

MEDICAL BOARD LAWS

AS OF THE 2019 LEGISLATIVE SESSION

TITLE 37, CHAPTER 20

PHYSICIAN ASSISTANTS

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CHAPTER 20 PHYSICIAN ASSISTANTS

Chapter Compiler's Comments

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

General provisions relating to health care practitioners, Title 37, ch. 2.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Abortion restricted to licensed physician or physician assistant, 50-20-109.

Duty of physician assistant to report violations of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Chapter Administrative Rules

Title 24, chapter 156, subchapter 16, ARM Physician assistant — scope of practice.

Chapter Law Review Articles

Physician Assistant as Abortion Provider: Lessons From Vermont, New York, and Montana, Schirmer, 49 Hastings L.J. 253 (1997).

Part 1 General

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of physicians, Title 37, ch. 3, part 3.

Unsworn falsification to authorities, 45-7-203.

Nondiscrimination in licensing, 49-3-204.

37-20-101. Qualifications of supervising physician and physician assistant. (1) The supervising physician named in the supervision agreement required by 37-20-301 shall:

(a) possess a current, active license to practice medicine in this state; and

(b) exercise supervision over the physician assistant in accordance with the rules adopted by the board and retain professional and legal responsibility for the care and treatment of patients by the physician assistant.

(2) A physician assistant named in the supervision agreement required by 37-20-301 must have a current, active Montana physician assistant license.

History: En. Sec. 3, Ch. 380, L. 1981; amd. Sec. 9, Ch. 97, L. 1989; amd. Sec. 6, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 in (1) in introductory clause substituted "supervision agreement" for "utilization plan"; in (1)(a) substituted "active license" for "unrestricted license"; deleted former (1)(b) that read: "(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the physician assistant-certified to be employed is of good character and is both mentally and physically able to perform the duties of a physician assistant-certified described in the utilization plan"; in (1)(b) at beginning deleted "submit a statement to the board that he will", substituted "physician assistant" for "physician assistant-certified", and at end inserted "by the physician assistant"; deleted former (1)(d) that

read: "(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require"; in (2) substituted "A physician assistant named in the supervision agreement required by 37-20-301 must have a current, active Montana physician assistant license" for "Each physician assistant-certified named in the utilization plan required by 37-20-301 shall meet the criteria for approval as a physician assistant-certified as provided in 37-20-402"; and made minor changes in style. Amendment effective October 1, 2005.

1989 Amendment: In (1), in three places, substituted "physician assistant-certified" for "assistant" or "physician's assistant"; and substituted language in (2) concerning criteria for approval for former (2) and (3) that read: "(2) Except as provided in subsection (3), each physician's assistant named in the utilization plan required by 37-20-301 shall:

- (a) be of good character;
- (b) be a graduate of a physician's assistant training program approved by the American medical association;
- (c) have taken an examination recognized by the national commission on physicians' assistants and received a score satisfactory to the board;
- (d) hold a current certification by the national commission on physicians' assistants; and
- (e) submit to the board detailed information on the applicant's history, education, and experience and such other information as the board may require.

(3) In lieu of the requirements of subsections (2)(b), (2)(c), and (2)(d) the physician's assistant may be a graduate of an approved medical school as defined in 37-3-102 and pass an examination approved by the board."

37-20-102. Repealed. Sec. 16, Ch. 419, L. 1993.

History: En. Sec. 8, Ch. 380, L. 1981; amd. Sec. 10, Ch. 97, L. 1989.

37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician assistant to perform those functions and duties specifically delegated by law to persons licensed as optometrists, as defined under Title 37, chapter 10. A physician assistant may perform an abortion.

History: En. Sec. 10, Ch. 380, L. 1981; amd. Sec. 11, Ch. 97, L. 1989; amd. Sec. 1, Ch. 321, L. 1995; amd. Sec. 7, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 in two places substituted "physician assistant" for "physician assistant-certified" and in second sentence after "may" deleted "not". Amendment effective October 1, 2005.

1995 Amendment: Chapter 321 inserted second sentence prohibiting a physician assistant-certified from performing abortions.

1989 Amendment: Substituted "physician assistant-certified" for "physician's assistant".

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Administrative Rules

ARM 24.156.1622 Supervision of physician assistant.

