

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.126.411 patient records)	PROPOSED AMENDMENT,
retention, 24.126.2103 continuing)	ADOPTION, AND REPEAL
education requirements, 24.126.2105)	
approved continuing education, and)	
24.126.2301 unprofessional conduct,)	
adoption of NEW RULE I sexual)	
relations with a patient and sexual)	
misconduct, and repeal of 24.126.405)	
board meetings, 24.126.406 record of)	
minutes and hearings, and)	
24.126.2101 renewals)	

TO: All Concerned Persons

1. On March 11, 2016, at 1:00 p.m., a public hearing will be held in the Basement Conference Room, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, 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 Chiropractors no later than 5:00 p.m., on March 4, 2016, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcchi@mt.gov (board e-mail).

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

24.126.411 PATIENT RECORDS RETENTION (1) Chiropractors Except as provided in [NEW RULE I], chiropractors ~~are required to~~ must retain adult patient records and x-rays for a minimum of ~~five~~ seven years and a minor patient's records and x-rays for a minimum of ~~five~~ seven years from their last treatment or at least one year past their 18th birthday. ~~Medicaid requires that minor patient records be kept until the patient's 23rd birthday.~~

AUTH: 37-1-131, ~~37-12-201~~, MCA
IMP: 37-1-131, ~~37-1-201~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align the board's record retention requirements with those of the IRS. The board concluded that this may be easier for licensees to maintain their professional records while still ensuring adequate retention for processing potential complaints.

The board is striking the reference to a Medicaid requirement, as the federal regulation may change without the board being aware.

Authority and implementation citations are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.126.2103 CONTINUING EDUCATION REQUIREMENTS (1) remains the same.

(2) New licensees to ~~the state of~~ Montana have from the date of their original licensure in Montana until the end of their first full renewal period to complete their first 13 hours of continuing education, and shall affirm on their second renewal application that they have attended and successfully completed a minimum of 13 hours of board-approved continuing education during that period.

(3) through (8) remain the same.

AUTH: 37-1-131, 37-1-319, ~~37-12-201~~, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend (2) to address questions and confusion regarding continuing education (CE) requirements for newly licensed chiropractors. The board intends to allow new licensees from their initial licensure plus one full renewal period to attest to having completed the required CE and be subject to potential selection in a random audit.

Authority and implementation citations are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.126.2105 APPROVED CONTINUING EDUCATION (1) remains the same.

(2) From the date of their original licensure in Montana until the end of the first full renewal period, new licensees can fulfill the continuing education requirement by attending one session of the "new doc seminar" in lieu of the 13-hour continuing education requirement.

(3) through (5) remain the same.

~~(6) All continuing education not listed in this rule must be submitted for review and approval by the board on a case-by-case basis.~~

AUTH: 37-1-131, 37-1-319, ~~37-12-201~~, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: See REASON for ARM 24.126.2103 for amendment to (2).

The board determined it is reasonably necessary to strike (6) and no longer approve CE that does not comply with the parameters of this rule. The board notes

that its licensees are competent professionals who are fully capable of reading the rule and determining which courses are acceptable and which are not.

Authority and implementation citations are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.126.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of 37-1-316, MCA, the board further defines unprofessional conduct as follows:

(a) ~~using or causing to be used advertising matter which contains any representations to patients or prospective patients, whether communicated verbally, by advertisement, or through any other medium, that contain misstatements, falsehoods, distorted or fabulous statements, relative to:~~

~~(i) misstatements, falsehoods, misrepresentations, or distorted and fabulous statements relative to cures or treatments diagnosis, palpation, treatment, cure, or cost of services;~~

~~(ii) statements which may in any way reflect against a fellow licensee, including statements which imply superiority over another licensee or health care professional; or~~

~~(iii) personal advertising claiming the licensee's particular abilities, qualifications, experience, features, or accomplishments regarding the licensee or areas of specialty the licensee's chiropractic practice unless documentation of such abilities, features, accomplishments, or specialties are documented with the board prior to placing the advertisement.~~

~~(b) engaging in or soliciting sexual relations with a patient, sexual misconduct either verbal or physical, sexual contact, sexual exploitation, or a sex offense, as defined in 45-2-101, MCA, when such act or solicitation is related to the practice of chiropractic violating any provision of [NEW RULE I] regarding sexual misconduct or sexual relations with a patient;~~

