.

NEW RULE II DEEP MODALITY ENDORSEMENT (1) The board may grant a deep modality endorsement to a licensed occupational therapist who has met the requirements of 37-24-105, 37-24-106, and 37-24-107, MCA, in the use of sound and electrical physical agent modalities and occupational therapy techniques involving topical medications.

AUTH: 37-1-131, 37-24-202, MCA

IMP: 37-1-131, 37-24-105, 37-24-106, 37-24-107, MCA

REASON: The board determined it is reasonably necessary to adopt this rule on the deep modality license endorsement for OT licensees meeting the requirements of 37-24-105, 37-24-106, and 37-24-107, MCA. To address questions from the licensing bureau and facilitate efficient, standardized licensing processes, the board is adopting this rule to clearly set forth the deep modality endorsement requirements.

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 Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov), and must be received no later than 5:00 p.m., September 19, 2014.

6. An electronic copy of this notice of public hearing is available at [www.ot.mt.gov](http://www.ot.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 Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdotp@mt.gov](mailto:dlibsdotp@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 24.165.401, 24.165.404, 24.165.407, 24.165.501, 24.165.502, 24.165.507, 24.165.511, 24.165.514, 24.165.604, 24.165.2101 and 24.165.2102 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 and II will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov).

10. Mark Jette, Attorney, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE  
NATE NAPRSTEK, CHAIR

/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 August 11, 2014