

BEFORE THE BOARD OF ATHLETIC TRAINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.118.301 definitions, 24.118.2301) PROPOSED AMENDMENT AND
unprofessional conduct, and the repeal) REPEAL
of 24.118.501 applications, 24.118.504)
supervision, 24.118.2101 renewals)

TO: All Concerned Persons

1. On February 11, 2021, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/94405871805>, Meeting ID: 944 0587 1805, Passcode: 266047; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 944 0587 1805, Passcode: 266047.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 Athletic Trainers no later than 5:00 p.m., on February 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdatr@mt.gov (board's e-mail).

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

24.118.301 DEFINITIONS (1) In addition to the terms defined in 37-36-101, MCA, the following definitions apply to the rules in this chapter:

(a) "Board of Certification" means the Board of Certification, Inc. (BOC), the only accredited, certifying body accepted by the Board of Athletic Trainers, and which sets the standards of practice of athletic training.

(b) "CAATE Standards" means the Standards for Accreditation of Professional Athletic Training Programs promulgated by the Commission on Accreditation of Athletic Training Education (CAATE).

(c) "Qualified supervisor" means a licensed athletic trainer or a health care professional licensed under Title 37, chapter 3, 6, 11, 12, 20, 24, or 26, MCA, who:

(i) is a preceptor at an institution accredited by the BOC and using CAATE Standards; and

(ii) is not currently enrolled in an entry-level athletic training education program.

~~(a) "Approved clinical instructor" means a BOC certified athletic trainer, licensed physician, or other individual credentialed in a health care profession, for no less than one year and:~~

~~(i) who is not currently enrolled in the entry level athletic training education program at the instructor's institution; and~~

~~(ii) whose training curriculum follows the standards of the Commission on Accreditation of Athletic Training Education (CAATE), July 1, 2012 edition, which are adopted and incorporated by reference. A copy of the CAATE standards may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513.~~

~~(b) "Board of Certification" means the Board of Certification, Inc. (BOC), the only accredited, certifying body accepted by the Board of Athletic Trainers, and which sets the standards of practice of athletic training.~~

~~(c) "Clinical instructor" means an individual credentialed in a health care profession for no less than one year, who may supervise students during clinical and/or field experiences, and who is not currently enrolled in the entry level athletic training education program at the instructor's institution. An individual credentialed in a health care profession for less than one year may serve as a clinical instructor if the instructor's institution has developed, documented, and implemented a plan for supervision of that instructor by an experienced, credentialed clinical instructor that ensures the quality of instruction provided to athletic training students.~~

~~(d) "Clinical instructor educator" means a clinical instructor educator as defined by the CAATE standards, July 1, 2012 edition, which are adopted and incorporated by reference. A copy of the CAATE standards may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513. A clinical instructor educator must also:~~

~~(i) have been recognized and designated by the institution as the clinical instructor educator for the individual's institution;~~

~~(ii) have been BOC credentialed for no less than three years;~~

~~(iii) have been designated and authorized by the institution to oversee approved clinical instructor training;~~

~~(iv) be knowledgeable in the content areas required for the training of approved clinical instructors; and~~

~~(v) if more than one individual is designated as the clinical instructor educator for the institution, then at least one of those individuals must be a BOC credentialed athletic trainer.~~

~~(e) "Graduate assistant" means a person who has graduated from a postsecondary institution with a baccalaureate degree, and has taken and passed~~

the BOC's examination, and who is in the process of attaining a higher level of education.

~~(f) "Health care professional" means a licensed athletic trainer, chiropractor, naturopathic physician, nurse, nurse practitioner, occupational therapist, physical therapist, physician, physician's assistant, or podiatrist as defined in Title 37, chapters 3, 6, 8, 11, 12, 20, 24, 26, or 36, MCA.~~

~~(g) "Student assistant or athletic training student" means an intern or undergraduate currently enrolled in an accredited athletic training curriculum, in an undergraduate or graduate program at a postsecondary institution. An intern or student trainee may be called by the title "student assistant" or "athletic training student."~~

AUTH: 37-36-102, MCA

IMP: 37-36-101, 37-36-203, MCA

REASON: Following an in-depth staff review of the board's rules and statutes, the board determined it is reasonably necessary to amend this rule throughout by striking unnecessary terms and rewording others for clarity and current industry standards and use.

The board is replacing (1)(b) with new (1)(a). The board is redefining CAATE at (1)(b) from previous (1)(a) and (d) to accommodate the use of the term in (1)(c). Additionally, it is reasonably necessary to strike the definition of "clinical instructor" as the term is now included in the definition of "qualified supervisor" in (1)(c).

