

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, 24.177.504) NOTICE OF PUBLIC HEARING ON
temporary permit, and 24.177.2105) PROPOSED AMENDMENT
continuing education)

TO: All Concerned Persons

1. On March 6, 2020, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, 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 no later than 5:00 p.m., on February 28, 2020, 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; or dlibsdp@mt.gov (board's e-mail).

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

24.177.401 FEES (1) through (1)(d) remain the same.
(e) Compact privilege fee – The fee has been established by the board for services or privileges rendered by the board. This is part of a fee paid by the applicant directly to the PT Compact Commission.

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(e) and (f) remain the same but are renumbered (f) and (g).
(2) and (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, 37-11-304, 37-11-307, 37-11-316, MCA

REASON: In 2017, the Montana legislature passed House Bill 105 which allowed the board to join the Interstate Physical Therapy Licensure Compact (compact). Pursuant to compact terms, the board is required to conduct a fingerprint-based criminal history background check on each applicant for licensure. To be able to conduct these background checks, the U.S. Federal Bureau of Investigation must approve statutory language permitting the department to receive the confidential information involved in the background checks. Because the department could not

initially obtain the FBI's approval, the department brought Senate Bill 74 on the board's behalf in 2019. The bill addressed the FBI's concerns and led to FBI approval for the background checks. The board is now able to move forward and complete all compact requirements. As permitted by 37-11-316, MCA, the board is proposing to amend this rule by adding (1)(f) to begin charging a fee to practice in Montana through participation in the compact.

Because the board is not issuing compact privileges currently, new applicants from out-of-state must pay the out-of-state application fee directly to the department for application processing. Once the board begins issuing compact privileges, most of the processing for those eligible applicants will be done by the PT Compact Commission (commission). The applicant will pay a commission fee determined by the commission, as well as any fee charged by the state for which the applicant is seeking a privilege to practice, to the commission. The commission will then forward all state fees, such as the one proposed here, to the relevant state.

The compact privilege fee proposed would supplant the fee that would otherwise be charged of new applicants seeking reciprocal licensure from another state, for those applicants participating in the compact.

The board is proposing this compact privilege fee to encourage potential applicants to participate in the compact, account for department staff time needed to process compact licenses at the board's expense, and offset potential lost revenue to the board from compact privilege applicants who otherwise might have applied to practice in Montana as out-of-state applicants. Currently, 16 states (Arizona, Colorado, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Oregon, Tennessee, Texas, Utah, Washington) are actively issuing compact privileges, with fees charged by those states ranging from \$0 to \$150. The average compact privilege fee charged is approximately \$52 among all states, so the proposed fee falls within a reasonable range of what the other states are charging.

Following addition of this fee, some applicants who intend to seek licensure in Montana and are eligible to participate in the compact will likely choose to pay the \$50 compact fee, rather than the \$125 out-of-state license fee. The board recognizes the compact will more than likely result in an overall reduction of fees paid to the board by physical therapists and physical therapist assistants as out-of-state applicants. However, any reduction in licensure revenue will likely be offset by an increase of licensees who claim residency in Montana for purposes of the compact and may result in more applicants choosing to seek licensure in Montana than would do so otherwise. Because compact staff will receive and process much of the documentation otherwise required for out-of-state applications, the board believes that processing time and administrative costs for compact applications coming to the board will be reduced. These factors will help mitigate the loss to the board of implementing a compact privilege fee lower than the out-of-state licensure fee. However, the board recognizes the possibility of losing total revenue in FY 2020 from out-of-state licensees applying for licensure via the interstate compact. The board estimates that these changes will affect approximately 35 out-of-state license applicants and result in a reduction in annual revenue of \$6125.

The board is adding the compact statute, 37-11-316, MCA, to the implementation citations to reflect all statutes implemented through the rule.

24.177.504 TEMPORARY LICENSES PERMIT (1) Physical therapist or physical therapist assistant applicants for licensure by examination may be issued a temporary license permit. The temporary license permit 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 120 days of the issuance date.~~ The temporary permit is valid until the applicant either fails the first national examination for which the applicant is eligible or passes the examination and is granted a license. Only one temporary license permit will be issued per applicant.