~~(c) through (e) remain the same.~~

~~(f) billing charges or fees to a third-party payer or collecting from a third-party payer on behalf of a patient at a different rate than the charge or fee actually billed to or collected from the patient. In the case where services are provided at a reduced rate to a patient ~~because of the patient's inability to pay for the services at their regular or undiscounted rate,~~ any charge or fee billed to or collected from a third party must be based upon the actual reduced rate billed to the patient;~~

~~(g) through (u) remain the same.~~

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, 37-1-319, 37-12-301, 37-12-322, MCA

REASON: The board screening panel has considered a number of complaints related to licensee advertisements. Noting that licensees do not routinely submit to the board proof of qualifications prior to advertising, the board concluded that the rule is inadequate and difficult to enforce as currently written. The board is amending (1)(a) to clearly delineate enforceable advertising requirements for

licensees and help ensure the public's protection against misleading or false advertisements.

In lieu of listing the types of sexual misconduct the board deems as unprofessional conduct, the board is amending (1)(b) to reference proposed NEW RULE I that sets forth the provisions regarding sexual misconduct and sexual relations with patients.

The board determined it is irrelevant why licensees might provide services at reduced cost; licensees should never misrepresent actual charges to insurance providers. The board is amending (1)(f) to clarify this for licensees.

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

4. The proposed new rule provides as follows:

NEW RULE I SEXUAL RELATIONS WITH A PATIENT AND SEXUAL MISCONDUCT (1) A licensee shall not solicit, engage, or attempt to engage, in any form of sexual relationship or sexual contact with a current patient, unless the sexual relationship or sexual contact was consensual and occurred or commenced prior to the chiropractor-patient relationship.

(2) A licensee shall not solicit, engage, or attempt to engage, in any form of sexual relationship or sexual contact with a former patient, unless the chiropractor-patient relationship is terminated in writing and more than 90 days have passed since the chiropractor-patient relationship terminated. The licensee must permanently retain written record of the terminated chiropractor-patient relationship to demonstrate compliance with this section.

(3) A licensee shall not solicit, engage, or attempt to engage, in verbal or physical sexual harassment, sexual contact, or sexual exploitation, against any person when working in the chiropractic practice or business, or under the guise of providing chiropractic services.

(4) Without regard to a licensee's or applicant's mental intent, a licensee or applicant shall not engage in any conduct defined as a sexual crime in 45-5-501 through 45-5-507, MCA, regardless of whether the conduct occurred in or is related to the licensee's chiropractic practice.

(5) For the purpose of this rule, "sexual contact," "sexual intercourse," and "solicit" or "solicitation" are defined in 45-2-101, MCA; and "without consent" is defined in 45-5-501, MCA.

(6) A licensee's or applicant's violation of this rule constitutes unprofessional conduct pursuant to ARM 24.126.2301(1)(b).

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

IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to adopt NEW RULE I in response to concerns raised by the board screening panel and department legal counsel. Currently, sexual misconduct is addressed in the unprofessional conduct rule and the rule language has resulted in confusion and difficulty in prosecuting cases involving allegations of sexual relations with patients or former patients. The

amendments will also address questions as to the ability of licensees to provide chiropractic adjustments on one's spouse. The board is therefore adopting NEW RULE I to clearly delineate the board's intent regarding sexual relations involving patients and sexual conduct, and clarify when these behaviors constitute unprofessional conduct.

5. The rules proposed to be repealed are as follows:

24.126.405 BOARD MEETINGS at ARM page 24-10022.

AUTH: 37-12-201, MCA
IMP: 37-12-201, MCA

REASON: The board is repealing this rule as unnecessary and outdated, noting that the rule requires written notification of board members and acknowledging that boards can follow Roberts Rules without adopting them in administrative rule.

24.126.406 RECORD OF MINUTES AND HEARINGS at ARM page 24-10022.

AUTH: 2-6-101, MCA
IMP: 2-6-101, MCA

REASON: The board is repealing this unnecessary rule as it does not account for current online posting of minutes and its provisions are adequately set forth in statute at 2-3-203 and 2-3-212, MCA.

24.126.2101 RENEWALS at ARM page 24-10137.

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-1-141, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

6. 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 Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibschi@mt.gov, and must be received no later than 5:00 p.m., March 18, 2016.

7. An electronic copy of this notice of public hearing is available at www.chiropractor.mt.gov (department and board's web site). 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.

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

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

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.126.411, 24.126.2103, 24.126.2105, and 24.126.2301 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.126.405, 24.126.406, and 24.126.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail dlibschi@mt.gov.

11. Darcee L. Moe, legal counsel, has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS
LEE HUDSON, DC, PRESIDENT

/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 February 8, 2016