

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM)
24.165.302 definitions, 24.165.401)
fees, 24.165.406 military training or)
experience, 24.165.407 examinations,)
24.165.501 supervision, 24.165.505)
deep modality endorsement,)
24.165.506 recognized educational)
programs, 24.165.507 standards of)
practice, 24.165.509 approved modality)
instruction, 24.165.510 approved)
training, 24.165.514 endorsement to)
apply topical medications, 24.165.516)
use of topical medications, 24.165.517)
protocols for use of topical medications,)
24.165.518 debriding agents protocols,)
24.165.519 anesthetic agents protocols,)
24.165.520 nonsteroidal anti-)
inflammatory agents protocols,)
24.165.521 antispasmodic agents)
protocols, 24.165.522 adrenocortico-)
steroid agent protocols, 24.165.524)
protocol for use of an approved)
medication as a neuropathic pain agent,)
24.165.601 temporary practice permit,)
24.165.604 inactive status, 24.165.2101)
continuing education, 24.165.2102)
continuing education – exemption,)
24.165.2301 unprofessional conduct,)
the adoption of New Rule I bactericidal)
agents protocols, and the repeal of)
24.165.404 applications for licensure,)
24.165.410 pass-fail criteria,)
24.165.502 supervision – methods,)
24.165.511 documentation of)
instruction and training, 24.165.513)
approval to use sound and electrical)
physical agent modalities endorsement,)
24.165.525 documenting education and)
competence to perform sound and)
electrical physical agent modalities –)
out-of-state practitioners)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT,
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On June 13, 2019, at 9:00 a.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 Occupational Therapy Practice no later than 5:00 p.m., on June 6, 2019, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdotp@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2019 Montana Legislature enacted Chapter 112, Laws of 2019 (Senate Bill 59), an act eliminating the requirement for occupational therapists to obtain an endorsement to utilize sound and electrical physical agent modalities in their practices. The board determined it is reasonably necessary to amend and repeal certain rules to remove references to this modality and further implement the legislation. The bill was signed by the Governor on April 3, 2019, and will become effective October 1, 2019.

As part of the periodic review of its administrative rules, the board is proposing revisions throughout the rules. Some of the proposed amendments are technical in nature, such as renumbering, reorganizing, or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, update and improve grammar and language choices, and amend rules for accuracy, consistency, simplicity, better organization, and ease of use. Authority and implementation citations are being amended throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority. Accordingly, the board has determined that it is reasonably necessary to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.165.302 DEFINITIONS For the purpose of this chapter the following definitions apply:

(1) "Clinician" means an occupational therapist endorsed by the board to administer topical medications.

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

(4) "Direct supervision" means the supervisor is physically present in the direct treatment area of the client-related activity being performed by the supervisee

and requires face-to-face communication, direction, observation, and daily evaluation.

(5) "Documentation" means evidence of successfully completing a formal instruction program and must include:

(a) an official certificate of attendance or completion indicating:

(i) name or title of the course attended;

(ii) number of hours of course instruction; and

(iii) date(s) the course was attended; and

(b) a course syllabus.

(6) "General supervision" means the supervisor provides face-to-face communication, direction, observation, and evaluation of a supervisee's delivery of client services at least monthly at the site of client-related activity, with interim supervision occurring by other methods, such as telephonic, electronic, or written communication.

(7) "Instruction" means didactic study presented in any of the following forums:

(a) continuing education unit course work;

(b) in-service training by licensed health care professionals;

(c) professional conference;

(d) professional workshop; or

(e) self-study course work pursuant to ARM 24.165.2101.

(3) and (4) remain the same but are renumbered (8) and (9).

(10) "Routine supervision" of temporary permit holders means direct contact at least daily at the site of work, with interim supervision by other methods, such as telephonic, electronic, or written communication.

(5) and (6) remain the same but are renumbered (11) and (12).

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-101, 37-24-103, 37-24-105, 37-24-106, 37-24-107, 37-24-108,

MCA

REASON: The board determined it is reasonably necessary to have all pertinent definitions in a single location and is relocating several definitions from elsewhere in the rules.

24.165.401 FEES (1) Fees adopted by the board under 37-24-310, MCA, are as follows:

(a) through (e)(i) remain the same.

~~(ii) sound and electrical~~ _____ 35

(iii) remains the same but is renumbered (ii).

(f) through (3) remain the same.

AUTH: 37-1-131, 37-1-134, 37-24-201, 37-24-202, 37-24-310, MCA

IMP: 37-1-134, 37-1-141, 37-24-306, 37-24-310, MCA

REASON: The board determined it is reasonably necessary to amend this rule and eliminate the application fee for sound and electrical physical agent modality and

further implement Senate Bill 59. Because the legislation eliminates the requirement that occupational therapists obtain an endorsement to utilize these modalities, it is reasonably necessary to strike the fee. The board estimates that this fee elimination will affect approximately 3 persons and decrease annual revenue by \$105.

