

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.177.405 physical therapy) PROPOSED AMENDMENT
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 June 4, 2009, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Physical Therapy Examiners (board) no later than 5:00 p.m., on May 29, 2009, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdp@mt.gov.

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

24.177.405 PHYSICAL THERAPY AIDES, LICENSE LICENSURE
EXEMPTIONS EXEMPTION, AND SUPERVISION AND DELEGATION (1)
~~Whereas 37-11-101, MCA, creates and defines physical therapy students, physical therapist assistant students and physical therapy aides, the board interprets such categories as exempt from licensure as physical therapists or physical therapist assistants so long as the supervision requirements stated in 37-11-101, MCA, are strictly adhered to. Such supervision requirements include also those imposed by 37-11-105, MCA.~~

~~(2) The board, therefore, finds it necessary to define periodic checks, supervision and direct supervision to mean on-site guidance by a licensed physical therapist who is responsible for and participates in a patient's care. Supervision of an assistant that requires on-site visits means that the physical therapist shall meet with the client personally at least once every six visits or once every two weeks, whichever occurs first.~~

~~(3) Components of tests and measurements of bodily functions and structures administered by a licensed physical therapist may be delegated to a licensed physical therapist assistant.~~

~~(1) As used in these rules, the following definitions apply:~~

~~(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.~~

~~(b) "Direct supervision" means that the supervising physical therapist or physical therapist assistant is onsite (on the premises physically) and immediately available for direction and supervision of the physical therapy aide at all times.~~

~~(2) A physical therapy aide performs activities supportive of, but not involving assistance in, the practice of physical therapy by performing patient-related 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.~~

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

~~(a) housekeeping activities including caring for and stocking equipment and supplies;~~

~~(b) transporting patients, records, equipment, and supplies in accordance with established policies and procedures;~~

~~(c) assembling and disassembling equipment and accessories;~~

~~(d) preparing, maintaining, and cleaning up treatment areas and maintaining supportive areas; and~~

~~(e) transcribing, recording, or copying treatment documentation generated by a physical therapist or physical therapist assistant. All documents prepared by a physical therapy aide must be signed by the treating physical therapist or physical therapist assistant.~~

~~(4) A physical therapist or physical therapy assistant who fails to directly supervise a physical therapy aide may be subject to disciplinary action by the board.~~

AUTH: 37-1-131, 37-11-201, MCA

IMP: 37-1-131, 37-11-105, MCA

REASON: The board determined it is reasonably necessary to amend this rule to further clarify the role of the physical therapy aide and the definitions associated with aide supervision. The board received information that some licensed physical therapists may be allowing aides to function without proper supervision. The amendments will clearly set forth aide functions and the corresponding required level of supervision to ensure that physical therapy aides are adequately supervised.

~~24.177.504 TEMPORARY LICENSES (1) Applicants for licensure who are holders of a license in another state may be issued a temporary license to practice pending licensure by the board. An interview with at least one board member may~~

~~be required. Said temporary license will terminate when the board makes its final determination on licensure.~~

~~(2) (1)~~ Physical therapist or physical therapist assistant applicants for licensure by examination may be issued a temporary license. The temporary license shall identify the licensed physical therapist who shall be responsible for providing direct supervision. After issuance of the temporary license, the applicant must take and pass his/her examination within 420 60 days of the issuance date. ~~The temporary license shall be valid until the board makes its final determination on licensure, but may be extended at the board's discretion.~~ Only one temporary license will be issued per applicant.

~~(3) (2)~~ If the applicant fails the NPTE examination, the applicant may sit for the next scheduled examination. Temporary licenses will not be extended while the applicant is waiting to retake the NPTE examination.

