

## **Changes in the Physical Therapy Rules November 13, 2009**

### **Board of Physical Therapy Examiners**

*Amendment of ARM 24.177.405 physical therapy aides, 24.177.504 temporary licenses, 24.177.507 out of state applicants, 24.177.510 foreign trained applicants, 24.177.704 topical medication protocols, and 24.177.2105 continuing education.*

All Montana licensed physical therapists and physical therapist assistants should be aware the Montana Board of PT Examiners (BOE) amended the PT rules implementing changes in the role of a physical therapy aide, effective November 13, 2009. The purpose of this article is to explain the background for these changes, give a general interpretation of the new rules, and to explain how complaints regarding licensed PTs and PTAs are processed by the BOE.

#### Mission of the Board and Members of the Board and Screening Panel

First it is important to understand that the BOE is the governing body that regulates the practice of PT in the state, and that the #1 purpose of the BOE is to protect the health, safety and welfare of the public.

The board consists of five members appointed by the governor with the consent of the senate for terms of 3 years. The members are four physical therapists licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board; and one member of the general public who is not a physician or a physical therapist.

The board functions as a whole at board meetings, but is bifurcated into two panels for review of disciplinary matters. The screening panel, which is authorized by statute, is composed of approximately half of the board's members. The screening panel reviews complaints that are filed with the board and determines whether the licensee against whom the complaint is lodged has violated Montana's laws and rules and engaged in unprofessional conduct. A department prosecuting attorney handles disciplinary cases for the board. If the screening panel determines that there is no violation, the matter is dismissed and it remains confidential. If the panel finds that the licensee has engaged in unprofessional conduct, a public notice is issued and the licensee is given the opportunity to enter into a stipulation imposing discipline, or request a hearing before an administrative law judge (hearing examiner).

The stipulation and/or the proposed order of the hearing examiner are reviewed by the adjudication panel that approves rejects or modifies the stipulation and/or the proposed order. The board members who do not sit on the screening panel are assigned to the adjudication panel. The board's counsel advises the adjudication panel. A licensee may file an appeal to district court after the adjudication panel rules on the hearing examiner's proposed order.

#### Background for amendment of ARM

Over the past number of years the Screening Panel has had numerous complaints filed by the public regarding the unlawful practice of physical therapy by various individuals. Patients claim to have been injured, or report that they thought they were being treated by physical therapists, when in fact they were treated by physical therapy aides, receptionists, athletic trainers, massage practitioners, students and volunteers. When the Screening Panel reviews these cases, it has no jurisdiction over unlicensed individuals, because they are not licensed under the PT Practice Act. The Screening Panel does have jurisdiction over the PT who is responsible for supervising the PT Aide and subject to discipline for failing to supervise appropriately and for aiding and abetting the unlicensed practice of

physical therapy. The Panel has found that there is both a poor level of supervision (sometimes none), and that aides are being delegated to perform physical therapy interventions.

*The Montana PT Practice Act states that*

- 1. A person may not practice or purport to practice physical therapy without first obtaining a license.*
- 2. A person who is not licensed as a physical therapist assistant in accordance with this chapter may not assist a physical therapist in the practice of physical therapy.*

Approximately 3 years ago, the Board began studying the use of aides in Montana, and gathered numerous documents for study. They looked at what other states do in regards to regulating PT Aides. The Board reviewed the APTA Code of Ethics and Guide to Professional Conduct, and the APTA position on delegation and supervision, adopted by the APTA House of Delegates in 2006. The Board reviewed the Model Practice Act, published by the Federation of State Boards of Physical Therapy (FSBPT). They looked at CMS regulations, and they talked to leaders in the profession.

All of these documents are available for review by all physical therapists. The majority of states do not recognize PT Aides, and states that do, have a range of rules. **The APTA Code of Ethics and Guide to Professional Conduct, 4.2 Direction and Supervision states, A. The supervising physical therapist has primary responsibility for the physical therapy care rendered to a patient/client. B. A physical therapist shall not delegate to a less qualified person any activity that requires the professional skill, knowledge, and judgment of the physical therapist.**

The **APTA position** is as follows:

**PROVISION OF PHYSICAL THERAPY INTERVENTIONS AND RELATED TASKS HOD P06-00-17-28**

*Physical therapists are the only professionals who provide physical therapy interventions. Physical therapist assistants are the only individuals who provide selected physical therapy interventions under the direction and at least general supervision of the physical therapist.*

*Physical therapy aides are any support personnel who perform designated tasks related to the operation of the physical therapy service. Tasks are those activities that do not require the clinical decision making of the physical therapist or the clinical problem solving of the physical therapist assistant. Tasks related to patient/client management must be assigned to the physical therapy aide by the physical therapist, or where allowable by law, the physical therapist assistant, and may only be performed by the aide under direct personal supervision of the physical therapist, or where allowable by law, the physical therapist assistant. Direct personal supervision requires that the physical therapist, or where allowable by law, the physical therapist assistant, be physically present and immediately available to direct and supervise tasks that are related to patient/client management. The direction and supervision is continuous throughout the time these tasks are performed. The physical therapist or physical therapist assistant must have direct contact with the patient/client during each session. Telecommunications does not meet the requirement of direct personal supervision.*

The Montana BOE is a member of the FSBPT, the organization whose mission is to achieve a high level of public protection through a strong foundation of laws and regulatory standards in physical therapy. The Montana BOE and FSBPT work together to promote safe and competent physical therapy practice. The FSBPT has developed **The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Change (MPA)**. The MPA is the preeminent standard and most effective tool available for revising and modernizing physical therapy practice acts. The

continuing movement to update physical therapy practice acts helps ensure that they provide the legal authority to fully protect the public while allowing for the effective regulation of the profession.