24.165.406 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as an occupational therapist or occupational therapy assistant. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Since adopting this rule, the board has become aware that certain military personnel (reservists and national guardsmen who have never been activated) in fact do not receive a DD 214 form upon discharge from the military. Because the current rule may be interpreted to require a DD 214 from all applicants who submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending the rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.165.407 EXAMINATIONS (1) The board adopts the examination ~~offered and pass/fail criteria administered~~ through the National Board of Certification in Occupational Therapy (NBCOT).

~~(2) Arrangements and fees for examinations are the responsibility of the applicant and shall be made with the NBCOT.~~

~~(3) (2) It shall be the responsibility of the applicant to assure that his or her~~ Applicants must ensure that examination score is forwarded by the NBCOT forwards examination scores to the board.

~~(4) Applicants who fail an examination may be reexamined upon payment of another examination fee to the NBCOT.~~

~~(5) Examinations will be given as set by the NBCOT.~~

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-131, 37-24-303, MCA

24.165.501 SUPERVISION – GENERAL STATEMENT (1) ~~(Adapted from the American Occupational Therapy Association Position Statement on Supervision, 1993). The supervisor~~ Supervisors shall determine the ~~degree of~~ required level of supervision to ~~administer to the supervisee~~ based on the ~~supervisor's estimation of~~ the supervisee's clinical experience, responsibilities, and competence ~~at a minimum.~~

(2) ~~A fully licensed occupational therapist shall~~ Occupational therapists do

not require supervision except for the direct supervision required for of proctored treatments.

(3) ~~A certified~~ Except per 37-24-105(2) and 37-24-106(2), MCA, certified occupational therapist assistant ~~therapy assistants, in accordance with 37-24-103, MCA, shall~~ must work under the general supervision of a licensed an occupational therapist.

(4) Temporary practice permit holders ~~under 37-1-305, MCA, shall~~ must work under the routine supervision of a certified occupational therapist therapy assistant or a licensed an occupational therapist.

(5) ~~Entry-level practitioners shall be defined as practitioners having less than six month's experience in the specific practice setting and may on a case-by-case basis, require supervision as determined by the board.~~

(6) (5) Occupational therapy aides ~~under 37-24-103, MCA, shall~~ must work under the direct supervision of a licensed an occupational therapist or a certified an occupational therapist therapy assistant. ~~Occupational therapy aides shall have no supervisory capacity.~~

AUTH: 37-1-131, 37-1-319, 37-24-201, 37-24-202, MCA

IMP: 37-1-305, 37-24-103, 37-24-106, 37-24-107, MCA

24.165.505 DEEP MODALITY ENDORSEMENT (1) The board ~~may grant a will issue a~~ deep modality endorsement to a licensed occupational therapist who has ~~met~~ therapists meeting the requirements of 37-24-105, 37-24-106, and 37-24-107, MCA, ~~in the use of sound and electrical physical agent modalities and occupational therapy techniques involving topical medications.~~

AUTH: 37-1-131, 37-24-202, MCA

IMP: 37-1-131, 37-24-105, 37-24-106, 37-24-107, MCA

24.165.506 QUALIFYING EDUCATION RECOGNIZED EDUCATIONAL PROGRAMS (1) ~~In accordance with 37-24-105 and 37-24-106, MCA, educational programs that would satisfy education requirements for use of superficial physical agent modalities or sound and electrical physical agent modalities must be~~ For licensure as an occupational therapist, the board recognizes those educational programs approved or recognized either by the American Occupational Therapy Association or the American Society of Hand Therapists ~~or be approved by the board.~~

AUTH: 37-24-202, MCA

IMP: ~~37-24-105, 37-24-106,~~ 37-24-303, MCA

24.165.507 STANDARDS OF PRACTICE (1) The board adopts by reference the ~~2010~~ 2015 American Occupational Therapy Association's Standards of Practice. A copy of these standards is available ~~from the office of the Board of Occupational Therapy Practice~~ at aota.org.

AUTH: 37-24-202, MCA

IMP: 37-24-105, 37-24-106, MCA

24.165.509 APPROVED MODALITY INSTRUCTION (1) ~~The term "instruction" refers to didactic study that is presented in any of the following forums:~~

- ~~(a) continuing education unit course work;~~
- ~~(b) in-service training by licensed health care professionals;~~
- ~~(c) professional conference;~~
- ~~(d) professional workshop; or~~
- ~~(e) self-study course work pursuant to ARM 24.165.2101.~~

(2) ~~(1) Any of the~~ The board has approved the following sponsors or providers of instruction ~~are approved by the board to provide instruction to licensees who wish seeking endorsement to provide sound and electrical physical agent modalities or superficial physical agent modalities:~~

(a) through (d) remain the same.

