

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

In the matter of the amendment of)
ARM 24.177.401 fees, 24.177.501)
examinations, 24.177.504 temporary)
licenses, 24.177.507 licensure of out-)
of-state applicants, 24.177.510)
foreign-trained physical therapy)
applicants, 24.177.2105 continuing)
education, 24.177.2301)
unprofessional conduct, and the)
repeal of ARM 24.177.2405)
screening panel)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On May 31, 2012, at 10:30 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment 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 Physical Therapy Examiners (board) no later than 5:00 p.m., on May 25, 2012, 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:

24.177.401 FEES (1) and (a) remain the same.

~~(b)~~ (c) Application for out-of-state licensure

Out-of-state license application fee \$125

~~(e)~~ (e) Renewal fee 60

(d) Temporary license fee 100

~~(e)~~ (b) Original license application fee 100

(f) through (3) remain the same.

AUTH: 37-1-134, 37-11-201, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, ~~37-11-201~~, 37-11-304, 37-11-307, MCA

REASON: The board is amending this rule to achieve consistency in terminology within board and department rules and for better organization and ease of use. It is reasonably necessary to delete an erroneous implementation cite to accurately reflect the statutes implemented through this rule.

24.177.501 EXAMINATIONS (1) The examination will be the national physical therapy exam (NPTE) or another equivalent examination as the board may, in its discretion, approve and adopt for physical therapist applicants. The examination for physical therapist assistants will be the national physical therapist assistant examination (NPTAE), or another equivalent examination as the board may, in its discretion, approve and adopt.

(2) Exact examination dates will be established by the current testing service as the national uniform testing ~~date~~ dates. ~~Applicants must have their complete applications in the board office at least 45 days prior to the examination date.~~

(3) The board may, ~~after review of an application,~~ request the an applicant to meet with the board at a time designated by the board and prior to licensure, for the purpose of conducting an oral interview as per 37-11-303, MCA.

(4) remains the same.

(a) application ~~for examination fee;~~

(b) remains the same.

~~(c) 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;~~

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

(5) remains the same.

(a) All applicants who have previously taken the NPTE, in any jurisdiction, shall submit a request for test history verification and the fee to the testing service, ~~on a form prescribed by the board.~~

(6) remains the same.

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

IMP: 37-1-304, 37-11-303, 37-11-304, MCA

REASON: The board is amending this rule to accurately reflect the current examination process and requirements. In addition, the board is deleting the requirement for three statements of good moral character at (4)(c). The board concluded that a letter from a friend or someone who has known the applicant for a period of time is not an accurate indication of "good moral character." The board acknowledges that an applicant's good moral character can be evidenced by a showing in the application of no criminal record or discipline.

24.177.504 TEMPORARY LICENSES (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

60 120 days of the issuance date. Only one temporary license will be issued per applicant.

(2) remains the same.

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

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

REASON: The board determined it is reasonably necessary to amend this rule and extend the duration for temporary licenses. Because the national examination no longer has open dates, and will only be given five times in 2012 and four times in 2013, this amendment will ensure that applicants have ample time to take and pass the exam.

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

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

(d) remains the same.

~~(e) 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;~~

(f) and (g) remain the same, but are renumbered (e) and (f).

(3) remains the same.

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

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

REASON: The board is deleting the requirement for three statements of good moral character from this rule and ARM 24.177.510. The board concluded that a letter from a friend or someone who has known the applicant for a period of time is not an accurate indication of "good moral character." The board acknowledges that an applicant's good moral character can be evidenced by a showing in the application of no criminal record or discipline.

24.177.510 FOREIGN-TRAINED PHYSICAL THERAPIST APPLICANTS

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

~~(d) submit three statements of good moral character;~~

(e) through (g) remain the same, but are renumbered (d) through (f).

~~(h) (g) All applicants who have previously taken the NPTE, in any jurisdiction, shall submit a request for test history verification and the fee to the testing service, on a form prescribed by the board.~~

(2) remains the same.

