

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.177.405 physical therapy )  
aides, 24.177.504 temporary )  
licenses, 24.177.507 out of state )  
applicants, 24.177.510 foreign-trained )  
applicants, 24.177.704 topical )  
medication protocols, and )  
24.177.2105 continuing education, all )  
pertaining to physical therapists )

TO: All Concerned Persons

1. On May 14, 2009, the Board of Physical Therapy Examiners (board) published MAR Notice No. 24-177-27 regarding the public hearing on the proposed amendment of the above-stated rules, at page 586 of the 2009 Montana Administrative Register, issue no. 9.

2. On June 4, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the June 12, 2009, deadline.

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

COMMENT 1: Several commenters stated support of the proposed amendments to ARM 24.177.504, 24.177.507, 24.177.510, 24.177.704 and 24.177.2105.

RESPONSE 1: The board appreciates all comments made in the rulemaking process.

ARM 24.177.405:

COMMENT 2: Several commenters supported the amendment to ARM 24.177.405, noting that the amendment conforms to the American Physical Therapy Association (APTA) positions. Several proponents expressed concern about aides receiving on-the-job training for a wide range of tasks, including conducting ultrasound, traction and massage, and the physical therapists then billing insurance companies for the work performed by aides. The commenters' overriding concern was protection of the public, since it may appear that inappropriate use of physical therapy aides in Montana is outside the parameters considered normal in other states.

RESPONSE 2: In amending this rule, the board is attempting to bring Montana's use of aides within the nationally recognized boundaries established by the APTA.

The board is statutorily mandated to protect the public. The board concluded that concerns about the misuse and overuse of physical therapy aides in Montana must be addressed proactively and globally in rule, and should not be policed on a case-by-case complaint basis only following patient harm.

COMMENT 3: Numerous comments were received in opposition to the proposed amendments to ARM 24.177.405 and the perceived elimination of physical therapy aides. The commenters stated that aides are needed in the provision of physical therapy to keep costs low for patients, maintain access to care, and to allow physical therapists to provide hands-on treatment while aides complete delegated tasks for other patients. Commenters also asserted that if the rule is amended as proposed, physical therapy aides will lose their jobs if they cannot be employed to provide components of physical therapy and stressed the importance of aides in providing personal attention to patients. Opponents asked the board to enumerate the specific tasks that physical therapy aides may perform. Lastly, opponents questioned the need for a broad-based rule change if the board has not received many complaints and suggested the board just address any problems on a case-by-case basis.

RESPONSE 3: The board concluded that many of the comments clearly show that physical therapy aides are being used in physical therapy offices in a manner that exceeds the scope of practice envisioned by the Federation of State Boards of Physical Therapy (FSBPT). Commenters confirm that aides are being used to monitor exercises, provide ultrasound treatments, and provide ice and heat treatments, in addition to appropriately delegated routine tasks. The intent for the amendments is not to eliminate aides, but to assure that aides are not treating patients and the public is adequately protected. In the interest of public protection, the board has been working on this rule for several years.

Following review of the comments, the board considered further amending this rule to clarify the tasks that may be performed by a physical therapy aide, particularly in reference to the definition of direct supervision. The board also considered more clearly delineating the tasks that a physical therapy aide may do without direct supervision. In response to the perceived overuse of physical therapy aides in the delivery of physical therapy services, the board also considered changing the proposed definition of a physical therapy aide to more clearly define the scope of the aide's position. After lengthy discussion of these issues, the board is amending the rule accordingly.

COMMENT 4: Several commenters expressed concern about the distinction between statutes and rules. A number of commenters asked the board to identify its authority for amending this rule.

RESPONSE 4: The board concluded that there is a misperception that the board is amending statutory language through rules. This is not correct because rules are promulgated to implement statutes. The board is authorized to promulgate rules to implement the Physical Therapy Act under 37-1-131 and 37-11-201, MCA.

COMMENT 5: One commenter stated that the board did not provide adequate notice of the proposed rule changes and that the board members should have been at the rules hearing.

RESPONSE 5: The board and the department complied with all the statutory requirements of the Montana Administrative Procedures Act for the administrative rulemaking process. Rules hearings are conducted by the department as one avenue to gather comments for the board's consideration in addition to comments received by e-mail, fax, and regular mail.

