

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS  
AND AUDIOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 24.222.701 supervisor ) ADOPTION  
responsibility, 24.222.702 schedule of )  
supervision, 24.222.703 functions of )  
aides or assistants, 24.222.2301 )  
unprofessional conduct, and the )  
adoption of NEW RULE I functions of )  
audiology aides or assistants )

TO: All Concerned Persons

1. On June 6, 2013, the Board of Speech-Language Pathologists and Audiologists (board) published MAR Notice No. 24-222-23 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 909 of the 2013 Montana Administrative Register, Issue No. 11.

2. On June 27, 2013, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the July 8, 2013, deadline.

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

Comments 1 through 19 relate to ARM 24.222.701:

COMMENT 1: Thirteen commenters opposed the changes to ARM 24.222.701, stating the new rules place undue burdens on the schools both financially and in finding licensees to do the supervisory work. The commenters cautioned about the current shortage of speech-language pathologists (SLP) in the state and asserted that new graduates may have to leave Montana to gain supervision, which reduces the likelihood that they will return to practice here. The commenters stated that a shortage of highly qualified individuals providing services has been a challenge and the rule changes will reduce the pool of those qualified to supervise paraprofessionals and create difficulties across the state, particularly for school districts.

RESPONSE 1: The board agrees that it may be a hardship, but notes that it is the board's job to protect the consumer, not the schools. The proposed one-year licensure requirement is in the middle of both the ASHA recommendation of two years, and other states that may have more or less experience required for supervisors. The board notes that other states and ASHA require practicum and/or

degrees for supervisors, while the board is proposing much less stringent requirements.

COMMENT 2: One commenter asserted that SLPs plan on a certain date to start repaying their school loans and the lenders do not know they are not yet fully employed due to the extension added to the program.

RESPONSE 2: See Response 1. Additionally, the board's duty is protecting the public, which does not involve student loans. The board notes that under current rules SLP licensees are not able to supervise in their post-required degree period of employment, and that licensees could still be fully employed while functioning as supervisors.

COMMENT 3: A commenter opined that schools will not hire SLPs with the additional \$10,000 - \$20,000 required for additional supervision, and that the SLPs will not receive the full salary they deserve since the extra money would go to replacement supervisors.

RESPONSE 3: The board's responsibility is ensuring qualified licensees to further protect the public and consumers, and the board is not involved with contracts between employers and licensees.

COMMENT 4: One commenter asserted that a one-year extension of the inability of SLPs to supervise aides is a fundamental change in a program, and that it's unknown what moral authority the program would have to apply this to anybody already in the program. The commenter further stated that those already in the program have not counted on working an extra year without full pay.

RESPONSE 4: See Response 1. The board does not understand what moral authority of a program entails and the board is not involved with contracts between employers and licensees.

COMMENT 5: One commenter stated that audiologists have thousands of hours of supervised clinic practicum before they can even hold a diploma as doctors of audiology. This commenter argued that requiring an extra year of licensure before an audiologist can supervise makes no sense, because audiologists are health care professionals and, in some states, are elevated to the status of limited license practitioners who can do everything but prescribe drugs.

RESPONSE 5: Medicare requires physician referral, so the board does not agree with the commenter's statement on limited license practitioners. The board concluded that the year of licensure is necessary to ensure qualified safe supervision of assistants/aides.

COMMENT 6: One commenter emphasized that today's graduating Au.D. audiologists already have four and a half years of supervised patient contact that support private practice and enhance the profession.

RESPONSE 6: See Response 5.

COMMENT 7: One commenter asked what data the board has to support the amendment of ARM 24.222.701 and require a year of licensure to supervise. The commenter questioned how this change will improve educational performance and services, and requested a copy of the data.

RESPONSE 7: The board considered standards of the American Speech-Language Hearing Association (ASHA), other states, the American Academy of Audiology (AAA), and university programs in proposing the amendments to this rule. The board believes it has accomplished its due diligence in proposing the additional year requirement. Board staff will provide the requested documentation to the commenter.

COMMENT 8: One commenter questioned the one-year licensure requirement for supervisors, asserting that the extension is an unfounded mandate for which the legislature has not authorized funding. The commenter asked for the data the board has to determine the cost to the state of the one-year extension of supervision.

