

BEFORE THE BOARD OF CHIROPRACTORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
24.126.2103 continuing education ) PROPOSED AMENDMENT AND  
requirements, 24.126.2105 acceptable ) ADOPTION  
continuing education, and the adoption )  
of New Rule I dry needling )

TO: All Concerned Persons

1. On May 11, 2020, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and adoption 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 by dialing 406-444-4647 (local) or 1-833-681-5958 (toll free) and entering meeting ID 499538 when directed to do so.

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 Chiropractors no later than 5:00 p.m., on May 4, 2020, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, Board of Chiropractors, 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 dlibschi@mt.gov (board's e-mail).

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

24.126.2103 CONTINUING EDUCATION REQUIREMENTS (1) ~~Beginning with the 2018 renewal, every active licensee~~ Active licensees shall affirm an understanding of the duty to complete a minimum of 12 hours of ~~board-approved~~ continuing education (CE) during each renewal period ~~as defined in per~~ ARM 24.101.413.

~~(a) Of the 12 hours, no more than two hours can be in the subject area of philosophy and/or practice management.~~

(2) Licensees shall complete four hours of CE in professional boundaries and ethics every four-year reporting period. These hours shall be in addition to and not count toward the 12 hours of CE required each year renewal period.

(3) remains the same.

(4) Licensees ~~transferring~~ converting from inactive to active status shall ~~abide by~~ comply with the continuing education CE requirements of ARM 24.126.701.

~~(5) An annual random audit of ten percent of active licensees will be~~

~~conducted to verify compliance with the CE requirements. The board may randomly audit up to 50 percent of renewed licensees.~~

~~(6) Block hours of CE hours cannot be accumulated and carried over from one renewal period to the next.~~

~~(7) Licensees attending the Montana Chiropractic Association educational meetings must register with the secretary of the association each day of attendance to receive CE credit.~~

~~(8) (7) A three-month extension will be provided for all licensees who fail to meet the CE requirements as a result of an audit. Failure to meet this extension may result in disciplinary action. Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

~~(9) (8) Any licensee seeking a hardship waiver from their CE requirements shall apply to the board, in writing, as soon as possible after the hardship is identified and prior to the close of licensure for that period. A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.~~

~~(a) Specific details of the hardship must be included.~~

~~(b) The board must find that a hardship exists.~~

~~(c) The waiver may be absolute or conditional.~~

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline the rule for better organization and ease of use for the reader. The board is amending (1) to strike the past implementation date of the renewal affirmation as no longer necessary.

It is reasonably necessary to move (1)(a) to ARM 24.126.2105 as a more appropriate location.

The board is amending (5) to allow flexibility in conducting random CE audits. Currently, the board randomly audits 10 percent of all renewed chiropractors for each reporting period. 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 striking (7) as registration of CE program attendees is entirely within the discretion of the CE provider.

The board is amending (8) by removing licensees' ability to request CE extensions to align 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 also clarifying in (8) 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.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.126.2105 APPROVED ACCEPTABLE CONTINUING EDUCATION

(1) ~~Continuing Acceptable continuing education (CE) approved by the board~~ must directly relate to the practice of chiropractic and shall be affiliated with or approved by:

(a) national, regional, or state chiropractic associations; ;

(b) state licensing boards; ;

(c) academies; ;

(d) colleges of chiropractic; ; or

(e) ~~education approved by the Federation of Chiropractic Licensure Board (FCLB) Providers of Approved Continuing Education (PACE).~~

(2) From the date of ~~their~~ original licensure in Montana until the end of the first full renewal period, new licensees can fulfill the 12-hour CE requirement by attending one session of the "new doc seminar" ~~in lieu of the 12-hour CE requirement."~~

(3) A maximum of two hours can be in philosophy and/or practice management.

~~(3)~~ (4) All licensees Licensees can receive two credits for each chiropractic board meeting attended.

~~(4)~~ (5) All Internet courses must meet the same CE guidelines for CE approval.

~~(5)~~ (6) The board shall not approve a course of study if it is CE courses considered outside the "scope of practice" for a chiropractor in Montana chiropractors are not acceptable.

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

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

The board is relocating provisions from ARM 24.126.2103(1)(a) to (3) as a more appropriate location in this rule.

4. The proposed new rule is as follows:

NEW RULE I DRY NEEDLING (1) Dry needling is a skilled technique performed using a mechanical device, filiform needle(s), to penetrate the skin and/or underlying tissues as a treatment method to manipulate tissues of the body for the correction of nerve interference.

(2) Dry needling requires a chiropractic examination and diagnosis.

(3) To perform dry needling, chiropractors must have completed training in dry needling.