From the FSBPT MPA 2006, the Board studied the definition of PT Aide, that is

**1.02 Definitions, F. "Physical therapy aide"** means a person trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy services. Furthermore, the MPA states, **4.03 Patient Care Management 2.** A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the on-site supervision of a physical therapist who is continuously on-site and present in the facility. This supervision may extend to off-site supervision of the aide only when the physical therapy aide is accompanying and working directly with a physical therapist assistant with a specific patient or when performing non-patient related tasks.

The Montana BOE reviewed all of these documents and drafted the amendments to the Montana rules. A member of the BOE presented the draft language and intent to the Montana Chapter APTA's Board of Directors at their September 2008 meeting. The Chapter's Board took a position to support the intent and draft language of the changes in the rules.

The BOE published the proposed changes for public comment in May 2009. A public hearing was held in June 2009. Final language, with minor changes, was recommended by the BOE in July 2009. The rules were adopted and finalized by the Secretary of State's office November 5, 2009, and became effective November 13, 2009. The rule follows:

#### **24.177.405 PHYSICAL THERAPY AIDES, LICENSE EXEMPTION, AND SUPERVISION**

**(1) As used in these rules, the following definitions apply:**

**(a) "Physical therapy aide" as defined in 37-11-101(8), MCA, means an unlicensed individual who has received appropriate, documented, on the job orientation and training by a physical therapist or physical therapist assistant. The physical therapy aide performs designated unskilled tasks.**

**(b) "Direct supervision" means that the supervising physical therapist or physical therapist assistant is onsite (on the premises physically) and immediately available for direction and supervision of the physical therapy aide at all times.**

**(2) A physical therapy aide is limited to performing the following patient-supportive tasks under the direct supervision of a physical therapist or physical therapist assistant:**

**(a) preparing a patient for treatment by a physical therapist or physical therapist assistant;**  
**(b) providing unskilled aid to a patient after treatment by a physical therapist or physical therapist assistant; and**

**(c) assisting a physical therapist or physical therapist assistant when safety or patient care requires a second person's assistance.**

**(3) A physical therapy aide may perform the following and similar nonpatient care routine tasks without direct or onsite supervision, by a physical therapist or physical therapist assistant:**

**(a) housekeeping activities including caring for and stocking equipment and supplies;**

**(b) transporting patients, records, equipment, and supplies in accordance with established policies and procedures;**

**(c) assembling and disassembling equipment and accessories;**

**(d) preparing, maintaining, and cleaning up treatment areas and maintaining supportive areas; and**

*(e) transcribing, recording, or copying treatment documentation generated by a physical therapist or physical therapist assistant. All documents prepared by a physical therapy aide must be signed by the treating physical therapist or physical therapist assistant.*

*(4) A physical therapist or physical therapy assistant who fails to directly supervise a physical therapy aide may be subject to disciplinary action by the board.*

At the most recent meeting of the BOE, there were numerous PTs who asked how the new rules would be interpreted. The Board reviewed most of what has been written in this article. In addition, the Chairman of the Board read a letter received from Leslie Adrian, PT, Director of Professional Standards, Federation of State Boards of Physical Therapy November 24, 2009, indicating that the new rules fit within the guidelines of the FSBPT Model Practice Act.

The interpretation of the rules is straight forward. The PT Aide must be trained. The supervision requirement is clear. Consistent with the APTA code of ethics, and position on provision of PT intervention, the PT Aide cannot provide PT intervention. Only a licensed PT or PTA can provide physical therapy. Under direct supervision, the PT aide may prepare a patient for treatment by a physical therapist or physical therapist assistant; and may provide unskilled aid to a patient after treatment by a physical therapist or physical therapist assistant. Consistent with the FSBPT model practice act, a physical therapy aide may perform nonpatient care routine tasks without direct or onsite supervision, listed in the rule.

By regulating the profession of physical therapy, the BOE protects the public. One of the elements of professionalism in the APTA Vision 2020 is **accountability**, the active acceptance of the responsibility for the diverse roles, obligations, and actions of the physical therapist including self-regulation and other behaviors that positively influence patient/client outcomes, the profession and the health needs of society. Three other elements of Vision 2020 apply to the evolution and changes in the rules governing the practice of physical therapy in Montana: Integrity, Professional Duty and Social Responsibility. **Integrity** is the steadfast adherence to high ethical principles or professional standards; truthfulness, fairness, doing what you say you will do, and “speaking forth” about why you do what you do. **Professional duty** is the commitment to meeting one’s obligations to provide effective physical therapy services to individual patients/clients, to serve the profession, and to positively influence the health of society. **Social responsibility** is the promotion of a mutual trust between the profession and the larger public that necessitates responding to societal needs for health and wellness.

If PTs and PTAs have questions about the rules, they can go to the web site, [www.pt.mt.gov](http://www.pt.mt.gov) for further information, or they can write to the BOE at the following address.

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