The board is striking (1)(f) as it unnecessarily repeats statutory definitions in Title 37 of the Montana Code Annotated.

Additionally, the board is eliminating (1)(g) because student assistants are defined in BOC standards.

The board is striking (1)(a), (d), and (e) as the terms are only used in the supervision rule, ARM 24.118.504, which is being repealed in this notice.

24.118.2301 UNPROFESSIONAL CONDUCT (1) The BOC's Athletic Trainers Standards of Professional Practice, implemented January ~~2018~~ 2019, are adopted and incorporated by reference. A copy of the BOC Standards of Professional Practice may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513. Violation of BOC practice standards or codes of professional responsibility may be grounds for discipline.

~~(2) Licensees may be subject to discipline for those forms of unprofessional conduct defined in 37-1-316, MCA.~~

~~(3)~~ (2) The In addition to 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 36, MCA, and may be grounds for discipline:

~~(a) exploiting a professional relationship with the patient for personal or financial gain;~~

~~(b) using a false, fraudulent, or deceptive statement in any document connected with the practice of athletic training;~~

~~(c) having been subject to disciplinary action of another state or jurisdiction, including the BOC, against a license or other authorization to practice athletic training based upon acts or conduct by the licensee, similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 36, MCA, or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;~~

~~(a) having been subject to disciplinary action by the BOC;~~

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

~~(g) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;~~

~~(e) failing to report to the board office within 30 days of the date of the final judgment, order, or agency action, any malpractice, professional misconduct, criminal, or disciplinary action in which the licensee is a named party;~~

~~(h) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;~~

~~(i) abusive billing practices;~~

~~(j) making promises of athletic prowess or ability as a result of athletic training;~~

~~(k) through (o) remain the same but are renumbered (f) through (j).~~

~~(p) (k) failing to transfer pertinent and necessary medical records to another licensed health care provider professional, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;~~

~~(q) remains the same but is renumbered (l).~~

~~(r) (m) failing to disclose having voluntarily relinquished or surrendered a license or privileges, or having withdrawn an application for licensure or privileges while under investigation, or prior to the granting or denial of an application in this state or in another state or jurisdiction; or~~

~~(s) (n) failing to maintain current BOC certification as required by statute, including adhering to and complying with all BOC continuing education requirements, and obtaining and carrying the proscribed professional liability insurance as required by BOC for certified athletic trainers; or~~

~~(t) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.~~

AUTH: 37-1-319, 37-36-102, MCA

IMP: 37-1-316, 37-1-319, 37-36-202, 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 also amending (1) to update to the 2019 edition of the BOC standards of professional practice, which is incorporated by reference.

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

24.118.501 APPLICATIONS

AUTH: 37-1-131, 37-36-102, MCA

IMP: 37-1-131, 37-36-201, MCA

REASON: During an internal review of existing board rules and division procedures, staff determined that the board-specific rules restate the division's standardized procedures. The board is repealing this rule because the department administers a standardized application process for all professional and occupational licensure boards and programs, and it is not necessary to repeat the procedural provisions in this board rule. The repeal will not alter statutory requirements.

24.118.504 SUPERVISION

AUTH: 37-1-131, 37-36-102, MCA

IMP: 37-1-131, 37-36-101, 37-36-203, MCA

REASON: The board determined it is reasonably necessary to repeal this rule to align with proposed changes to the definitions rule, ARM 24.118.301 which will accomplish the objectives of this rule. Repealing this rule in its entirety will improve clarity and readability in the board's rules.

24.118.2101 RENEWALS

AUTH: 37-1-131, 37-36-102, MCA

IMP: 37-1-131, 37-1-141, 37-1-309, 37-36-202, MCA

REASON: During an internal review of existing board rules and division procedures, staff determined that the board-specific rules restate the division's standardized procedures. The board is repealing this rule because the department administers a standardized renewal process for all professional and occupational licensure boards and programs, and it is not necessary to repeat the procedural provisions in this board rule. The repeal will not alter statutory requirements, nor will it hinder the board's ability to conduct its certification duties.

5. 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 Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdatr@mt.gov, and must be received no later than 5:00 p.m., February 12, 2021.

6. An electronic copy of this notice of public hearing is available at <http://athletictrainer.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.

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

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.118.301 and 24.118.2301 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 24.118.501, 24.118.504, and 24.118.2101 will not significantly and directly impact small businesses.

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

10. Kevin Bragg, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF ATHLETIC TRAINERS
JANET TRETHERWEY, CHAIRPERSON

/s/ DARCEE L. MOE

Darcee L. Moe
Rule Reviewer

/s/ BRENDA NORDLUND

Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 31, 2020.