

BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.156.601 fee schedule,	)	PROPOSED AMENDMENT,
24.156.606 examination, 24.156.615	)	ADOPTION, AND REPEAL
renewals, 24.156.801 purpose and	)	
authority, 24.156.802 definitions,	)	
24.156.1002 fees, 24.156.1003 ankle	)	
surgery certification, 24.156.1409	)	
accreditation, approval, and	)	
standards, 24.156.1618 physician	)	
assistant fees, and 24.156.1621	)	
obligation to report to board; the	)	
adoption of New Rule I medical	)	
assistant–delegation and supervision,	)	
and New Rule II practice	)	
requirements for physicians using	)	
telemedicine; and the repeal of ARM	)	
24.156.640 medical assistant and	)	
24.156.810 effect of telemedicine	)	
license	)	

TO: All Concerned Persons

1. On June 6, 2018, at 1:00 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, 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 Medical Examiners (board) no later than 5:00 p.m., on May 30, 2018, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsmed@mt.gov (board's e-mail).

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

24.156.601 FEE SCHEDULE (1) through (1)(c) remain the same.

(d) Physician renewal fee (inactive)

~~400~~ 250

(e) through (3) remain the same.

AUTH: 37-1-134, ~~37-1-319~~, 37-3-203, 37-3-307, 37-3-308, 37-3-356, MCA  
IMP: 37-1-134, 37-1-141, 37-3-305, 37-3-307, 37-3-308, 37-3-309, 37-3-313, 37-3-356, MCA

**REASON:** Department rules provide that an inactive license renewal fee is 50 percent of the active renewal fee. Following a recommendation by department staff, and to align with and achieve efficiencies from standardized department renewal application fees and procedures, the board is amending the inactive renewal fee for physicians.

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

24.156.606 EXAMINATION (1) through (1)(b) remain the same.

(c) a passing score of ~~75 or more~~ on one of the following:

(i) through (iii) remain the same.

(d) for foreign medical graduates not eligible for the fifth pathway, a passing score of ~~75 or more~~ on ECFMG.

(2) remains the same.

(3) If an applicant fails to ~~obtain a score of 75 or more in pass~~ the first attempt at USMLE Step III, the applicant may be reexamined no more than five additional times.

(4) For exams taken prior to January 1, 2000, the board will accept the following combination of examinations, with passing scores on each ~~passed with a score of 75 or more for each component exam, in satisfaction of the examination requirement for licensure:~~

(a) through (e) remain the same.

(5) For exams taken after January 1, 2000, the board will accept only USMLE Steps 1, 2, and 3, ~~passed with a score of 75 or more for each step.~~

(6) The board will accept an examination by the National Board of Examiners for Osteopathic Physicians and Surgeons, or its successor, ~~passed with a score of 75 or more~~ with a passing score, regardless of date of examination.

AUTH: 37-3-203, MCA

IMP: 37-3-305, ~~37-3-306~~, ~~37-3-307~~, ~~37-3-308~~, 37-3-309, ~~37-3-311~~, MCA

**REASON:** Because the entities responsible for the U.S. Medical License Examination (USMLE) do not report numerical scores but report only whether an examinee passed the examination, the board determined it is reasonably necessary to amend this rule to require just the passing score. If older examination records indicate a passing score as set by the testing entity, whether a numerical score is included, the board notes that exam passage is the key fact.

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

24.156.615 RENEWALS (1) ~~Renewal notices will be sent as specified in ARM 24.101.414.~~

(2) through (4) remain the same but are renumbered (1) through (3).

(5) ~~Until March 31, 2016, a physician with a permanent license not engaged in the practice of medicine and who has retired from practice may renew this license as an inactive-retired licensee and pay the fee listed in ARM 24.156.601. A retired license may not be reactivated. The individual must reapply for a new original license. After March 31, 2016, inactive-retired status no longer will be granted.~~

(6) remains the same but is renumbered (4).

AUTH: 37-1-131, 37-1-319, ~~37-3-203~~, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-1-319, ~~37-3-313~~, MCA

REASON: The board is striking (1) because the referenced rule was repealed in 2015. Renewal parameters for all boards now fall within the standardized department licensing procedures.

Section (5) of this rule was intended to be in effect only through the 2016 physician licensure renewal period. The board determined it is reasonably necessary to delete the section now since the date has passed.