~~(3) (2) The board will approve instruction provided by licensed health care professionals whose competency in teaching the use of sound and electrical physical agent modalities and superficial physical agent modalities is demonstrated to the satisfaction of the board.~~

~~(4) (3) To be approved by the board, the instructor must submit proof that the instructor:~~

~~(a) is be a licensed or otherwise regulated professional allowed to use sound and electrical physical agent modalities or superficial physical agent modalities; and~~

~~(b) has have more than one year of clinical experience in the use of sound and electrical physical agent modalities or superficial physical agent these modalities.~~

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-131, 37-24-105, ~~37-24-106~~, 37-24-107, MCA

24.165.510 APPROVED TRAINING (1) ~~The term "training" Approved training includes proctored sessions provided by example and observation by a qualified person.~~

~~(2) A qualified person, within the meaning of this rule, is any person who is of either:~~

~~(a) a licensed an occupational therapist:~~

~~(i) and (ii) remain the same.~~

~~(b) a licensed health care professional who has with more than one year of clinical experience in the use of sound and electrical physical agent modalities or superficial physical agent modalities as within the professional's licensed scope of practice.~~

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-131, 37-24-105, ~~37-24-106~~, 37-24-107, MCA

24.165.514 QUALIFICATIONS ENDORSEMENT TO APPLY TOPICAL MEDICATIONS – CLINICIAN DEFINED (1) ~~Prior to~~ To obtain an endorsement for

the administration or use of topical medications on a patient, an occupational therapist shall:

~~(a) successfully complete instruction or training provided in 37-24-106, MCA, and ARM 24.165.513, for the use of sound and electrical physical agent modalities; and~~

~~(b) successfully complete five hours of instruction or training approved by the board in:~~

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

~~(c) (b) perform one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner, as described in ARM 24.165.510(2), and either:~~

~~(i) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or~~

~~(ii) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.~~

~~(2) For the purposes of the rules related to application of topical medications by occupational therapists, the term "clinician" means an occupational therapy licensee who has been approved by the board to administer topical medications. All proctored treatments required in (1) must be under the direct supervision of a person offering training per ARM 24.165.510.~~

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-106, 37-24-107, 37-24-108, MCA

24.165.516 USE OF TOPICAL MEDICATIONS (1) Topical medication prescribed for a patient on a specific or standing basis by a licensed medical practitioner with prescriptive authority must be obtained by the patient or an authorized representative from a licensed Montana pharmacy. ~~The topical medication may be obtained by either:~~

~~(a) the clinician who will be administering the topical medication; or~~

~~(b) the patient.~~

~~(2) All prescribed topical medications, whether obtained by the clinician or directly by the patient,;~~

~~(a) must be stored at the clinician's place of business in compliance with proper storage guidelines under Title 37, chapter 7, MCA, or as otherwise developed by the Board of Pharmacy, or as noted by the pharmacist;~~

~~(a) Any particular requirements for storage as noted by the pharmacist must be followed by the clinician.~~

~~(b) Topical medications must be stored in the environmental conditions as prescribed by the labeled drug directions.~~

~~(c) (b) All topical medications obtained by the patient directly and brought to the clinician's place of business must be returned to the patient's possession at the termination of the course of treatment with the patient; and~~

~~(d) (c) No topical medications obtained by the patient directly may not be transferred to or used in treatment of any other occupational therapy patient.~~

~~(3) remains the same.~~

~~(4) A copy of the written prescription specifying the topical medication to be applied and the method of application (direct application, phonophoresis or iontophoresis) must be retained in the patient's occupational therapy medical records.~~

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-107, 37-24-108, MCA

24.165.517 PROTOCOLS FOR USE OF TOPICAL MEDICATIONS

(1) Only those classes of topical medications approved for use by 37-24-108, MCA, and prescribed for the patient by a licensed medical practitioner with prescriptive authority, may be applied by the a clinician to a patient.