RESPONSE 8: The board is responsible for ensuring qualified, licensed supervisors for the protection of the public and has authority from the legislature to accomplish this. The board is not responsible for assessing the budgetary impact of the rule change on state agencies.

COMMENT 9: A commenter suggested the board increase the requirement to two years of licensure to qualify as a supervisor.

RESPONSE 9: The board is not required to comply with standards of professional organizations or other entities, but to regulate licensees in a manner that is reasonable and prudent to ensure the protection of the Montana public.

COMMENT 10: One commenter recommended the board require supervisors to provide 20 percent direct supervision and ten percent indirect supervision for the first 90 days rather than the ten percent currently proposed.

RESPONSE 10: The board believes this comment relates to ARM 24.222.702, and not the direct services required of supervisors in ARM 24.222.701. The comment exceeds the scope of this rulemaking notice as the board has not proposed any changes to required supervision percentages.

COMMENT 11: A commenter suggested limiting the number of aides/assistants supervised by one individual to two, rather than allowing board-approval when supervising three or more.

RESPONSE 11: See Response 9.

COMMENT 12: Two commenters support the amendments to ARM 24.222.701, stating that ASHA requires two years of experience before being able to supervise assistants.

RESPONSE 12: The board appreciates all comments received during the rulemaking process.

COMMENT 13: One commenter suggested that at a minimum, the one-year requirement for supervisors should not apply to anyone currently in the program, because it would be a total change to their program.

RESPONSE 13: The board is unsure what the commenter means by "program." Following extensive research and discussion, the board decided not to provide for grandfathering or any exceptions to the one-year licensure requirement for supervisors.

COMMENT 14: Two commenters suggested that the board consider credit for years of experience when determining competence to supervise aides.

RESPONSE 14: See Response 13.

COMMENT 15: Two commenters asked the board to consider the opinions of former supervisors when determining new graduates' ability to supervise.

RESPONSE 15: See Response 13.

COMMENT 16: One commenter recommended that the university include a supervisor course since applicants must pass a practical exam and complete coursework, and for the board to require one year of experience or semester credits in supervision.

RESPONSE 16: The board has no authority over curricula of any educational institution and notes there are no exceptions to the one-year licensure requirement.

COMMENT 17: A commenter asked the board to amend the rule to require licensure in Montana or another state for at least nine months to qualify as a supervisor, as this would credit audiologists for their one year and nine month residency.

RESPONSE 17: The board concluded that the year of licensure is necessary to ensure qualified safe supervision of assistants and aides.

COMMENT 18: One commenter asked the board to defer this issue, stating that most SLPs are on vacation and unaware of the proposed changes.

RESPONSE 18: Board meetings are set a year in advance according to the availability of meeting rooms, staff, and board members. The board must continue

its work regardless of anyone's vacation schedule. Further, the board complied with all public notice requirements of the Montana Administrative Procedure Act in this rulemaking project.

COMMENT 19: One commenter asked that the board clarify exactly what kind of a schedule is expected from the supervising SLPs and specifically regarding the ten percent and 20 percent supervision.

RESPONSE 19: The board notes that the requirements in ARM 24.222.702 were purposefully set to allow for flexibility in providing services in Montana. The board always welcomes comments and suggestions regarding the supervision forms.

Comments 20 through 25 relate to ARM 24.222.702:

COMMENT 20: Four commenters asserted that the ten percent requirement for total client contact time places an undue burden on already challenged work schedules, the likelihood of additional documentation requirements, and geography.

RESPONSE 20: The board believes this comment likely relates to ARM 24.222.701(5), on direct services provided by supervisors. In any case, the board concluded that a supervisor providing ten percent of direct client services is a minimum requirement to ensure that at least some services come from a licensed practitioner. The board believes that ten percent is minimal, is not burdensome, and that flexibility in scheduling will allow licensees to prorate the ten percent.

COMMENT 21: One commenter opposed the amendments, stating the shortage of speech pathology aides in schools is very restrictive for those providing services over long distance and with large caseloads. The commenter asserted that since supervisors sign off with their credentials, they are accountable and diligent about who they have attend their patients.

