

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

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through VII telepractice of)
speech-language pathology and)
audiology and NEW RULE VIII)
military training or experience)

TO: All Concerned Persons

1. On February 27, 2014, the Board of Speech-Language Pathologists and Audiologists (board) published MAR Notice No. 24-222-24 regarding the public hearing on the proposed adoption of the above-stated rules, at page 379 of the 2014 Montana Administrative Register, Issue No. 4.

2. On March 24, 2014, a public hearing was held on the proposed adoption of the above-stated rules in Helena. Several comments were received by the March 28, 2014, deadline.

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

COMMENT 1: Two commenters were concerned that the new rules treat telepractice as a new type of practice or area of specialty, and may require additional licensing before current licensees may use telepractice. The commenters stated that telepractice is just one tool in service delivery among many used by practitioners.

RESPONSE 1: The board does not believe the new rules have created any additional license requirements, but instead, clarify the minimum safe standards for providing speech-language pathology and audiology services via telepractice. The board is aware that the implemented statutes prohibit the board from creating a new license type, and the board drafted the new rules accordingly.

COMMENT 2: Two commenters cautioned the board to adopt rules that consider the evolution of technology and clinical competence, asserting that the rules should set basic telepractice parameters without hindering licensure.

RESPONSE 2: The board discussed setting restrictive technological parameters, such as those regarding bandwidth, when drafting these new rules. Because the involved technology changes quickly and the board did not want to set rules that would need constant monitoring and updating to reflect the evolution of technology, the board therefore drafted the rules to avoid specific requirements.

COMMENT 3: One commenter said that the rules lack guidance on practitioner-to-practitioner consultation via telepractice, whether or not a patient is present, and suggested the rules should specify that such consultation constitutes telepractice and consultants would be bound by the same competency, practice, and ethical standards.

RESPONSE 3: The board agrees that such consultation falls within the statutory definition of telepractice at 37-15-102(11), MCA, but does not believe it is necessary to promulgate new rules addressing practitioner-to-practitioner consultation at this time.

NEW RULE II PROVISION OF TELEPRACTICE SERVICES

COMMENT 4: One commenter asserted that New Rule II is vague and may be interpreted to apply when practitioners in Montana provide telepractice services to out-of-state patients. The commenter asked the board to clarify their intent that the rule applies only to services provided to patients located in Montana.

RESPONSE 4: The board does not believe that New Rule II is vague and notes that the rule's language "in this state" means that the services are provided in Montana upon Montana patients.

NEW RULE III LIMITS ON TELEPRACTICE

COMMENT 5: A commenter asked the board to delete the requirement in (2) that out-of-state practitioners providing services to Montana patients be licensed in the state or jurisdiction where the practitioners are located. The commenter asserted that requiring Montana licensure is adequate, since the services are provided in Montana.

RESPONSE 5: The board discussed the fact that the Board of Medical Examiners actually grants a license for out-of-state physicians to practice only telemedicine on Montana patients, while requiring that the physicians hold out-of-state licensure. The board notes that speech-language pathology and audiology telepractice does not require a new or separate license. The board must issue a Montana speech-language pathology or audiology license before an individual practices on Montana patients, by whatever delivery service method, including telepractice. The board agrees with the commenter that Montana licensure adequately protects the Montana public and patients, and is therefore amending the rule accordingly.

COMMENT 6: One commenter asked the board to amend the new rule to allow out-of-state practitioners to provide consultation services in Montana without remuneration, or at the request of a Montana-licensed practitioner, to allow practitioners to seek expert assistance when needed.

RESPONSE 6: The board never intended to restrict its licensees' opportunities to consult with other practitioners. The board directs the commenter to refer to 37-15-

103(5), MCA, for the statutory exemptions from licensure for individuals practicing less than 5 and 30 days without a Montana license.

COMMENT 7: A commenter questioned whether (1) and (2) conflict with the provisions of 37-15-103(5), MCA, regarding limited practice by individuals not licensed in Montana. The commenter further asserted that these rule sections are unnecessary, given the language in 37-15-314, MCA.