~~(2) Each clinician must is responsible for understanding the use of approved topical medications. The medications must be prescribed for the patient by a licensed medical practitioner with prescriptive authority.~~

(a) understand the use of approved topical medications;

~~(a) (b) The clinician is responsible for reading and understanding read and understand the medication's medication package inserts for indications, and contraindications, as well as and actions;~~

~~(b) (c) The clinician is responsible for consulting consult the Physician's Desk Reference ("PDR") whenever the clinician needs to supplement the information contained in the package insert in order to appropriately understand the use of the medication when necessary; and~~

~~(c) (d) The clinician is responsible for keeping maintain appropriate records with respect to the of all topical medication(s) applied or administered in the course of the clinician's practice. Such record keeping The records must:~~

(i) be part of included in the patient's chart;

~~(ii) and must verify that the topical medication is properly labeled and packaged as required proper labeling and packaging; ~~Moreover, the record must include a verification that the topical medication was purchased~~~~

(iii) demonstrate purchase from a licensed Montana pharmacy; and

(iv) include a record of the written prescription specifying the topical medication to be applied and the method of application (direct application, phonophoresis, or iontophoresis).

~~(3) The following list identifies the classes of topical medications which are approved for use by the clinician. The list also cross-references the rule that provides more detailed information concerning each class of approved topical medications:~~

(a) bactericidal agents (see NEW RULE I);

~~(a) (b) debriding agents, including bactericidal agents (see ARM 24.165.518);~~

~~(b) through (e) remain the same but are renumbered (c) through (f).~~

~~(4) The use of an approved class of topical medications is subject to the conditions and requirements established by the administrative rule applicable to that class.~~

~~(5) (4) In the event a licensee works Occupational therapists working at a facility that has facilities with different protocols for the use of topical medications by occupational therapy practitioners, the licensee may apply to the for board for~~

authorization to use topical medications pursuant to the protocols adopted by the facility protocols. The board, in the exercise of its sound judgment and discretion, and in consultation with such health care providers as it deems appropriate, may grant a licensee such authorization on a case-by-case basis. In no instance will the The board will not authorize the use of any topical medications medication that are not within the classes of topical medications authorized by statute for use by occupational therapy practitioners 37-24-108, MCA.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.518 DEBRIDING AGENTS PROTOCOLS (1) Within the class of debriding agents, only the following subclasses are approved for use by the a clinician on a patient:

(a) through (d) remain the same.

(e) endogenous platelet-derived growth factors; and

~~(f) antibiotic ointments;~~

~~(g) (f) fibrinolytics;~~

~~(h) antimicrobial agents; and~~

~~(i) bactericidal agents.~~

(2) and (2)(a) remain the same.

(b) Papain-based ointments are indicated ~~when there is a need to debride~~ for debriding necrotic tissue and ~~liquefy~~ liquefying slough in acute and chronic lesions, trauma wounds, or infected lesions.

(c) through (3)(a) remain the same.

(b) Papain with urea additive indications are ~~to treat~~ for treating acute and chronic lesions ~~such as including but not limited to:~~

(i) through (4)(a) remain the same.

(b) Anti-inflammatory agents are indicated ~~to relieve~~ for relieving inflammation and pruritis caused by dermatosis.

(c) through (5)(a) remain the same.

(b) Collagenase agents are indicated for ~~the debridement of~~ debriding chronic dermal ulcers and severely burned areas.

(c) through (6)(b) remain the same.

(c) Endogenous platelet-derived growth factor agents are contraindicated for patients with known hypersensitivity, ~~such as including but not limited to~~ parabens. Endogenous platelet-derived growth factor agents are not for use with wounds that close by primary intention because they are a nonsterile, low bioburden, preserved product.

~~(7) Clinicians may use antibiotic ointments as directed by a licensed medical practitioner with prescriptive authority.~~

~~(a) Antibiotic ointments act to kill bacteria and microbes.~~

~~(b) Antibiotic ointments are indicated on culture-proven infected wounds.~~

~~(c) Antibiotic ointments are contraindicated in patients with proven sensitivities or allergic reactions to the antibiotic prescribed.~~

(8) through (8)(b) remain the same.

(c) Fibrinolytics are contraindicated in patients who are allergic or exhibit a

sensitivity to steroids. Fibrinolytics are also contraindicated when used alone in the treatment of wounds.

~~(9) Clinicians may use antimicrobial agents as directed by a licensed medical practitioner with prescriptive authority.~~

~~(a) Antimicrobial agents contain a broad spectrum silver cascade that acts to reduce the bioburden in wounds for up to seven days.~~

~~(b) Antimicrobial agents are indicated for managing full and partial thickness wounds and may be used over debrided or grafted partial thickness wounds.~~

~~(c) Antimicrobial agents have no known contraindications.~~

~~(10) Clinicians may use bacterial agents only for debridement as directed by a licensed medical practitioner with prescriptive authority.~~

~~(a) Bactericidal agents act by killing bacteria.~~

~~(b) Bactericidal agents are indicated for the presence of bacteria.~~

~~(c) Bactericidal agents are contraindicated in patients with allergic or sensitive response to the agent.~~

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

REASON: Following an in-depth review and with input from representatives of the boards of medical examiners and pharmacy, the board is amending the protocol rules for topical medications. The board determined it is reasonably necessary to generally amend ARM 24.165.518 through 24.165.522 to improve grammar and language choices, and simplify and streamline for consistency, simplicity, better organization, and ease of use for the reader. The rules have not been revised since their 2005 adoption.