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

IMP: 37-11-310, MCA

24.177.2105 CONTINUING EDUCATION (1) remains the same.

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

(a) Each 60 minutes of instruction equals one continuing education hour/credit;

~~(a)~~ (b) Licensees with even-numbered licenses shall submit at least 20 continuing education hours/credits 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;

~~(b)~~ (c) Licensees with odd-numbered licenses shall submit at least 20 continuing education hours/credits 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;

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

~~(d)~~ (e) 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; ~~and~~

(f) Course work may be live, by correspondence, video conferencing, internet, or be satellite-based; and

~~(e)~~ (g) The board will randomly audit continuing education hours/credits.

(3) remains the same.

~~(a) the~~ The activity must have significant intellectual or practical content. The activity must deal primarily with substantive physical therapy issues as physical therapy is defined in Montana. ~~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 the licensee's practice as a physical therapist or physical therapist assistant;~~

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

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

(b) The board/staff does not preapprove any activities or sponsors for continuing education credits. All accepted continuing education hours/credits in category A, B, or C must meet the Standards of Continuing Competence (SCC) set forth by the Federation of State Boards of Physical Therapy (FSBPT). A licensee can determine the acceptability of a course or activity by referencing the current SCC activities set forth by the FSBPT. It is the responsibility of the licensee to select programs that contribute to their knowledge and competence in the physical therapy field, and which meet the qualifications specified in these rules;

~~(d)~~ (c) ~~all~~ All acceptable continuing education courses must issue a program and a certificate of completion. The program must contain the following information: full name and qualifications of the presenter; title of the presentations; number of hours; date and location of each presentation; 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) Programs that promote a company, individual, or product, and programs whose subject is to practice economics cannot be credited for continuing education, except those programs specifically dealing with workers' compensation, public health, Medicare, or insurance coverage issues.

~~(e) 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, public health, medicare, or insurance coverage issues; and~~

~~(f) 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 that includes physical therapists and physical therapist assistants for continuing education credit.~~

~~(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 program, excluding breaks and meals;~~

~~(b) a maximum of two credits for cassette or videotape lectures;~~

~~(c) a maximum of four credits from online or correspondence courses;~~

~~(d) a maximum of ten credits is allowed per reporting period for peer-reviewed publication(s); and~~

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

~~(5) The board/staff will not preapprove continuing education programs or sponsors. 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 meet qualifications specified in these rules.~~

(4) Qualifying continuing education hours/credits:

(a) Category A activities: A total of 20 continuing education hours/credits may be obtained in this category in each two-year cycle. Category A includes: continuing education courses, physical therapy clinical specialty certification coursework, physical therapy clinical residency coursework, and postgraduate physical therapy education, including, but not limited to, postdoctor of physical therapy course work. The course must be passed with a grade of "C" or higher or "pass" if a "pass/fail" course. Category A activities are distinguished from category B and C activities in that they are approved for continuing education hours/credits by one of the following, regardless of whether the course is classroom-based, online, or home study:

(i) an accredited medical, physical therapy, or healthcare education program;

(ii) a national or state medical, physical therapy, or healthcare association, or a component of that association; or

(iii) a national, medical, physical therapy, or healthcare specialty society.

(b) Category B Activities: A total of ten out of 20 continuing education credits may be obtained in this category in each two-year cycle. Category B activities must meet the Standards of Continuing Competence (SCC) activities set forth by the

FSBPT. Some Category B activities may not have not been approved for continuing education hours by any of the Category A approval organizations. Category B includes:

(i) any course that pertains to physical therapy, but which is not offered through an accredited medical, physical therapy, and/or healthcare education program as identified in (4)(a).