RESPONSE 7: The board does not see a conflict between the statute and rule, but does agree that the rule would be clearer by referencing the specific statutory licensure exemptions in 37-15-103(5), MCA. The board decided to delete (2) after concluding that requiring Montana licensure for all speech-language pathology and audiology practice, including telepractice, adequately protects the public/patients.

NEW RULE V QUALITY OF TELEPRACTICE SERVICES

COMMENT 8: One commenter stated that the board's intent regarding practitioner responsibility for telepractice quality assurance in New Rule V(1) is vague and requested further clarification.

RESPONSE 8: The board notes that specific details regarding telepractice quality assurance are set forth in (8) and (9) of this rule.

COMMENT 9: A commenter opined that the requirement in (2) for telepractice services to conform to professional standards is too vague and requested the board adopt by reference specific professional standards in this rule.

RESPONSE 9: During the development of these rules, the board did look to several codes of ethics, but decided it would be impossible to list or name all relevant ones. Additionally, even if the board chose several codes, the board would then have to monitor them and update the rules as codes of ethics change and evolve. The board further notes that all references to ASHA standards were eliminated from the statutes in 2005.

COMMENT 10: A commenter asked the board to define "competent" as used in New Rule V(6), to avoid misinterpretation by practitioners.

RESPONSE 10: The board concluded that it is impossible to define competency, and there is no single certification for all the equipment and technology that can be used in providing services through telepractice. The board notes that competency is obtained through continuing education and measured by the random audit process. Additionally, if someone believes a speech-language pathologist or audiologist is incompetent, the matter will come to the board as a complaint, and the board will evaluate it on a case-by-case basis. The board decided to strike (6) after determining that competency in delivering telepractice services is adequately addressed in 37-15-315, MCA.

COMMENT 11: One commenter stated that New Rule V(7) through (9) are unnecessary as the provisions are adequately stated in statute at 37-15-315(1) and (2), MCA.

RESPONSE 11: The board agrees with the commenter, and is deleting (7) through (9) accordingly.

NEW RULE VI ESTABLISHING THE PRACTITIONER-PATIENT RELATIONSHIP

COMMENT 12: Several commenters opposed the requirement in New Rule VI for in-person evaluations of prospective telepractice patients. The commenters asserted the requirement will restrict access and delay services to patients that most need telepractice, and that it is not an evidence-based procedure. Commenters stated that there are valid and effective online evaluations available and the requirement may result in evaluations by local therapists who lack expertise to refer for telepractice. Commenters asserted the in-person evaluation exceeds assessment requirements in 37-15-315(4), MCA, and that in-person assessments were considered and rejected during Senate Bill 230 legislative committee discussion. The commenters suggested the board allow the practitioners' codes of ethics govern whether an in-person evaluation is needed, on case-by-case bases.

RESPONSE 12: It is the duty of the board to protect the public, including consumers, and the board believes the best way to accomplish this in telepractice services is to ensure initial evaluations are always done in person. The board acknowledges that at times this will require a practitioner to travel to a patient, but that at other times, the patient will come to the licensee. The board notes that evaluations generally will take only a single session and that people living in rural areas are oftentimes used to and willing to travel for services.

Because telepractice is new to Montana, there is no experience evidence to review or base standards upon. The board notes that the commenter did not provide any documentation of evidence.

The board is aware of online evaluations and tests, but concluded that requiring in-person evaluations is the correct approach for public safety.

The board anticipates that initial evaluators will make recommendations regarding the need for further assessment by someone more qualified in certain areas, prior to referring for telepractice. The board believes that the statute is broad enough to allow the designation of in-person evaluations as the required initial assessment. The board does not believe the requirement exceeds statutory parameters.

The board notes that during the legislative committee hearings, people commented both for and against in-person evaluations, and that the issue was not dismissed, but was just not addressed in the final bill draft.

The board acknowledges that all licensees should be practicing under their codes of ethics and within applicable professional standards, but that in-person evaluation is the minimum safe standard for initial telepractice assessment.