The board is moving the bactericidal agent protocol provisions from ARM 24.165.518 into a separate rule for simplicity and ease of use. The bactericidal protocols are being adopted in New Rule I to align with statutory language and better reflect that while there may be some overlap in specific medications' ability to be prescribed for use as either type of agent, the functions, indications, etc. of each class of agent are not necessarily identical.

24.165.519 ANESTHETIC AGENTS PROTOCOLS (1) and (2) remain the same.

(3) Anesthetic agents are indicated ~~to relieve~~ for relief of pain and inflammation associated with minor skin disorders and for acute inflammatory conditions.

(4) Anesthetic agents are contraindicated if there is sensitivity to the topical anesthetic. ~~They~~ Anesthetic agents are also contraindicated if there are abrasions, openings, or a local infection at the site of application.

(5) through (5)(a)(v) remain the same.

(vi) hydrocortisone menthol (See also ARM 24.165.522(4)); and

(vii) remains the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.520 NONSTEROIDAL ANTI-INFLAMMATORY AGENTS

PROTOCOLS (1) Clinicians may use nonsteroidal anti-inflammatory agents as directed by a licensed medical practitioner with prescriptive authority.

(2) remains the same.

(3) Nonsteroidal anti-inflammatory agents are indicated for acute inflammation ~~such as~~ including but not limited to tendonitis, arthritis, and bursitis.

(4) Nonsteroidal anti-inflammatory agents are contraindicated when there is a local infection or abrasion at the site of application. Nonsteroidal anti-inflammatory agents are also contraindicated when there is sensitivity to topical anti-inflammatory agents, especially when there is a local infection or abrasion at the site of application.

(5) remains the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.521 ANTISPASMODIC AGENTS PROTOCOLS

(1) Clinicians may use antispasmodic agents as directed by a licensed medical practitioner with prescriptive authority.

(2) remains the same.

(3) Antispasmodic agents are indicated ~~to reduce~~ for reduction of the volume of perspiration by inhibiting sweat gland secretions to reduce muscle spasms and pain.

(4) and (5) remain the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.522 ADRENOCORTICO-STEROID AGENTS PROTOCOLS

(1) and (2) remain the same.

(3) Adrenocortico-steroid agents are indicated for inflammation (~~such as~~ including but not limited to tendonitis, bursitis, arthritis, or myositis), and for antipruritic and vasoconstrictor actions.

(4) Adrenocortico-steroid agents are contraindicated or require special care when used with children, growing adolescents, and pregnant women. ~~The use of adrenocortico-steroids is~~ Adrenocortico-steroid agents are also contraindicated:

(a) through (5) remain the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.524 PROTOCOL FOR USE OF AN APPROVED MEDICATION AS A NEUROPATHIC PAIN AGENT (1) through (4) remain the same.

AUTH: ~~This rule is advisory only, but may be a correct interpretation of the law,~~ 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

REASON: The board is amending this rule to remove the advisory rule statement from the rule's historical notations. The rule was initially adopted in 2005 to codify the board's interpretation of statute at the time. Advisory rules do not have the full force and effect of law.

After reviewing the rule and considering board statutes and current occupational therapy practice, the board acknowledged that topical medications are now prescribed as neuropathic pain agents on a much more routine basis than 14 years ago. The board is removing the advisory statement to reflect the board's conclusion that occupational therapy clinicians may safely apply or administer approved topical medications even when prescribed as neuropathic pain agents.

24.165.601 TEMPORARY PRACTICE PERMIT (1) ~~All temporary~~ Temporary permit holders shall work under the supervision of ~~a licensed an~~ an occupational ~~therapy practitioner~~ therapist in accordance with ARM 24.165.501 and 24.165.502.

~~(2) Applicants under 37-1-305(2), MCA, who have previously taken the national examination and failed, are not eligible for a temporary practice permit.~~

AUTH: 37-1-305, 37-1-319, ~~37-24-201, 37-24-202~~, MCA

IMP: 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with standardized department licensing procedures and ensure compliance with the implemented statute, 37-1-305, MCA.