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

24.156.801 PURPOSE AND AUTHORITY (1) ~~These rules are promulgated to promote the efficient administration of the provisions of the Medical Practice Act, 37-3-341 through 37-3-349 regulate the practice of telemedicine by physicians pursuant to 37-3-301, MCA, regulating the practice of medicine across state lines.~~

AUTH: 37-3-203, 37-3-301, MCA

IMP: 37-3-102, 37-3-301, 37-3-341, MCA

REASON: This rule was originally adopted in 2000 to address the now repealed "telemedicine" license type. In 2015, Senate Bill 77 repealed the statutes referenced in this rule and amended 37-3-301, MCA, to require the board provide guidelines in rule for the practice of telemedicine by physicians. The board is therefore amending this rule to provide the correct statutory reference and state clearly the purpose and authority for the rules to follow.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.156.802 DEFINITIONS (1) "In-person encounter" means that a licensee and the patient are in the physical presence of each other during the physician-patient encounter.

(4) (4) "Practice of telemedicine" means the practice of telemedicine as defined in ~~37-3-342(1)~~ by 37-3-102, MCA.

~~(2) Exemptions to the practice of telemedicine are defined in 37-3-342(2), MCA.~~

~~(3) "Occasional telemedicine case" means the practice of medicine across state lines occurring less than five times in a calendar year or involves fewer than five patients in a calendar year.~~

~~(4) "Board" means the Board of Medical Examiners for the state of Montana created under 2-15-1841, MCA.~~

~~(5) "Telemedicine license" means a license issued by the board to practice telemedicine which:~~

~~(a) is only issued to an applicant who meets all of the requirements of 37-3-344 and 37-3-345, MCA; and~~

~~(b) limits the licensee to the practice of telemedicine as defined in these rules and only with respect to the specialty in which the licensee is board-certified or meets the current requirements to take the examination to become board-certified and on which the licensee bases the application for a telemedicine license pursuant to 37-3-345, MCA.~~

~~(6) (2) "Licensee" means the current holder of a telemedicine current license issued under 37-3-305 or 37-3-307, MCA, using telemedicine as defined by 37-3-102, MCA.~~

~~(3) "Physician-patient relationship" means that:~~

~~(a) the licensee agrees to undertake diagnosis and treatment of a person seeking medical services from a licensee; and~~

~~(b) the person agrees to be diagnosed and/or treated by the licensee whether or not there has been an in-person encounter between the licensee and the person.~~

AUTH: 37-3-203, 37-3-301, MCA

IMP: 37-3-102, 37-3-301, 37-3-342, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update definitions following the 2015 repeal of the telemedicine licensure statutes in Senate Bill 77. The board considered how to amend this rule since 2015 and only recently came to agreement on the proposed language. The board is proposing definitions for "in-person encounter" and "physician-patient relationship" to align with and facilitate New Rule II in this notice.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.156.1002 FEES (1) through (1)(b) remain the same.

(c) inactive license renewal

400 250

(2) remains the same.

AUTH: 37-1-134, 37-6-106, MCA

IMP: 37-1-134, 37-1-141, 37-6-302, MCA

REASON: Department rules provide that an inactive license renewal fee is 50 percent of the active renewal fee. Following a recommendation by department staff, and to align with and achieve efficiencies from standardized department renewal application fees and procedures, the board is amending the inactive license renewal fee for podiatrists.

24.156.1003 ANKLE SURGERY CERTIFICATION (1) remains the same.

(a) submits proof of certification by the American Board of Podiatric Foot and Ankle Surgery or its successor(s) in foot and ankle surgery or reconstructive rearfoot/ankle surgery; or

(b) remains the same.

(c) submits proof of completion of a podiatric surgical residency approved in the year of the candidate's residency by the Council on Podiatric Medical Education or the American Board of Podiatric Foot and Ankle Surgery or its successor(s), and submits evidence satisfactory to the board of not fewer than 25 ankle surgeries performed by the applicant and proctored by a primary surgeon of record who is an orthopedic surgeon with foot and ankle experience or a doctor of podiatric medicine with ankle surgery certification within the five years immediately preceding the application.

(2) remains the same.

AUTH: 37-6-106, MCA

IMP: 37-6-107, MCA

REASON: The board became aware that the name of the entity responsible for national certification of foot and ankle surgery by podiatrists has changed. The board is amending this rule to utilize the correct name of the certifying entity and to allow for future changes of the entity's name without further amendment of this rule.

24.156.1409 ACCREDITATION, APPROVAL, AND STANDARDS

(1) through (2)(f) remain the same.

(g) Courses sponsored by a state acupuncture association or an acupuncture school shall be preapproved by the board.

(h) Teaching acupuncture in an accredited academic or continuing education program shall be accepted as continuing education.