RESPONSE 21: The board agrees that most licensees are ethical in practice, but notes that these rules are necessary to assure the public that minimum standards of practice are being met.

COMMENT 22: One commenter believed the board lacks the ability to make the proposed changes and the changes are an unnecessary infringement on the profession.

RESPONSE 22: See Response 8.

COMMENT 23: One commenter asked the board to define "direct service" for clarity.

RESPONSE 23: The board intends to explore the definition in a future rulemaking project regarding telepractice.

COMMENT 24: Two commenters stated that the application supervision forms are confusing and not user-friendly.

RESPONSE 24: The board always welcomes comments and suggestions regarding the supervision forms.

COMMENT 25: One commenter suggested the board remove the requirement for the board to approve all schedules of supervision, since supervisors already supervise ten percent of contact hours, and submit forms showing patient contact hours and hours supervised. The commenter asserted that the board is unnecessarily trying to turn a supervisor's right to have an aide into a board-bestowed privilege. The commenter stated that since state employees have a minimum third grade education, they are capable of the simple math required to check the contact hours on the forms. The commenter asserted that the amendments will allow the board unlimited time to review applications, followed by a final board decision to deny licensure for any or no reason whatsoever, without allowing a process to appeal the board decision.

RESPONSE 25: The board requires review and approval of supervisor schedules to ensure that aides/assistants are properly and adequately supervised.

Comments 26 through 47 relate to ARM 24.222.703 and New Rule I:

COMMENT 26: Five commenters stated that the new requirements for audiology assistants are excessively constricting.

RESPONSE 26: In the past, there were no guidelines for audiology aides/assistants. The board conducted appropriate research to propose these minimum requirements for safe audiology aide practice.

COMMENT 27: One commenter stressed that the rule changes could affect audiology assistants' wages.

RESPONSE 27: See Response 3.

COMMENT 28: One commenter stated that following the amendments, assistants would no longer relieve the audiologist of duties, since the duties an assistant can perform currently will require an on-site supervising audiologist and result in longer wait-time for patients. The commenter believed that the changes would make taking on an assistant so daunting that an audiologist may choose not to even have an assistant, thus costing the audiologist time and money.

RESPONSE 28: The board notes that the proposed rule changes do not require one hundred percent on-site supervision and do allow for practice flexibility. Also, see Response 3.

COMMENT 29: One commenter opposed New Rule I, stating that it prevents normal office conduct by permitting tasks without the ability to communicate useful information.

RESPONSE 29: The board does not believe the proposed aide/assistant functions prohibit normal, routine, and necessary interaction with consumers in accordance with supervisor practices. However, the board is amending New Rule I (4)(a)(vii), (ix), and (x) to clarify this area of practice.

COMMENT 30: One commenter asked the board to strike ARM 24.222.703(2)(a)(ii) and (vi), and (2)(b)(iv), asserting that the functions allowed in these sections are outside the ASHA scope of practice for SLP aides/assistants.

RESPONSE 30: See Response 9.

COMMENT 31: A few commenters stated there is a need to better define aide levels and asked the board to consider the differences between aides and assistants and align the definitions with ASHA and the Office of Public Instruction for clarity.

RESPONSE 31: The board is governed by and functions within the statutory definitions of audiology aide or assistant and speech-language pathology aide or assistant, which do not differentiate between "aides" and "assistants."

COMMENT 32: One commenter stated that the new rules provide some helpful guidelines for scope of practice of audiology assistants.

RESPONSE 32: The board appreciates all comments received during the rulemaking process.

COMMENT 33: Two commenters suggested that the board work with the university to get a bachelor-level track for assistants. The commenters prefer using "assistants" believing that with formal training, a person serves as an assistant, not an aide.

RESPONSE 33: The board has established minimum educational requirements for aides/assistants in ARM 24.222.301. The board lacks the authority to establish educational curricula.

COMMENT 34: Two commenters suggested the board work with health care companies, school administrators, and practicing speech therapists to find solutions to these issues.

RESPONSE 34: The board always welcomes input from the public on any matter or issue within the board's jurisdiction.