24.165.604 INACTIVE STATUS (1) ~~A licensee who wishes to retain a license, but who will not be practicing occupational therapy, may obtain an inactive status by indicating this intention on the annual renewal form or by submission of an application and payment of the appropriate fee. An active status licensee may convert to inactive status on the renewal form or by informing the board office. Inactive licensees must inform the board of any change of address while on inactive status and must pay the inactive renewal fee annually to avoid license expiration or termination.~~

~~(2) An individual licensed on inactive status~~ Inactive licensees may not practice occupational therapy during the period in which he or she remains on inactive status.

~~(2) (3) An individual licensed on inactive status~~ licensee may convert his or her license to active status by submission of an appropriate application upon request and payment of the renewal required fee for the year in question. The application licensee must demonstrate contain evidence of one or more of the following, in the board's discretion:

(a) full-time practice of occupational therapy in another state and completion of continuing education for each year of inactive status, that is substantially equivalent to Montana's, ~~in the opinion of the board, to that required under these rules, or;~~

(b) completion of a minimum of six ~~contact~~ hours of continuing education within the six months prior to ~~application for reinstatement~~, converting to active status if the licensee has not practiced occupational therapy for more than two years; or

(c) remains the same.

AUTH: 37-1-131, 37-1-319, ~~37-24-201, 37-24-202~~, MCA

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

REASON: The board is amending this rule to align with standardized department licensing procedures and streamline the rule for better organization and ease of use. The board is amending (3)(b) to require proof of six hours of continuing education (CE) for licensees converting from inactive to active status after not practicing for two years. The board determined that to protect the public and ensure continued competence, it is necessary to require a balance between a relatively short period of non-practice and the requirement of only six hours of CE to convert to active status.

24.165.2101 CONTINUING EDUCATION (1) ~~All licensees~~ Licensees must complete ten hours of continuing education (CE) annually and shall affirm on the an understanding of the recurring duty to comply with CE requirements as part of license renewal form that they have completed ten contact hours of continuing education as provided in this rule. The continuing education CE requirement will does not apply until the a licensee's first full year of licensure.

(2) The board may randomly audit up to 50 percent of renewed licensees.

~~(2) (3)~~ (3) The licensee shall maintain records and documentation of completed CE and make the records available upon board request ~~completion of continuing education activities such as verification of participation forms, conference brochures, certificates, college or university transcripts or grade reports, articles, book reviews, and apprenticeship evaluations.~~

~~(3) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of compliance if so requested during a random audit. A random audit of ten percent of renewed active licensees will be conducted on an annual basis.~~

~~(4) All continuing education CE must be germane to the profession and must contribute to the professional competence of an occupational therapist as determined by the board in its sole discretion.~~

(5) The board shall accept any ~~continuing education CE~~ offered or approved by the Montana Occupational Therapy Association, the American Occupational Therapy Association, the American Society of Hand Therapists, the National Board for Certification in Occupational Therapy (NBCOT), or the American Journal of Occupational Therapy.

(6) The board recognizes the maintenance of current NBCOT certification as fulfilling the ~~continuing education CE~~ requirements of this rule.

(7) through (7)(a)(i) remain the same.

(ii) one semester credit shall equal 15 contact hours of ~~continuing education CE~~; and

(iii) one quarter credit shall equal ten contact hours of ~~continuing education~~

CE.

(b) through (c)(iii) remain the same.

(iv) apprenticeships must be served under the supervision of a licensed an occupational therapist whose license is in good standing.

(d) remains the same.

(e) by attending and participating in a live presentation (workshop, seminar, conference, in-service education program) or other ~~continuing education~~ CE activity requiring a formal assessment of learning (electronic or web-based courses, formalized self-study courses), according to the following limitations:

(i) through (iii) remain the same.

(8) All Internet courses must meet the same criteria as in-person ~~continuing education~~ CE courses.

(9) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.

AUTH: 37-1-131, 37-1-319, ~~37-24-202~~, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-24-202~~, MCA

REASON: The board is amending this rule and ARM 24.165.2102 to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline for better organization and ease of use for the reader.

Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within 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 (2) 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 (9) 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.

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.

24.165.2102 CONTINUING EDUCATION – ~~WAIVER EXEMPTION~~ (1) The board may grant waivers or extensions of time within which to fulfill continuing education requirements in cases involving A licensee may request an exemption from CE requirements due to physical disability or undue hardship. Requests will be considered by the board.

~~(2) To be considered for a waiver, an applicant shall submit a written application on forms provided by the board.~~

~~(3) Waivers may be granted for periods not to exceed two calendar years. Should the reason for granting a waiver continue beyond the waiver period, the~~

licensee must apply for an extension.