(3) Licensees may claim five hours of self-study toward meeting the requirements of ARM 24.156.1408.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA

IMP: 37-1-131, 37-1-306, 37-13-201, MCA

REASON: Since its formation under this rule, the board's acupuncture committee has been charged with reviewing acupuncturist continuing education. After reviewing the results of multiple continuing education audits of acupuncturist licensees, the committee recommended in 2017 that the board acknowledge additional forms of continuing education and the board agreed. The committee and the board both determined these amendments will reduce the work of the

department audit unit in conducting continuing education audits and reduce the number of audit results reviewed by the committee.

24.156.1618 PHYSICIAN ASSISTANT FEES (1) through (1)(b) remain the same.

(c) inactive renewal fee

~~200~~ 150

(d) remains the same.

(2) Licensees desiring to activate an inactive physician assistant license must contact the board and pay an activation fee of ~~\$100~~ 150 and affirm that they have a current NCCPA certification.

(3) remains the same.

AUTH: 37-1-134, 37-20-202, MCA

IMP: 37-1-134, 37-1-141, 37-20-302, MCA

REASON: Department rules provide that an inactive license renewal fee is 50 percent of the active renewal fee. Following a recommendation by department staff, and to align with and achieve efficiencies from standardized department renewal application fees and procedures, the board is amending the inactive license renewal fee for physician assistants.

24.156.1621 OBLIGATION TO REPORT TO BOARD (1) through (3) remain the same.

(4) A physician assistant ~~is obligated to~~ may report suspected or known impairment of other health care providers to the appropriate licensing board, agency, or in lieu of the board or agency, may report to the endorsed professional assistance program.

AUTH: 37-1-131, ~~37-1-319~~, 37-3-203, ~~37-20-202~~, MCA

IMP: 37-1-131, 37-3-401, ~~37-3-405~~, MCA

REASON: During the rule review, the laws and rules committee discovered that this rule created a mandatory requirement that physician assistants report suspected or known impairment of other health care providers, while physicians are not so required. The board's committee questioned this inequitable situation, and the board determined it is reasonably necessary to amend this rule to comply with the statutory provisions for reporting of others' impairment in 37-3-401(2), MCA, by specifying that physician assistant reporting is voluntary.

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

4. The proposed new rules are as follows:

NEW RULE I MEDICAL ASSISTANT – DELEGATION AND SUPERVISION

(1) A health care provider authorized by 37-3-104, MCA, may delegate administrative and clinical tasks which are within the delegating health care provider's scope of practice to medical assistants who:

(a) work in the delegating health care provider's office under the general supervision of the delegating health care provider; and

(b) are known by the delegating health care provider to possess the education, training, knowledge, and skill to perform the delegated tasks in keeping with the standard of medical care owed by the delegating health care provider to the patient.

(2) A health care provider's knowledge of a medical assistant's education, training, knowledge, and skill to perform delegated tasks may be evidenced by:

(a) documentation of the medical assistant's graduation from an accredited medical assistant program;

(b) completion of education and training courses which are substantially equivalent to curriculum taught by accredited medical assistant programs;

(c) the delegating health care provider's personal knowledge of instruction, training, and experience provided directly to the medical assistant by the delegating health care provider; or

(d) other objective evidence known to the health care provider.

(3) A health care provider delegating administrative and/or clinical tasks to a medical assistant shall:

(a) require that the medical assistant record in the patient's medical records:

(i) the identity of the medical assistant to whom the health care provider has delegated tasks included in the patient's care; and

(ii) the clinical tasks delegated to the medical assistant;

(b) ensure through oversight and supervision that the medical assistant's performance of the delegated tasks meets the standard of medical care owed by the delegating health care provider to the patient;

(c) personally provide onsite direct supervision as defined by ARM 24.156.501 to a medical assistant to whom the health care provider has delegated:

(i) injections other than immunizations;

(ii) invasive procedures;

(iii) conscious sedation monitoring;

(iv) allergy testing;

(v) intravenous administration of blood products; or

(vi) intravenous administration of medication; and

(d) require medical assistants to wear a name badge which includes the title: "Medical Assistant".

(4) Health care providers shall not delegate to medical assistants:

(a) medical tasks which are outside the delegating health care provider's scope of practice;

(b) medical tasks which the delegating health care provider is not authorized to perform;

(c) surgery as defined in ARM 24.156.501;

(d) medical tasks which the medical assistant is not qualified by education, training, knowledge, and skill to perform in keeping with the standard of medical care owed by the delegating health care provider to the patient; or

(e) who previously held a health care provider license of any kind in any jurisdiction which was restricted, suspended, revoked, or voluntarily relinquished in lieu of discipline for unprofessional conduct in a health care profession.