Case Notes

Prohibition Against Abortion by Physician Assistant-Certified Unconstitutional Violation of Right of Privacy: After the decision in *Mazurek v. Armstrong*, 520 US 968, 138 L Ed 2d 162, 117 S Ct 1865 (1997), *ibid.*, Dr. Armstrong and Cahill, a physician assistant-certified (see 2005 amendment), filed this case in state District Court challenging the constitutionality of 50-20-109 and this section, which prohibited a physician assistant-certified (see 2005 amendment) from performing abortions. The District Court found that the prohibition affected a woman's right to obtain a legal first trimester abortion and that the state had advanced no compelling interest to justify prohibiting Cahill from performing abortions, as she had for 20 years, and granted plaintiffs' motion for a preliminary injunction. Noting that Montana adheres to one of

the most stringent protections of its citizens' right of privacy in the United States, exceeding even the federal constitution, the Supreme Court affirmed, holding that legislation that infringes on the exercise of the right of privacy must be reviewed under a strict scrutiny analysis. Under Art. II, sec. 10, Mont. Const., every individual is guaranteed the right to make medical judgments affecting that person's bodily integrity and health, in partnership with a chosen health care provider and free from government interference, except in very limited circumstances not at issue here. The court agreed that the statutory restrictions in question impacted a woman's right to procreative autonomy and her right to seek and obtain a specific lawful medical procedure from the health care provider of her choice, in this case a previability abortion from a physician assistant-certified, and were thus an unconstitutional violation of the right of privacy. *Armstrong v. St.*, 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999), following *Gryczan v. St.*, 283 M 433, 942 P2d 112, 54 St. Rep. 699 (1997). See also *Intermtn. Planned Parenthood v. St.* (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), and *Planned Parenthood of Missoula v. St.* (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II, sec. 10, Mont. Const.).

Standing of Health Care Providers to Litigate Privacy Right of Patient to Obtain Previability Abortion:

In a case of first impression, the Supreme Court relied on federal law to decide that the statutes directed at health care providers in 50-20-109 and this section, which prohibit a physician assistant-certified (see 2005 amendment) from performing abortions, interfered with the normal functioning of the physician-patient relationship by criminalizing certain procedures. To establish standing to challenge government action: (1) the complaining party must clearly allege past, present, or threatened injury to a property right or civil right; and (2) the alleged injury must be distinguishable from the injury to the public generally but need not be exclusive to the complaining party. In this case, based on the closeness of the physician-patient relationship, the health care providers had standing, on behalf of their women patients, to assert the women's constitutional privacy right under Art. II, sec. 10, Mont. Const., to obtain a previability abortion from the health care provider of their choosing. *Armstrong v. St.*, 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999), following *Singleton v. Wulff*, 428 US 106, 49 L Ed 2d 826, 96 S Ct 2868 (1976). See also *Intermtn. Planned Parenthood v. St.* (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), and *Planned Parenthood of Missoula v. St.* (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II, sec. 10, Mont. Const.).

37-20-104. Unlicensed practice — penalties. (1) A person who employs a physician assistant or holds out to the public that the person is a physician assistant without having been issued a Montana physician assistant license is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) Prior to being issued a license and submitting a supervision agreement to the board, a physician assistant may not practice as a physician assistant in this state, even under the supervision of a licensed physician.

(3) The board may enforce the provisions of this section by the remedy of injunction and the application of other penalties as provided by law.

History: En. Sec. 5, Ch. 380, L. 1981; amd. Sec. 12, Ch. 97, L. 1989; amd. Sec. 1, Ch. 446, L. 1991; amd. Sec. 7, Ch. 419, L. 1993; amd. Sec. 8, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 in (1) near beginning in two places substituted "physician assistant" for "physician assistant-certified" and near middle substituted "without having been issued a Montana physician assistant license" for "without the approval of the Montana state board of medical examiners"; in (2) in middle substituted "submitting a supervision agreement to the board, a physician assistant may not practice as a physician assistant in this state" for "receiving approval of a utilization plan, a physician assistant-certified may not engage in the practice of medicine in this state"; in (3) at end inserted reference to application of other penalties; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 substituted (2) regarding restriction on practice of medicine for former (2) and (3) authorizing Board to take certain disciplinary action (see 1993 Session Law for text); and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: In (2), near beginning after "board may", substituted "in the manner set out in subsection (3) and after notice and opportunity for hearing, discipline" for "withdraw its approval of any utilization plan previously approved which is applicable to"; and inserted (3) enumerating action Board may take against supervising physician or physician assistant-certified. Amendment effective April 16, 1991.