COMMENT 35: One commenter suggested the board amend the rules to allow clinical fellows (CFs) to supervise aides as this would support the university in providing a different track.

RESPONSE 35: The board concluded that the one-year licensure requirement would help to ensure public safety. The board finds it unlikely that a university would change a curriculum in response to a board rule amendment.

COMMENT 36: A commenter asked the board to consider a graduate student as another unique part of supervision, considering that a university's expectations of a graduate student to serve as an assistant or perform practicum experience or externship are much greater.

RESPONSE 36: The board has no authority to affect student supervision requirements and determined that the one-year licensure requirement is necessary for public safety.

COMMENT 37: One commenter asked the board to add language to New Rule I (3)(a)(xi) for audiology aides to direct patients to another professional for cerumen management, stating that without the language, the rule limits tasks currently allowed.

RESPONSE 37: The board does not see a limitation in allowable tasks in New Rule I (3)(a)(xi), and believes cerumen management is already included.

COMMENT 38: One commenter suggested adding language to New Rule I (3)(a)(xxvi) to permit audiology aides to restore a previous setting or session to a hearing instrument if the setting was previously prescribed by the audiologist.

RESPONSE 38: The board believes that restoring settings and functions is already included within New Rule I (3)(a)(xiii), and is amending that section for clarity.

COMMENT 39: A commenter suggested adding to New Rule I (3)(a)(xxvii) to permit audiology aides to administer patient questionnaires or surveys prepared by the supervising audiologist to determine patient scheduling priority, especially regarding initial screening for sudden hearing loss.

RESPONSE 39: The board believes that the stated functions are already included within New Rule I (3)(a)(i).

COMMENT 40: One commenter suggested adding to New Rule I (3)(a)(xxviii) to permit audiology aides to communicate to patients the results of the tests and activities described in (v), (vi), (vii), (viii), and (xvi) of (3). The commenter noted that though aides can do many things under the new rules such as cleaning a hearing aid, they are expressly prohibited from communicating any results to the patient.

RESPONSE 40: See Response 29.

COMMENT 41: One commenter suggested adding to New Rule I (3)(a)(xxix) to permit audiology aides to communicate information regarding a patient or patient status to family members or other third parties only with the consent of the patient and at the direction of the supervising audiologist.

RESPONSE 41: See Response 29.

COMMENT 42: One commenter suggested adding to New Rule I (3)(a)(xxx) to permit audiology aides to program, set up, and troubleshoot assistive listening devices recommended by the supervising audiologist.

RESPONSE 42: The board does not believe that programming assistive listening devices is within the allowable functions of audiology aides/assistants, and is not amending the rule as suggested.

COMMENT 43: One commenter suggested adding to New Rule I (3), "(b) an industrial audiology aide or assistant may: (i) conduct pure tone audiometry testing, make comparisons of the results to previous pure tone audiometry test results to determine if a change has occurred, and communicate the results of the pure tone audiometry test to the patient; and (ii) may read and interpret changes to an audiogram and refer the patient to the supervising audiologist for subsequent testing siting that industrial aids or CAOHC certified aids (same thing) have a job to do which requires the following. They absolutely cannot work without these changes. An industrial aid: works under an audiologist, may perform pure tone tests without direct on-site supervision, is trained and certified to be able to evaluate test results for the purpose of determining degree of loss by pure tone, and change when comparing a previous test to the current test, they must be allowed to calculate change per frequency (baseline, this test), they must be able to communicate that change to the person being tested, and they must be able to refer that patient to the supervising audiologist for further testing based on OSHA or NIOSH recommendations."

RESPONSE 43: The board appreciates the suggested additions and will consider the language regarding industrial aides in future rulemaking discussions, since the suggestions exceed the parameters of the current rules notice.

COMMENT 44: A commenter suggested amending New Rule I (4) to allow for functions that may be specifically permitted in (3).

RESPONSE 44: The board decided to keep the format and organization of the rule exactly as proposed.

COMMENT 45: One commenter stated that aides cannot ask a question about a group discussion unless the board amends New Rule I (4)(a)(iii) to allow aides/assistants to confirm previous instructions of the supervising audiologist with other aides, assistants, or employees of the supervising audiologist. The

commenter thought it was odd that the board would prevent aides from being able to ask other staff members' questions about a group meeting required by the supervising audiologist.