AUTH: 37-1-131, 37-1-319, 37-11-201, MCA

IMP: 37-1-131, 37-1-305, MCA

REASON: The board is amending this rule to limit temporary licenses to applicants for licensure by examination only. Previously, temporary licenses were issued to out-of-state applicants without any set standards or information on disciplinary action in other states. In some instances, temporary license holders simply worked in Montana for the year the temporary license was valid and never applied for full licensure. The board notes that out-of-state license applications are generally processed within two to four weeks. The board is eliminating temporary licensure for out-of-state applicants as unnecessary and to better protect the public by ensuring licensure of competent and qualified applicants.

The board is also amending this rule to require that examination applicants take and pass the examination within 60 days of receiving a temporary license. The board decided to reduce the temporary licensure period from 120 to 60 days since computerized tests are offered more often and in more locations than paper and pencil exams. The board is also removing the board's discretion to extend temporary licenses for anyone due to this increased exam availability.

24.177.507 LICENSURE OF OUT-OF-STATE APPLICANTS (1) through (2)(b) remain the same.

(c) verification of graduation from a board approved physical therapy school or physical therapist assistant curriculum;

(c) remains the same but is renumbered (d).

~~(d)(e)~~ submit three statements of good moral character, one of which is a professional reference from a licensed physical therapist, and two others from persons with knowledge of the applicant within the past five years. All reference letters must be sent directly to the board office from the reference source;

~~(e)(f)~~ verification of all current, previous, and expired licenses in any licensed profession from other states; and

~~(f) verification of physical therapy or physical therapist assistant instruction and graduation; and~~

(g) remains the same.

(3) Applicants applying for licensure from another state who have not been actively engaged in the profession of physical therapy or physical therapist assistant in the ~~five~~ four years immediately preceding application ~~shall~~ may be required to undergo ~~continued~~ remedial study in the field of physical therapy ~~or physical therapist assistant~~ subject to the discretion of the board. ~~Continued Remedial~~ study may include, but will not be limited to:

(a) through (3)(f) remain the same.

~~(4) All the above would be subject to the discretion of the board.~~

AUTH: 37-1-131, ~~37-1-319~~, 37-11-201, MCA

IMP: 37-1-131, 37-1-304, 37-11-307, MCA

REASON: The board determined it is reasonably necessary to amend this rule to reword and relocate former (2)(f) as new (2)(c). Verification of education is not a new requirement, but (2)(c) is worded more clearly and in a more logical location.

The board is amending new (2)(f) to clarify the board's intent for verification of other states' licensure. The board determined it is reasonable and necessary to require that out-of-state applicants submit information on any and all types of professional licensure the applicant has held or currently holds when applying in Montana. The board notes that physical therapist applicants may have been licensed in other related health care fields and the information regarding other licenses is necessary to ensure the licensure of qualified, safe practitioners.

The board is amending (3) regarding remedial study for out-of-state applicants. The board concluded that reducing the time an applicant could have been out of practice to four years better protects the public by assuring the applicant's competency to practice. The board is also amending this rule to change the requirement for mandatory remedial study to instances where the board determines it is necessary for the public's continued protection. The board is striking (4) as the board's discretionary authority is stated elsewhere in this rule.

24.177.510 FOREIGN-TRAINED PHYSICAL THERAPIST APPLICANTS

(1) through (1)(e) remain the same.

(f) if from a non English speaking culture, the applicant shall display competency in the English language by passing the national examination test of English as foreign language (TOEFL) with a ~~score of 50 percent of the total possible points on each subject~~ passing score as designated by the Federation of State Boards of Physical Therapy (FSBPT). The applicant would contact TOEFL by writing:

TOEFL
Box 899
Princeton, NJ 08541, USA

A fee is required by TOEFL and must be paid by the applicant.

(g) through (2) remain the same

AUTH: 37-1-131, 37-11-201, MCA

IMP: 37-11-310, MCA

REASON: The board is amending this rule to comply with standards set by the Federation of State Boards of Physical Therapy (FSBPT), of which the board is a member. The FSBPT administers the physical therapy licensure examinations and has recommended that all states raise the passing score requirement due to information that a 50% on TOEFL is not sufficient to enable passage of the licensure exams. The board also notes that keeping the score at 50% may bar licensees from obtaining licensure in other states that require a higher TOEFL score.