1989 Amendment: In (1) and (2) substituted "physician assistant-certified" for "physician's assistant"; and in (1), before "without the approval", substituted "physician assistant-certified" for "qualified physician's assistant".

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Affidavits, Title 26, ch. 1, part 10.

Injunctions, Title 27, ch. 19.

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Part 2 **Board of Medical Examiners**

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1731.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

Part Administrative Rules

Title 24, chapter 156, subchapter 1, ARM Organizational rule.

Title 24, chapter 156, subchapter 2, ARM Procedural rules.

37-20-201. Repealed. Sec. 32, Ch. 519, L. 2005.

History: En. Sec. 1, Ch. 380, L. 1981.

37-20-202. Adoption of rules. The board may adopt administrative rules to implement the provisions of this chapter and set forth grounds for disciplinary action.

History: En. Sec. 9, Ch. 380, L. 1981; amd. Sec. 13, Ch. 97, L. 1989; amd. Sec. 3, Ch. 446, L. 1991; amd. Sec. 9, Ch. 419, L. 1993; amd. Sec. 9, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 near beginning substituted "board may adopt" for "board of medical examiners shall adopt"; deleted former (1) through (5) that read: "(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless the physician is able to demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public;

(5) address physician assistant training in Montana"; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 inserted (6) requiring Board to adopt rules containing grounds for disciplinary action; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: Inserted (5) concerning physician assistant training. Amendment effective April 16, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 446, L. 1991, provided: "A statement of intent is necessary for this bill because 37-20-202(5) requires the board of medical examiners to develop rules pertinent to the training of physician assistant students in Montana. It is intended that the rules address the kind and amount of supervision required for physician assistant students and other aspects of student training the board considers pertinent."

1989 Amendment: In (3) substituted "physician assistant-certified" for "physician's assistant"; and in (4) substituted "physician assistant-certified" for "physicians' assistants" and inserted "and locum tenens utilization plans". Amendment effective March 15, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 97, L. 1989, provided: "A statement of intent is required for this bill because [sections 4 and 13] [37-20-404 and 37-20-202] grant or extend rulemaking authority to the board of medical examiners in order to implement the provisions of this bill.

At a minimum, it is intended that the rules address the following topics:

(1) authorization for prescribing, dispensing, and administering drugs by a physician assistant-certified, including the extent and limitations of the prescribing and dispensing authority, required recordkeeping, and refilling of prescriptions; and

(2) considerations pertinent to approval of locum tenens utilization plans."

1981 Statement of Intent: The statement of intent attached to HB 7 (Ch. 380, L. 1981) provided: "A statement of intent is required for this bill because it delegates authority to the board of medical examiners to consider physicians' assistants utilization plans and to promulgate administrative rules in that regard.

HB 7 intends that the board of medical examiners carry out the provisions of this bill and act to provide better health care for the public. In this spirit, the bill intends for the board of medical examiners to adopt rules which will clarify the nature and limitations of the supervision of physicians' assistants by physicians. The rules adopted should address issues of direction and supervision such as proximity of the supervising physician to his assistant; the nature of the communication between the physician and the assistant, whether it must be face-to-face or whether telephone communications suffice, and under what circumstances; the questions of protocols for interaction between different health care actors, including issues of liability and the possible direction of others by physicians' assistants; and the rules adopted should give additional guidance to prospective applicants with respect to the requirements for education and experience required of physicians' assistants, the nature of a training program approved by the American medical association, and general information indicating the scope of utilization plans likely to be approved.

In addition, a rule shall be promulgated to specify that a physician may not utilize more than one physician's assistant unless he can demonstrate to the board the ability to supervise more than one assistant adequately."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of boards to adopt rules on conduct, 37-1-121.

Administrative Rules

ARM 24.156.1601 Definitions.

37-20-203. Licensing of physician assistants. The board may issue either an active or inactive license to a physician assistant applying for a license or license renewal in Montana.