AUTH: 37-3-104, 37-3-203, MCA

IMP: 37-3-102, 37-3-104, MCA

REASON: In 2017, the legislature passed House Bill 476 that allowed physician assistants to supervise and delegate tasks to medical assistants. Amendments to 37-3-104, MCA, required the board to adopt guidelines by administrative rule to implement the bill's provisions. Additionally, the board has not amended the current rule since its adoption in 2006. The board concluded that the rule is confusing and arcane and no longer reflects current practice in the medical field. Because the proposed amendments resulted in a complete rewrite of the current medical assistants' rule, the board is repealing ARM 24.156.640 and adopting this new rule in its place.

NEW RULE II PRACTICE REQUIREMENTS FOR PHYSICIANS USING TELEMEDICINE (1) Treatment of a patient who is physically located in Montana by a licensee using telemedicine occurs where the patient is physically located.

(2) The licensee using telemedicine in the treatment and care of patients in Montana shall adhere to the same standards of care required for in-person medical care settings.

(3) A physician-patient relationship may be established for purposes of telemedicine:

(a) by an in-person medical interview and physical examination when the standard of care requires an in-person encounter;

(b) by consultation with another licensee or health care provider who has a documented relationship with the patient and who agrees to participate in, or supervise, the patient's care; or

(c) through telemedicine if the standard of care does not require an in-person encounter.

(4) The licensee using telemedicine in patient care may prescribe Schedule II drugs to a patient only after first establishing a physician-patient relationship through an in-person encounter which includes a medical interview and physician examination.

(5) The licensee using telemedicine in patient care shall:

(a) make available to the patient verification of the licensee's identity and credentials;

(b) verify the identity of the patient;

(c) establish a physician-patient relationship prior to initiating care;

(d) obtain a medical history sufficient for diagnosis and treatment in keeping with the applicable standard of care prior to providing treatment, issuing prescriptions, or delegating the patient's medical services to other health care providers;

(e) delegate the patient's medical care only to health care providers:



- (i) who are known by the licensee to be qualified and competent to perform the delegated services;
- (ii) with whom the patient has an established provider-patient relationship; or
- (iii) who have physical or electronic access to the licensee for consultation and follow-up while the patient is under the licensee's or the delegee's care;
- (f) securely maintain and make timely available:
  - (i) to the patient or the patient's representative all relevant medical and billing records received or produced in connection with the patient's care; and
  - (ii) to other health care providers all medical records received or produced in connection with the patient's care.

AUTH: 37-3-203, 37-3-301, MCA  
IMP: 37-3-301, MCA

REASON: In 2015, Senate Bill 77 amended 37-3-301, MCA, to require that the board establish guidelines by administrative rule for the practice of telemedicine by physicians. After more than two years of review and discussion, the board only recently came to agreement on the necessary rule changes. The board concluded that it is reasonably necessary to adopt this new rule to provide an appropriate level of patient protection and physician responsibility without being burdensome to the affected licensees. Because the changes resulted in a complete rewrite of the current telemedicine rule, the board is repealing ARM 24.156.810 and adopting this new rule in its place.

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

24.156.640 MEDICAL ASSISTANT

AUTH: 37-3-104, 37-3-203, MCA  
IMP: 37-3-104, MCA

REASON: See REASON for New Rule I.

24.156.810 EFFECT OF TELEMEDICINE LICENSE

AUTH: 37-3-203, MCA  
IMP: 37-3-342, 37-3-348, 37-3-349, MCA

REASON: See REASON for New Rule II.

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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdmed@mt.gov](mailto:dlibsdmed@mt.gov), and must be received no later than 5:00 p.m., June 8, 2018.

7. An electronic copy of this notice of public hearing is available at [www.medicalboard.mt.gov](http://www.medicalboard.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.

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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsmed@mt.gov](mailto:dlibsmed@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, apply and have been fulfilled. Senator Debby Barrett (SB 77) was contacted on October 12, 2015, by telephone. Representative Denise Hayman (HB 476) was contacted on August 8, 2017, by regular mail.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.601, 24.156.606, 24.156.615, 24.156.801, 24.156.802, 24.156.1002, 24.156.1003, 24.156.1409, 24.156.1618, and 24.156.1621 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I and II will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.156.640 and 24.156.810 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov).

11. Ian Marquand, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS  
TANJA BREKKE, L.AC., PRESIDENT

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

/s/ GALEN HOLLENBAUGH  
Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 1, 2018.