(c) Category C Activities: A total of ten out of 20 continuing education credits may be obtained in this category in each two-year cycle. Category C activities must meet the SCC activities set forth by the FSBPT. Some Category C activities may not have been approved for continuing education hours by any of the Category A approval organizations. Category C includes:

(i) teaching or lecturing principally for healthcare professionals, if teaching or lecturing is not the licensee's primary occupation. One continuing education credit may be granted per one hour of lecture or teaching. Max hour/credit five;

(ii) being a current member of the American Physical Therapy Association (APTA). Max hour/credit one;

(iii) performing as an APTA-certified clinical instructor in each two-year cycle. Max hour/credit five;

(iv) being a recognized committee member or serving on the Montana Board of Physical Therapy Examiners, the board of the Montana Chapter of American Physical Therapy Association (MAPTA), or nationally on the board of the APTA or the FSBPT in each two-year cycle. Max hour/credit five;

(v) being published in an area that pertains to physical therapy, if publishing is not a requirement for a licensee's primary occupation. Max hour/credit five;

(vi) taking and passing the jurisprudence exam in each two-year cycle. Max hour/credit one;

(vii) taking and completing the FSBPT's Practice Review Tool. Max hour/credit one.

(5) Activities excluded from continuing education credits: Staff meetings, teaching of physical therapy-related courses, or if the licensee's primary occupation is teaching, regularly scheduled institutional activities such as rounds or case conferences, and repeating or retaking an activity and/or coursework.

(6) remains the same.

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

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

REASON: The board is reorganizing and reformatting this rule as the board determined that the current rule is poorly organized and confusing to licensees.

The board is also amending this rule in general to change the current continuing education requirements to "competency" requirements. The amendments will specifically add and define three competency categories with varying degrees of difficulty. The board determined that following amendment, this rule will clearly set forth for licensees the variety of continuing education formats and the subject matter of continuing education.

The board notes that the purpose of requiring continuing education is to ensure that licensees remain up-to-date on current trends and changes in

healthcare, in addition to public protection. Nationally, continuing education is moving toward a competency-based system. In response to several requests from licensees, the doctor of physical therapy program has been incorporated into the proposed rule change. The board anticipates that the amendments will result in continuing education requirements that are more affordable, accessible, and less restrictive than the current requirements.

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

24.177.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of 37-11-321~~(3)~~ and ~~(9)~~, MCA, the board defines immoral or unprofessional conduct, conduct unbecoming a person licensed as a physical therapist or physical therapist assistant, and conduct detrimental to the best interests of the public as follows:

(a) Engaging in or soliciting sexual relations with a patient, sexual misconduct, sexual exploitation, sexual contact, or sexual intercourse, as defined in 45-2-101, MCA, when such act or solicitation is related to the practice of physical therapy;

(b) Incompetence, negligence, or use of any modality procedure in the practice of the profession, which creates an unreasonable risk of physical or mental harm to the patient;

(c) remains the same.

(d) Any of the following, except when reasonably undertaken in an emergency situation to protect life, health, or property:

(i) accepting and performing physical therapy or physical therapist assistant responsibilities, which the licensee knows or has reason to know that he or she is not competent to perform; or

(ii) and (1)(e) remain the same.

(f) Promoting for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(g) Over utilizing services by continuing treatment beyond the point of possible benefit to the patient, or treating more frequently than necessary to obtain maximum therapeutic effect;

(h) Offering, undertaking, or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the board;

(i) and (j) remain the same.

(k) Fee-splitting and over utilization of services;

(l) Failure to comply with the continuing education requirement as per ARM 24.177.2105.

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

IMP: 37-1-316, 37-1-319, MCA

REASON: The board is amending this rule to add licensees' failure to complete the required continuing education as unprofessional conduct, so that licensees are

aware of the negative implications of this failure. The board has become aware of licensees who have checked "yes" on their renewal forms to completing continuing education, but when audited, were found to not meet their continuing education requirements.

4. The rule proposed to be repealed is as follows:

24.177.2405 SCREENING PANEL found on ARM page 24-20225.

AUTH: 37-11-201, MCA

IMP: 37-1-307, MCA

REASON: The 2009 Montana Legislature amended 2-15-1748, MCA, the statute that reflects the board's membership, and deleted the physician member. The board determined that it is reasonably necessary to repeal this rule as there is no longer a medical doctor member and department statutes adequately outline the screening panel process.

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 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 dlibsdptp@mt.gov, and must be received no later than 5:00 p.m., June 8, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's web 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.

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 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

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

BOARD OF PHYSICAL THERAPY EXAMINERS
PATTIE JO LANE, 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 April 30, 2012