24.177.704 TOPICAL MEDICATION PROTOCOLS (1) remains the same.

(a) bactericidal agents:

(i) action: interferes with functions of the cell wall membrane;:

(ii) indication: topical treatment for dermal infections;:

(iii) remains the same.

~~(iv) SSD, SSD-AF--Silver sulfadiazine; (Sulfamylon)--Mafenide acetate cream; Gentamicin Sulfate--(Garamycin); Mycostatin--(Nystatin)--(cream, powder, ointment); (Lotrisone)--Clotrimazole and betamethasone dipropionate; Polymyxin B Sulfate--(Cortisporin, Neosporin); Nystatin--(Nystex); (Bactroban)--Mupirocin; Neomycin Sulfate--(Cortisporin cream, NeoDecadron topical cream, Neosporin cream, Neo-Synalar cream); Unna Boot--Dome Paste (zinc).~~

(b) debriding agents:

(i) action: cleanse the surface of wounds of wound exudate, bacteria, and particulate contaminants;:

(ii) indication: cleanse exudative wounds such as venous stasis ulcers, decubitus ulcers, infected traumatic and surgical wounds, and infected burns;:

~~(iii) contraindications: Dextranomer should not be used with topical antibiotics or debriding enzymes and should not be used in deep fistulas or any body cavity from which complete removal is not assured. Fibrinolysin and Deoxyribonuclease Combined (Bovine), a debriding enzyme debriding enzymes, should be used with precaution against allergic reactions, particularly in patients hypersensitive to materials of bovine origin or to mercury compounds. Consult the current PDR for specifics.~~

~~(iv) (Elastase)--Fibrinolysin and desoxyribonuclease; (Elastase-Chloromycetin)--Fibrinolysin and desoxyribonuclease with chloramphenicol; Debrisan--(Dextranomer).~~

(c) anesthetic agents:

(i) action: blocks both the initiation and conduction of nerve impulses by decreasing the neuron membranes permeability to sodium ions;:

(ii) indication: relieve pain and inflammation associated with minor skin disorders and for acute inflammatory conditions;:

(iii) remains the same.

~~(iv) (Fluori Methane)--Dichlorodifluoromethane 15%, trichloromonofluoromethane 85%; Lidocaine Hydrochloride; (Xylocaine)--Lidocaine Hydrochloride; (Chempad)--L-Lidocaine, Menthol, H Hydrocortisone, Menthol, LH Lidocaine Hydrocortisone, Menthol; (Medipad)--L-Lidocaine, Menthol, H Hydrocortisone, Menthol, LH Lidocaine Hydrocortisone, Menthol; (Ethyl Chloride)--~~

~~Chloroethane; Menthol 0.8% (Dermoplast, Medicore Derma-HC, Methalgen Cream, Panalgesic Gold cream-liniment, PrameGel, Nephro-Derm Cream); Dibucaine 1% (Nupercainal cream and ointment, only 0.5%).~~

(d) anti-inflammatory agents (see adrenocortico-steroids).

(e) antispasmodic agents:

(i) action: forms strong drug-receptor complex at postganglionic parasympathetic neuroeffector sites in smooth muscle, cardiac muscle and exocrine glands, thereby blocking action of acetylcholine.

(ii) indication: reduce the volume of perspiration by inhibiting sweat gland secretions.

(iii) remains the same.

(f) adrenocortico-steroids:

(i) action: diffuses across cell membranes to complex with specific cytoplasmic receptors. The resulting complexes enter the nucleus, bind to DNA thereby irritating cytoplasmic synthesis of enzymes responsible for systemic effects of adrenocortico-steroid.

(ii) indication: anti-inflammatory (bursitis, tendonitis, myositis, arthritis), antipruritic and vasoconstrictor actions.

(iii) remains the same.