History: En. Sec. 10, Ch. 419, L. 1993; amd. Sec. 27, Ch. 492, L. 1997; amd. Sec. 10, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 substituted "board may issue either an active or inactive license to a physician assistant applying for a license or license renewal in Montana" for "Montana state board of medical examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) a permanent license, signed by the president and subject to periodic renewal; and
(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board"; and made minor changes in style. Amendment effective October 1, 2005.

1997 Amendment: Chapter 492 in (1), near end, substituted "periodic" for "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

Effective Date: Section 18, Ch. 419, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 20, 1993.

Administrative Rules

ARM 24.156.1617 Application for physician assistant license.

Part 3

Supervision Agreements

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-20-301. Requirements for use of physician assistant — supervision agreement — duties and delegation agreement — content — approval — filing. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant in the practice of medicine, as defined in 37-3-102, and as provided in this chapter and a physician assistant may not be employed or practice as a physician assistant unless the physician assistant:

- (a) is supervised by a physician licensed in this state;
- (b) is licensed by the board;

(c) has submitted a physician assistant supervision agreement to the board on a form prescribed by the department; and

(d) has paid to the board the applicable fees required by the board.

(2) A supervising physician and the supervised physician assistant shall execute a duties and delegation agreement constituting a contract that defines the physician assistant's professional

relationship with the supervising physician and the limitations on the physician assistant's practice under the supervision of the supervising physician. The agreement must be kept current, by amendment or substitution, to reflect changes in the duties of each party occurring over time. The board may by rule specify other requirements for the agreement. A physician assistant licensed by the board before October 1, 2005, shall execute a duties and delegation agreement with a supervising physician by October 1, 2006.

(3) A physician assistant and the physician assistant's supervising physician shall keep the supervision agreement and the duties and delegation agreement at their place of work and provide a copy upon request to a health care provider, a health care facility, a state or federal agency, the board, and any other individual who requests one.

History: En. Sec. 2, Ch. 380, L. 1981; amd. Sec. 14, Ch. 97, L. 1989; amd. Sec. 2, Ch. 446, L. 1991; amd. Sec. 11, Ch. 419, L. 1993; amd. Sec. 62, Ch. 467, L. 2005; amd. Sec. 11, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 467 in (4) near end after "37-20-302" deleted "(1)"; and made minor changes in style. Amendment effective July 1, 2005. The amendment by Ch. 519 rendered the amendment by Ch. 467 void.

Chapter 519 in (1) throughout subsection substituted "physician assistant" for "physician assistant-certified"; near middle of introductory clause after "37-3-102, and" inserted "as provided in this chapter"; in (1)(c) near beginning substituted "submitted" for "received board approval" and at end substituted "supervision agreement to the board on a form prescribed by the department" for "utilization plan"; inserted (1)(d) requiring payment of applicable fees; deleted former (2) through (5) that read: "(2) A physician assistant-certified utilization plan must set forth in detail the following information:

- (a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and license number of the physician assistant-certified;
- (b) the nature and location of the physician's medical practice;
- (c) the scope of practice of the physician assistant-certified and the locations where the physician assistant-certified will practice;
- (d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to act as an alternate supervising physician in the absence of the primary supervising physician;
- (e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and
- (f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the practice of the physician assistant-certified is:

- (a) assigned by the supervising physician;
- (b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and
- (c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member"; inserted (2) and (3) relating to supervision agreement requirements and requirement for providing a copy; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 in (1)(b), at beginning, substituted "is licensed" for "has been approved"; in (2)(a) substituted "license" for "approval"; in (2)(c), at beginning, substituted "scope of practice of" for "duties to be delegated to" and at end substituted "locations where the physician assistant-certified will practice" for "location in which those duties are to be performed"; in (2)(d), after "37-20-101 to", substituted "act as an alternate" for "serve in the place of" and at end substituted "absence of the primary supervising physician" for "event that the supervising physician is unable to supervise the physician assistant-certified temporarily"; in (3) substituted "practice of" for "duties to be delegated to"; and made minor changes in style. Amendment effective April 20, 1993.

1991 Amendment: In (5), at end of first sentence after "practice", deleted "for a period not to exceed 30 calendar days". Amendment effective April 16, 1991.