COMMENT 6: Several commenters questioned why the board was eliminating language in the rules that referred to the physical therapy statutes, particularly in reference to the supervision of physical therapist assistants and students.

RESPONSE 6: The board is deleting sections of ARM 24.177.405, because they unnecessarily duplicate statutory language in 37-11-105, MCA.

COMMENT 7: A few commenters asked the board not to eliminate the simple and allowable physical therapy aide tasks but instead appropriately certify the aides.

RESPONSE 7: The board lacks jurisdiction to certify physical therapy aides and to do so would require a statutory change through the legislative process.

COMMENT 8: Several commenters also questioned the impact of the rule change in reference to Medicare and health insurance billing.

RESPONSE 8: The board has no jurisdiction over insurance payments, reimbursement, billing codes, and related issues. While the board recognizes that reimbursement for physical therapy services is critical to the success of a physical therapy practice, its jurisdiction is limited to and by Montana statutes.

COMMENT 9: Several commenters described personal experiences with physical therapists and physical therapy aides and urged the board not to change the rules. Commenters indicated that the personal care and treatment received from aides is cost-effective, personally welcome, and necessary for the provision of many treatments.

RESPONSE 9: The board notes that many of the comments received appear to confirm the information previously provided to the board that aides are being employed in place of licensed physical therapy assistants in Montana.

COMMENT 10: Several commenters suggested the board use the model practice act of the Federation of State Boards of Physical Therapy (FSBPT) to draft changes to the board's physical therapy aide rules.

RESPONSE 10: The board declared that the FSBPT Model Practice Act is an excellent guideline and did use it to assist the board in changing the rules.

ARM 24.177.2105:

COMMENT 11: One commenter suggested that online continuing education (CE) hours be increased to more than four hours because of the course work required to transition to a physical therapy doctorate degree program. Several commenters asked that the board accept all physical therapy doctorate degree program courses toward the required CE credits.

RESPONSE 11: The board notes that many licensees do fulfill their CE requirements and decided to explore the allowance of doctoral course credits toward CE requirements. However, because this will take further consideration, and because the board would also like to consider how to handle the course credits for physical therapy assistants who complete course requirements to achieve a physical therapy degree, the board declined allowing more than four hours for online courses at this time and is amending the rule exactly as proposed.

COMMENT 12: One commenter requested that required CE be increased to 25 or 30 hours every two years.

RESPONSE 12: The board unanimously declined to increase the CE requirements and is amending the rule exactly as proposed.

4. The board has amended ARM 24.177.504, 24.177.507, 24.177.510, 24.177.704, and 24.177.2105 exactly as proposed.

5. The board has amended ARM 24.177.405 with the following changes, stricken matter interlined, new matter underlined:

24.177.405 PHYSICAL THERAPY AIDES, LICENSE EXEMPTION, AND SUPERVISION (1) remains as proposed.

(a) "Physical therapy aide" as defined in 37-11-101(8), MCA, means an unlicensed individual ~~trained on the job by a physical therapist or physical therapist assistant who performs activities supportive of, but not involving assistance in, the practice of physical therapy by performing designated and supervised routine tasks that do not require a formal course of study~~ who has received appropriate, documented, on the job orientation and training by a physical therapist or physical therapist assistant. The physical therapy aide performs designated unskilled tasks.

(b) remains as proposed.

(2) A physical therapy aide ~~performs activities supportive of, but not involving assistance in, the practice of physical therapy by~~ is limited to performing the following patient-related patient-supportive tasks only under the direct supervision of a physical therapist or physical therapist assistant. ~~Such patient-related tasks are limited to preparing a patient for treatment by a physical therapist or physical therapist assistant.~~

(a) preparing a patient for treatment by a physical therapist or physical therapist assistant;

(b) providing unskilled aid to a patient after treatment by a physical therapist or physical therapist assistant; and

(c) assisting a physical therapist or physical therapist assistant when safety or patient care requires a second person's assistance.

(3) A physical therapy aide may perform the following and similar nonpatient care routine tasks under onsite supervision, although without direct or onsite supervision, by a physical therapist or physical therapist assistant:

(a) through (4) remain as proposed.

BOARD OF PHYSICAL THERAPY EXAMINERS  
RICHARD SMITH, PT, CHAIRPERSON

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

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

Certified to the Secretary of State November 2, 2009