~~(iv) Hydrocortisone Cream 10%, 1%; (Decadron) Dexamethasone sodium phosphate; (Aristocort) triamcinolone acetonide; (Chempad) L Lidocaine, Menthol, H Hydrocortisone, Menthol, LH Lidocaine Hydrocortisone, Menthol; (Medipad) L Lidocaine, Menthol, H Hydrocortisone, Menthol, LH Lidocaine Hydrocortisone, Menthol; Dexamethasone (Decaderm, Decadron); Betamethasone (Alphatrex cream-ointment, Diprolene AF, Lotrisone cream, Maxivate cream-lotion-ointment, Psorion cream, Betatrex).~~

(2) The board considers anti-fungal agents to be within the class of bactericidal agents.

AUTH: 37-11-107, 37-11-201, MCA

IMP: 37-11-106, 37-11-107, MCA

REASON: The board has determined it is reasonably necessary to amend this rule and no longer list allowable topical medications by name. Section 37-11-106, MCA, provides that licensed physical therapists may apply or administer certain classes of topical medications. The board is eliminating the specific listing of medications within the classes because drug names do change and the amendment will also ensure that new drugs are not excluded just because they are not listed specifically.

The board is amending (1)(b)(iii) to no longer specifically limit the use of dextranomer in the practice of physical therapy. Following a review of the rules and updated studies involving debriding agents, the board concluded that anyone using dextranomer in this manner would refer to the physicians' desk reference (PDR) to determine applicability and contraindications. The board is striking the limitation from this rule as no longer necessary.

The board is also amending the rule to make licensees aware of the board's position that anti-fungal agents are considered to be bactericidal agents. Following discussion, the board concluded that anti-fungal agents fall within the bactericidal

agent class of topical medications, and therefore may be used in practice by licensed physical therapists.

24.177.2105 CONTINUING EDUCATION (1) ~~All licensees shall submit evidence of completion of continuing education requirements biennially with their license renewal. Training for entry into a field is not considered adequate assurance of~~ Continuing education is required to ensure continued competence throughout a physical therapist or physical therapist assistant career. Training for entry into the physical therapy field is not considered adequate assurance of continued competence.

~~(2)(5)~~ The board/staff will not preapprove continuing education programs or sponsors. ~~Qualifying criteria for continuing education is specified in these rules. It is the responsibility of the licensee to select quality programs that contribute to their knowledge and competence in the physical therapy field and which also meet these qualifications specified in these rules.~~

(3) ~~The continuing~~ Continuing education ~~program programs~~ must meet the following criteria:

(a) the activity must have significant intellectual or practical content. The activity must deal primarily with substantive physical therapy issues as ~~contained in the physical therapy definition~~ physical therapy is defined in Montana. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to ~~his or her role~~ the licensee's practice as a physical therapist or physical therapist assistant;

(b) ~~A~~ a continuing education program ~~is defined as~~ may be a class, institute, lecture, conference, workshop, cassette or videotape, correspondence or online course, or peer-reviewed publication of a journal article(s), or textbook(s) ~~or online course;~~

~~(b)(c)~~ the activity must be conducted by an individual or group qualified by practical or academic experience;

~~(c)(d)~~ all acceptable continuing education courses must issue a program ~~or~~ and a certificate of completion ~~containing~~ . The program must contain the following information: full name and qualifications of the presenter; title of the ~~presentation~~ attended presentations; number of hours ~~attended~~; and date and location of each presentation ~~attended~~; name of sponsor; and description of the presentation format; The certificate must bear an official signature or verification of the program sponsor and list the course name, number of hours of continuing education obtained by the licensee, and date and location of the presentation;

~~(d)(e)~~ ~~excluded are~~ programs that promote a company, individual, or product, and programs whose subject is practice economics cannot be credited for continuing education, except those programs specifically dealing with workers' compensation, or public health, medicare, and or insurance coverage issues;