(a) Dry needling training shall include, but not be limited to, training in the following areas:

(i) indications;

(ii) contraindications;

(iii) potential risks;

- (iv) proper hygiene;
- (v) proper use and disposal of needles.
- (b) To perform dry needling, chiropractors must have completed training in dry needling affiliated with or approved by:
  - (i) national, regional, or state chiropractic associations;
  - (ii) state licensing boards;
  - (iii) academies;
  - (iv) colleges of chiropractic; or
  - (v) the Federation of Chiropractic Licensure Board (FCLB) Providers of Approved Continuing Education (PACE).
- (c) Initial training in dry needling must include hands-on training.
- (4) A chiropractor shall perform dry needling in a manner consistent with generally accepted standards of practice, including relevant standards of the Center for Disease Control and Prevention, and Occupational Safety and Health Administration blood borne pathogen standards as per 29 CFR 1910.1030 et. seq.
- (5) Dry needling shall only be performed by a chiropractor and may not be delegated.
- (6) Chiropractors performing dry needling must maintain proof of appropriate training as required by this rule. Failure to provide proof of training upon the board's request may result in disciplinary action.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-101, 37-12-104, MCA

**REASON:** The statutory scope of practice for Montana licensed chiropractors is broad and includes recognized diagnostic and treatment methods as taught in chiropractic colleges. While primarily focused on the spine, chiropractic care since its inception has provided treatment to all areas of the musculoskeletal system. Dry needling includes using filiform needles as a mechanical device to treat pain and injury. The procedure can also be applied to specific muscle motor points, spinal segments, and other structures including ligaments, tendons, and joint capsules for pain relief and increased mobility. In clinical practice dry needling is often used in conjunction with other physiotherapeutic modalities to manage pain and improve function. The board is proposing this new rule now because instruction on the modality is becoming readily available as chiropractors throughout the United States are increasingly incorporating dry needling into their practices. The board is proposing to adopt NEW RULE I to provide guidance on the safe practice of dry needling in Montana. This new rule establishes criteria to ensure that chiropractors who perform dry needling meet minimum educational training and safety standards. Further, the rule establishes potential disciplinary consequences for failing to meet those standards.

Over the last nine years, the board has received several public comments to support the express incorporation of dry needling into the chiropractic scope of practice and to provide practitioners with guidance regarding its use. Dry needling, according to board research, is currently allowed in 35 states nationwide. Additionally, four chiropractic colleges incorporate dry needling instruction either via curriculum or continuing education. The board has undertaken extensive evaluation

of all 35 permissive jurisdictions as well as their regulations. NEW RULE I is the result of extensive investigation, lengthy board discussion, and the conclusion that adequate instruction on dry needling has expanded and evolved so that dry needling is within the current scope of practice as a recognized chiropractic treatment method.

The rule requires that Montana licensed chiropractors either currently possess or obtain the appropriate training to exercise the modality in practice while adequately ensuring public protection. The board notes that 13 of the 35 permissive states do not require any specific training to undertake dry needling as part of licensed chiropractic practice. The board concluded that for public safety purposes some level of training must be undertaken in the modality to ensure adequate public safety. This training must include, but is not limited to, the subjects identified in (3)(a)(i) through (v).

The board determined that Montana chiropractors must be able to demonstrate competency to perform dry needling as part of their chiropractic practices. Licensed chiropractors in Montana are required to pass the physiotherapy portion of the National Board of Chiropractic Examiners exam. This training and measured competence, when combined with proper continuing education, provides practitioners a firm base from which to utilize dry needling. Since the modality is taught in, and by, chiropractic colleges, the board concluded the most efficient way for practitioners to validate this training is to maintain documentation of the training and provide proof upon request by the board. Chiropractors are licensed doctors who must utilize their own professional judgment consistently and continually in their practices. As such, the board determined that licensees are competent to abide by these regulations without requiring submission of explicit documentation by all licensees. This process will also continue to provide licensees with a fiscally conservative board operation. Further, the board will address complaints regarding improper treatment and use of dry needling through the standardized complaint procedure as unprofessional conduct in ARM 24.126.2301.

As medical technology evolves, scopes of practice and training shift and overlap for many health care professionals who use and are trained in the use of needles. The board's foremost concern is public safety and NEW RULE I provides practitioners with a measured direction from which to begin their use of the modality.

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 Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibschi@mt.gov](mailto:dlibschi@mt.gov), and must be received no later than 5:00 p.m., May 15, 2020.

6. An electronic copy of this notice of public hearing is available at [www.chiropractor.mt.gov](http://www.chiropractor.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 Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibschi@mt.gov](mailto:dlibschi@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 24.126.2103 and 24.126.2105 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.

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

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

BOARD OF CHIROPRACTORS  
V.J. MADDIO, DC  
PRESIDENT

/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 April 7, 2020.