~~(4) The board will not grant any waiver to applicants who:~~

~~(a) have attested to meeting continuing education requirements at renewal;~~

or

~~(b) are currently subject to a random audit.~~

AUTH: 37-1-131, 37-1-319, ~~37-24-202~~, MCA

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

REASON: The board is amending this rule by removing licensees' ability to request CE extensions to align CE provisions with standardized department procedures. Under the standardized audit processes, licensees are provided with adequate time to cure any audit deficiencies and additional extensions are no longer necessary. The board is further simplifying the requirements for licensees to request CE exemptions.

24.165.2301 UNPROFESSIONAL CONDUCT (1) ~~For the purpose of implementing Title 37, chapter 1, MCA, and in addition to the provisions at of 37-1-316, MCA, the board defines "unprofessional conduct" as follows:~~

~~(a) diagnosing or treating individual disorders by correspondence;~~

~~(b) remains the same.~~

~~(c) inaccurately recording, falsifying, altering, or failing to make essential entries of any record of a client or health care provider;~~

~~(d) intentionally making or filing a false or misleading report or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such report;~~

~~(e) remains the same but is renumbered (c).~~

~~(f) using a firm name, letterhead, publication, term, title, designation, or document which states or implies an ability, relationship, or qualification that does not exist;~~

~~(g) practicing the profession under a false name or name other than the name under which the license is held;~~

~~(h) impersonating any licensee or representing oneself as a licensee for which one has no current license;~~

~~(i) charging a client or a third party payor for a service not performed;~~

~~(j) submitting an account or charge for services that are false or misleading.~~

~~This does not apply to charging for an unkept appointment;~~

~~(k) filing a complaint with, or providing information to the board which the licensee knows, or ought to know, is false or misleading. This provision does not apply to any filing of complaint or providing information to the board when done in good faith;~~

~~(l) (d) violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 24, MCA, or rule promulgated thereunder, or any order of the board;~~

~~(m) (e) violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct profession of any licensee;~~

- ~~(n) being convicted of a misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug, controlled substance, or alcoholic beverage, or any combination of such substances;~~
- ~~(o) using any dangerous drug or controlled substance illegally while providing professional services;~~
- ~~(p) acting in such a manner as to present a danger to public health or safety, or to any client including but not limited to incompetence, negligence, or malpractice;~~
- (q) remains the same but is renumbered (f).
- ~~(r) failing to obtain an appropriate consultation or make an appropriate referral when the problem of the client is beyond the licensee's training, experience, or competence;~~
- (s) and (t) remain the same but are renumbered (g) and (h).
- ~~(u) promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;~~
- (v) remains the same but is renumbered (i).
- ~~(w) (j) failing to render adequate supervision, management, training, or control of auxiliary staff or supervisees other persons, including licensees practicing under the licensee's supervision or control according to generally accepted standards of practice;~~
- (x) remains the same but is renumbered (k).
- ~~(y) (l) delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license, or certification to perform the delegated task;~~
- ~~(z) failing to cooperate with a board inspection or investigation in any material respect;~~
- ~~(aa) (m) failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority board;~~
- ~~(ab) (n) failing to obtain informed consent from client or client's representative prior to providing any therapeutic intervention or treatment;~~
- ~~(ac) failing to complete 40 hours of instruction or training under proctoring of sound and electrical physical agent modalities done on patients directly supervised by the instructor/proctor;~~
- ~~(ad) employing a nontraditional or experimental treatment or diagnostic process without informed consent from client or client's representative prior to such diagnostic procedure or treatment, or research, or which is inconsistent with the health or safety of the client or public;~~
- ~~(ae) (o) guaranteeing that a cure will result from the performance of medical occupational therapy services;~~
- ~~(af) ordering, performing, or administering, without clinical justification, tests, studies, x-rays, treatments, or services;~~
- ~~(ag) (p) failing to provide to a client, client's representative, or an authorized health care practitioner, upon a written request, the medical record or a copy of the client's medical record relating to the client which is in the possession or under the control of the professional. Prior payment for professional services to which the records relate, other than photocopy charges, may not be required as a condition of making the records available;~~
- (ah) and (ai) remain the same but are renumbered (q) and (r).

~~(aj)~~ (s) engaging in sexual contact, sexual intrusion, or sexual penetration, as defined in Title 45, chapter 2, MCA, with a client ~~during a period of time in which~~ when a professional relationship exists, or ~~for~~ up to six months after the relationship has terminated;

~~(ak)~~ (t) failing to account for funds received in connection with any services rendered or to be rendered; and

~~(al)~~ (u) failing to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.165.2101 or supplying misleading, incomplete, or false information relative to continuing education taken by the licensee respond to board or department inquiry, audit, or request for information.