~~(e)(f)~~ Presentation of a course will only be allowed for a maximum of four hours of continuing education credit are allowed for presenting a continuing education course in each two-year cycle. The course must be presented to a group including that includes physical therapists and physical therapist assistants for continuing education credit. Licensees whose regular occupation is teaching of

~~physical therapy related courses will not be allowed continuing education credit for these regular teaching duties.~~

(4) Implementation for continuing education shall be as follows:

(a) one continuing education credit shall be granted for each hour of participation in a lab or lecture of the continuing education activity program, excluding breaks and meals;

(b) A a maximum of two credits by for cassette or videotape lectures; and

~~(c) a maximum of four credits from online or correspondence courses will be allowed. ;~~

~~(d) A a maximum of ten credits is allowed per reporting period for peer-reviewed publication of a journal article(s), textbook(s) and publication(s). ;~~

(e) licensees whose regular occupation is teaching of physical therapy related courses will not be allowed continuing education credit for these regular teaching duties.

(2) Continuing education credits shall be reported as follows:

~~(i)(a) Commencing on or before April 30, 1998, licensees Licensees with even-numbered licenses shall submit at least 20 continuing education hours earned within the 24 months prior to the renewal date set by the department in each even-numbered year. Licensees in this category will not report continuing education on the odd-numbered years, but must renew their license each year.;~~

~~(ii)(b) Commencing on or before April 30, 1999, licensees Licensees with odd-numbered licenses shall submit at least 20 continuing education hours earned within the 24 months prior to the renewal date set by the department in each odd-numbered year. Licensees in this category will not report continuing education on the even-numbered years, but must renew their license each year.;~~

~~(b)(c) no continuing Continuing education is not required for licensees renewing their license for the first time;~~

~~(c) all licensees must submit to the board, on the appropriate year's license renewal, a report summarizing their obtained continuing education credits. The board will review these reports and notify the licensee regarding his/her noncompliance by December 1. Licensees found to be noncompliant with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure. Prior to the next reporting year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees who at this time have not complied with continuing education requirements will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements. Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period;~~

~~(d) if a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will be considered by the board and evaluated on an individual basis;~~

~~(e)(d)~~ It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance (in the form of programs and certificates of attendance) and make them available upon board request for a period of two years following submission of a continuing education report;

~~(f)(e)~~ from the continuing education reports submitted each biennium, the board will randomly audit 5 percent of the reports continuing education credits.

(6) Failure to comply with the continuing education requirement may be grounds for disciplinary action.

AUTH: 37-1-319, 37-11-201, MCA

IMP: 37-1-306, ~~37-11-201~~, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to clarify the continuing education (CE) requirements and address confusion among licensees. Therefore the board is renumbering, reorganizing, and updating the rule throughout with better language and grammar choices.

The board is amending this rule to require that acceptable CE courses issue both a program and a certificate of completion, and setting forth the requirements for both documents. The board currently requires a course issue either a program or certificate, but determined that both should be required as the two documents provide different but equally important information regarding CE.

The board is amending this rule to streamline the CE reporting and audit processes and to coincide with the department's shift to online renewals and a reduction in paper records. The current process requires all licensees to submit a CE summary report at renewal, but the board audits only 5% of those that renewed. Following amendment, the board will continue to randomly audit an adequate portion of renewed licensees, as determined by the board, and only those audited will have to supply the documents supporting their CE completion. This amended process will also comply with the CE and renewal requirements of 37-1-141, MCA.

The board is also proposing to eliminate the board's ability to waive CE requirements for licensees. The board determined that allowing board waiver gives the board too much discretion which could lead to allegations of favoritism. Further, the board notes that the CE requirements for physical therapists are not overly burdensome and waivers would not be granted often.

The board is adding (6) to this rule to comply with 37-1-141, MCA, and notify licensees that failure to comply with CE requirements may result in disciplinary action taken by the board.

4. 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 Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdtpt@mt.gov, and must be received no later than 5:00 p.m., June 12, 2009.

5. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.pt.mt.gov. 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.

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

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

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

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 May 4, 2009