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

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 to utilize the correct terminology for temporary permits and match the language of this rule with the text of 37-1-305, MCA. The board is further amending this rule to align with the timeline provisions in the implemented statute. This amendment will not change the substantive requirements to receive a temporary permit to practice.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

24.177.2105 CONTINUING EDUCATION (1) Continuing education (CE) 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) Continuing education hours/credits shall be reported as follows:~~

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

~~(b) (2) All licensees, regardless of license number, shall now obtain 30 hours/credits of continuing education CE in each 24-month period prior to the renewal date in odd-numbered years. The first reporting period will be from April 1, 2015 to March 31, 2017;~~

~~(c) (3) Licensees must renew their license each year; shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.~~

~~(d) (4) Continuing education is not required for licensees Licensees renewing their license for the first time; are exempt from CE requirements.~~

~~(e) (6) It is the responsibility of the licensee to Licensees must establish and maintain detailed records of continuing education compliance completed CE in the form of programs and certificates of attendance and make them the records available upon board request;~~

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

~~(g) (5) The board will may randomly audit continuing education hours/credits up to 50 percent of renewed licensees in each odd-numbered year.~~

~~(3) (7) Continuing education CE programs must meet the following criteria:~~

~~(a) The activity must have significant intellectual or practical content. The activity must and deal primarily with substantive physical therapy issues as physical therapy is defined in Montana.;~~

~~(a) Sixty minutes of instruction equals one CE hour/credit.~~

~~(b) Coursework may be live, by correspondence, video conferencing, internet, or satellite-based.~~

~~(c) Programs promoting a company, individual, or product, or the subject of which is practicing economics are not qualifying CE, except programs specifically addressing workers' compensation, public health, Medicare, or insurance coverage.~~

~~(d) Activities excluded from CE credits include staff meetings, teaching physical therapy-related courses when teaching is the licensee's primary occupation, regularly scheduled institutional activities such as rounds or case conferences, and repeating or retaking an activity and/or coursework.~~

~~(b) (8) The board/staff does not preapprove any activities or sponsors for continuing education CE credits. All accepted continuing education CE hours/credits in category A must meet the standards set by the American Physical Therapy Association (APTA) or the Federation of State Boards of Physical Therapy (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 this rule.;~~

~~(c) 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.~~

~~(4) (9) Qualifying continuing education hours/credits:~~

~~(a) Category A activities: A minimum of 15 of the 30 continuing education CE hours/credits must be obtained in this category in each two-year cycle. Category A includes: continuing education CE 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 postgraduate physical therapy course work 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 activities in that they are approved or offered continuing education CE hours/credits by one of the following, regardless of whether the course is classroom-based, online, or home study:~~

~~(i) through (iii) remain the same.~~

(b) Category B Activities: Up to 15 of the 30 continuing education CE credits may be obtained in this category in each two-year cycle. ~~Category B includes:~~

(i) ~~any course that pertains pertaining to physical therapy, but which is not approved or offered through an accredited medical, physical therapy, and/or healthcare education program as identified in (4)(a) (9)(a);-~~

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

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

(iv) through (ix) remain the same.

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

~~(6) (10) Failure to comply with the continuing education requirement may be grounds for disciplinary action. Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

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

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is reorganizing and reformatting this rule to align with and help facilitate the department's standardized renewal, administrative suspension, and audit procedures. The amendments will streamline and simplify the rule for better organization and ease of use by licensees and department staff. Following a recommendation by department legal staff, the board is amending (3) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments align with standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

The board is adding (5) to allow flexibility in conducting random CE audits. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is clarifying in (10) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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 e-mail to dlibsdp@mt.gov, and must be received no later than 5:00 p.m., March 13, 2020.

5. An electronic copy of this notice of public hearing is available at www.pt.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site 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 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 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.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Regarding House Bill 105 (2017), the primary bill sponsor was contacted on August 7, 2017, and November 6, 2019, by e-mail. Regarding Senate Bill 74 (2019), the primary bill sponsor was contacted on November 6, 2019, by e-mail; on December 3, 2019, by telephone; and on December 4, 2019, by postal mail.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.177.401, 24.177.504, and 24.177.2105 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to dlibsdp@mt.gov.

9. Linda Grief, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PHYSICAL THERAPY
EXAMINERS
KELSEY WADSWORTH, PT, DPT, OCS
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 4, 2020.