COMMENT 13: One commenter suggested the board delete the unnecessary requirement in (2)(g) that practitioners inform patients in writing of several risks, and to maintain the document as signed by both patient and practitioner.

RESPONSE 13: The board notes that there is no other way to ensure the compliance of these standards but to require some documentation of such.

NEW RULE VII COMPETENCE – PRACTICE LIMITS – MAINTENANCE AND RETENTION OF RECORDS

COMMENT 14: Several commenters opposed the requirement in New Rule VII(1)(a) for practitioners to obtain four hours of board-approved telepractice training prior to providing services via telepractice. The commenters asked how the board chose four hours, asserting the requirement is arbitrary and not evidence-based. Several questioned the criteria and process for board approval of the training, and asked why training isn't required for other areas of service. Commenters stated that four hours is too restrictive and excessive, two hours is adequate, and that it would be prohibitive on practitioners consulting from other states. Commenters asserted that licensees should be responsible to be competent in all areas of practice and suggested the board focus on outcomes, by ensuring equal service quality, regardless of delivery method.

RESPONSE 14: The board acknowledged that there was no specific rationale for selecting four hours of telepractice training, but had determined that some training is essential and that a half a day would likely be adequate with consumer protection in mind. The board notes that new graduates will gain the technological training during their education, while current licensees may not, but will still have the technology required in their jobs. The board further notes that technology changes so quickly, and all Montana practitioners should be as up-to-date as possible on the advancements. The board points out that the four hours is easy to obtain through online methods, fairly reasonable in cost, and is only a one-time requirement.

The board acknowledges that most current practitioners were trained in an era where telepractice was not even an opportunity, but now telepractice is a part of most existing licensees' practices. The board likened the technology training requirement to when cerumen management became part of the audiology scope of practice, and practitioners were then required to have appropriate training. The board concluded that requiring four hours of training is the minimum safe standard for ensuring knowledge of telepractice technology involved.

COMMENT 15: One commenter asked the board to delete (1)(c), the requirement for telepractice practitioners to maintain continuing competency, stating that limiting telepractice services to a licensee's scope of practice adequately addresses this.

RESPONSE 15: The board concluded that this requirement is needed to ensure minimally safe continued telepractice services.

COMMENT 16: One commenter opposed (2), the prohibition on aides/assistants providing telepractice services. The commenter stated that at times speech-language pathology aides may have more technical skills than a local therapist and therefore would be qualified to provide telepractice services.

RESPONSE 16: The board notes that 37-15-314(3), MCA, specifically prohibits telepractice by aides and assistants.

4. The board has adopted NEW RULES I (24.222.901), II (24.222.904), IV (24.222.910), VI (24.222.916), VII (24.222.920), and VIII (24.222.504) exactly as proposed.

5. The board has adopted NEW RULES III (24.222.907) and V (24.222.913) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III LIMITS ON TELEPRACTICE (1) ~~No~~ Except as provided in 37-15-103(5), MCA, no person licensed as a speech-language pathologist or audiologist in another state may engage in the practice of speech-language pathology or audiology in Montana, including telepractice services, unless a license to practice has been issued in Montana.

~~(2) A person located outside this state who provides speech-language pathology or audiology telepractice services to any patient in Montana shall be appropriately licensed in the jurisdiction in which the person providing telepractice services is located.~~

(3) remains as proposed, but is renumbered (2).

NEW RULE V QUALITY OF TELEPRACTICE SERVICES (1) through (5) remain as proposed.

~~(6) Licensees must be competent in delivering telepractice services via an electronic communications environment.~~

~~(7) The scope, nature, and quality of telepractice services must be the same as those provided by the licensee during in-person sessions.~~

~~(8) Optimal audio and video quality is dependent on the consistent and reliable operation and connection of telepractice equipment and networks.~~

~~(9) Telepractice service delivery includes the responsibility for calibration and maintenance of clinical instruments and telepractice equipment in accordance with standard operating procedures of the telepractice site(s) and manufacturer's specifications.~~

(10) remains as proposed but is renumbered (6).

Board of Speech-Language Pathologists
and Audiologists
Lynn Harris, AuD, 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 June 2, 2014