RESPONSE 45: See Response 29. Additionally, the board intends that New Rule I (4)(a)(iii) applies to interdisciplinary team meetings and aides are not able to represent audiologist licensees at these meetings.

COMMENT 46: One commenter suggested amending New Rule I (4)(a)(ix) to allow aides to disclose clinical or confidential information to individuals other than the supervising audiologist as long as they have the approval of the supervising audiologist. The commenter asserted that without the amendment, aides are completely mute and audiologists may as well not even have aides, since all information about a patient is both clinical and confidential. The commenter asserted that without this suggested amendment, the limitation would kill the professions of assistants and industrial assistants.

RESPONSE 46: See Response 29.

COMMENT 47: A commenter suggested amending New Rule I (4)(a)(xii) to allow aides to make ear impressions, since audiologists are hard to come by and dispensers may also be too expensive for small clinics to afford. The commenter suggested the board consider requiring a formal "earmold impression" test to determine an assistant's competence.

RESPONSE 47: The board concluded that it is necessary for the protection of the public to require that licensed audiologists make earmold impressions.

COMMENT 48: One commenter suggested that given the seriousness of the proposed amendment to ARM 24.222.2301, and the fact that most SLPs are on summer break, the board should allow more input and consideration of the ramifications of any new or existing guidelines before adoption.

RESPONSE 48: See Response 18.

COMMENT 49: One commenter asked for a clarifying definition of remote supervision of aides.

RESPONSE 49: See response 23.

COMMENT 50: A commenter stated that the Montana Speech and Hearing Association wishes to participate in the board's rulemaking for this notice and future notices. The commenter asserted that scheduling of board meetings by both the board and the association were ill-timed and did not allow the association to respond as a whole.

RESPONSE 50: See Response 18. The board publicly posts its upcoming scheduled meetings on the board web site as well as showing them on full board meeting agendas.

COMMENT 51: One commenter requested the board host a second hearing with all board members present since the audiologists received the notice at 3:30 a.m. on June 27, 2013.

RESPONSE 51: The board complied with all public notice requirements of the Montana Administrative Procedure Act in this rulemaking project, and notes that public comments were accepted until 5:00 p.m. on July 8, 2013. Rules hearings are conducted by department staff as one of several means to collect public comment on proposed rule changes, which are brought to the boards for consideration.

COMMENT 52: One commenter suggested the board amend ARM 24.222.202 (6) by inserting a definition of "supervision" that allows for a substitute supervisor to fill in at times.

RESPONSE 52: The board is not proposing to amend ARM 24.222.202; therefore, the comment exceeds the parameters of the current rules notice.

COMMENT 53: One commenter requested the board amend ARM 24.222.301(5)(a) and (b) to clarify that the equivalent of the undergraduate degree in communication sciences and disorders is the "Leveling Course Certificate" to align with the MASHA resolution to award certificates of completion to students completing the leveling course.

RESPONSE 53: The board is not proposing to amend ARM 24.222.301; therefore, the comment exceeds the parameters of the current rules notice.

4. The board has amended ARM 24.222.701, 24.222.702, 24.222.703, and 24.222.2301 exactly as proposed.

5. The board has adopted New Rule I (24.222.706) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I FUNCTIONS OF AUDIOLOGY AIDES OR ASSISTANTS

(1) through (3)(a)(xii) remain as proposed.

(xiii) assist audiologists with setup and technical tasks, including restoring setting in hearing aids and other amplification devices;

(xiv) through (4)(a)(vi) remain as proposed.

(vii) transmit clinical information either orally or in writing to anyone, including the patient, ~~without the approval~~ except at the direction of the supervising audiologist;

(viii) remains as proposed.

(ix) disclose clinical or confidential information either orally or in writing to anyone other than the supervising audiologist, except at the direction of the supervising audiologist;

(x) counsel or consult with the patient, family, or others regarding the patient status or service, or make referrals for additional services, except at the direction of the supervising audiologist;

(xi) through (5) remain as proposed.

BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
LYNN HARRIS, CHAIRPERSON

/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 October 7, 2013