AUTH: 37-1-131, 37-1-136, 37-1-319, ~~37-24-201~~, 37-24-202, MCA

IMP: 37-1-136, 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, 37-1-316, ~~37-24-106, 37-24-107, 37-24-202~~, MCA

REASON: Following an in-depth review, board legal counsel recommended several amendments to this rule to ensure no unnecessary duplication with 37-1-316, MCA, the unprofessional conduct statute. The board determined it is reasonably necessary to update this rule to remove duplication with statute, simplify and streamline the rule for ease of use and readability, and more clearly set forth the actions considered by the board as unprofessional conduct. The board is striking (1)(ac) to align with the provisions of Senate Bill 59.

5. The proposed new rule is as follows:

NEW RULE I BACTERICIDAL AGENTS PROTOCOLS (1) Within the class of bactericidal agents, only the following subclasses are approved for use by the clinician on a patient:

- (a) antibiotic ointments;
- (b) antimicrobial agents; and
- (c) bactericidal agents.

(2) Clinicians may use antibiotic ointments as directed by a licensed medical practitioner with prescriptive authority.

- (a) Antibiotic ointments act to kill bacteria and microbes.
- (b) Antibiotic ointments are indicated on culture-proven infected wounds.
- (c) Antibiotic ointments are contraindicated in patients with proven sensitivities or allergic reactions to the antibiotic prescribed.

(3) Clinicians may use antimicrobial agents as directed by a licensed medical practitioner with prescriptive authority.

(a) Antimicrobial agents contain a broad spectrum-silver cascade that acts to reduce the bioburden in wounds for up to seven days.

(b) Antimicrobial agents are indicated for managing full and partial thickness wounds and may be used over debrided or grafted partial thickness wounds.

- (c) Antimicrobial agents have no known contraindications.

(4) Clinicians may use bactericidal agents only for debridement as directed by a licensed medical practitioner with prescriptive authority.

- (a) Bactericidal agents act by killing bacteria.

- (b) Bactericidal agents are indicated for the presence of bacteria.
- (c) Bactericidal agents are contraindicated in patients with allergic or sensitive response to the agent.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

REASON: The board is adopting this new rule to separate the debriding and bactericidal agents protocols into discreet rules by relocating the bactericidal agent protocols from ARM 24.165.518. These changes will more clearly track statutory language and better highlight that while these specific medications can be prescribed for use as either type of agent, the functions, indications, etc. of each class of agent are not necessarily identical.

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

24.165.404 APPLICATIONS FOR LICENSURE

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA
IMP: 37-1-131, 37-24-302, 37-24-303, MCA

REASON: The department administers a standardized application process for all professional and occupational licensure boards.

24.165.410 PASS-FAIL CRITERIA

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA
IMP: 37-24-304, MCA

REASON: It is reasonably necessary to repeal this rule as the provision has been relocated to ARM 24.165.407.

24.165.502 SUPERVISION - METHODS

AUTH: 37-1-131, 37-24-202, MCA
IMP: 37-1-131, 37-24-103, 37-24-105, 37-24-106, 37-24-107, MCA

REASON: It is reasonably necessary to repeal this rule as the provision has been relocated to ARM 24.165.302.

24.165.511 DOCUMENTATION OF INSTRUCTION AND TRAINING

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-105, 37-24-106, 37-24-107, MCA

REASON: It is reasonably necessary to repeal this rule as the provision has been relocated to ARM 24.165.302.

24.165.513 APPROVAL TO USE SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA
IMP: 37-24-106, 37-24-107, MCA

REASON: The board is repealing this rule and ARM 24.165.525 as Senate Bill 59 eliminated the need for the sound and electrical physical agent modality endorsement.

24.165.525 DOCUMENTING EDUCATION AND COMPETENCE TO PERFORM SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES – OUT-OF-STATE PRACTITIONERS

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-1-304, 37-24-302, 37-24-303, MCA

7. 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 Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdotp@mt.gov, and must be received no later than 5:00 p.m., June 13, 2019.

8. An electronic copy of this notice of public hearing is available at ot.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.

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on April 8, 2019, by telephone.

11. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.165.302, 24.165.401, 24.165.406, 24.165.407, 24.165.501, 24.165.505, 24.165.506, 24.165.507, 24.165.509, 24.165.510, 24.165.514, 24.165.516, 24.165.517, 24.165.518, 24.165.519, 24.165.520, 24.165.521, 24.165.522, 24.165.524, 24.165.601, 24.165.604, 24.165.2101, 24.165.2102, and 24.165.2301 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 Rule I 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 24.165.404, 24.165.410, 24.165.502, 24.165.511, 24.165.513, and 24.165.525 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibsdotp@mt.gov.

12. L'Joy Griebenow, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
BRENDA TONER, OT
PRESIDING OFFICER

/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 April 30, 2019.