1989 Amendment: Throughout section changed "physician's assistant" to "physician assistant-certified"; in (1)(a), after "physician", deleted "and unless such employment or use"; at beginning of (1)(c) inserted "has received board approval of a"; in (2)(a) inserted reference to name and approval number of the physician assistant-certified; inserted (2)(e) relating to availability for consultation; inserted (2)(f) regarding other information the Board may consider necessary; inserted (4) regarding submission of new or additional plan; inserted (5) relating to locum tenens utilization plans; and made minor changes in arrangement and phraseology.

Cross-References

Professional service corporations, Title 35, ch. 4.

Administrative Rules

ARM 24.156.1622 Supervision of physician assistant.

37-20-302. Application for and renewal of license — fees. (1) A person desiring to practice as a physician assistant shall submit an application to the department on a form prescribed by the department and pay all applicable fees to the department. The applicant shall provide the authorization necessary for the release of records or other information necessary for licensure to the department. The burden of proving that the applicant has complied with all application requirements is on the applicant. However, the department may make an independent investigation to determine whether the applicant possesses the required qualifications and whether the applicant has ever committed unprofessional conduct.

(2) In order to renew a license, a physician assistant shall pay to the department a renewal fee as prescribed by the board. The renewal fee must be paid before the expiration date of the license, as set forth in department rule. The department shall send renewal notices before the renewal is due. Except as provided in 37-1-138, failure to pay a renewal fee results in the expiration of the license.

History: En. Sec. 4, Ch. 380, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 97, L. 1989; amd. Sec. 5, Ch. 540, L. 1991; amd. Sec. 12, Ch. 419, L. 1993; amd. Sec. 73, Ch. 429, L. 1995; amd. Sec. 28, Ch. 492, L. 1997; amd. Sec. 24, Ch. 224, L. 2003; amd. Sec. 28, Ch. 271, L. 2003; amd. Sec. 63, Ch. 467, L. 2005; amd. Sec. 12, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 467 at beginning after "plan" inserted "must be submitted" (amendment rendered void by Ch. 519 amendment); deleted former (2) through (7) that read: "(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department of labor and industry.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department of labor and industry shall mail a renewal notice prior to the renewal date.

(6) Except as provided in 37-1-138, if the license renewal fee is not paid on or before the renewal date, the board may consider the license lapsed.

(7) Fees received by the department of labor and industry must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 519 deleted former (1) through (6) that read: "(1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed for a period and on a date set by the department of labor and industry.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department of labor and industry shall mail a renewal notice prior to the renewal date.

(6) Except as provided in 37-1-138, if the license renewal fee is not paid on or before the renewal date, the board may consider the license lapsed"; inserted (1) relating to submission of an application to practice; inserted (2) relating to license renewal; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 224 in three places after "department" inserted "of labor and industry"; in (5) after "notice" deleted "no later than 60 days" and deleted former second sentence that read: "A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the license"; and in (6) after "may" substituted "consider" for "revoke" and after "license" substituted "lapsed" for "after giving 30 days' notice to the licensee" and deleted former second sentence that read: "A license may not be revoked for nonpayment of a renewal fee if the licensee pays the renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation." Amendment effective July 1, 2003.

Chapter 271 in (6) at beginning of first sentence inserted "Except as provided in 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 492 in (3) substituted "for a period and" for "annually"; and in (6), in first sentence near beginning, substituted "license renewal" for "annual renewal" and in second sentence, after "if the licensee pays the", deleted "annual". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 at end of (3) substituted "department" for "board"; and in first sentences of (5) and (6), after "date", deleted "set by the board under subsection (3)".

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 419 throughout section substituted references to license for references to certificate and references to licensee for references to certificate holder; in (1), at beginning, deleted "Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified shall pay to the board" and after "fee" inserted "must be paid"; and substituted (2) requiring a locum tenens utilization plan approval fee for "Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified on a locum tenens basis shall pay to the board a locum tenens utilization plan fee in an amount set by the board." Amendment effective April 20, 1993.

1991 Amendment: In (1), at end of first sentence after "board", deleted "not exceeding \$50"; deleted former (2) concerning approval of a utilization plan and notification by Department of Commerce of expiration of Board approval of utilization plan 1 month prior to expiration; deleted former (3) concerning Board renewal of approval of utilization plan under circumstances justifying original approval

and payment of fee; in (2), at end after "board", deleted "not to exceed \$50"; inserted (3) concerning annual renewal of certificate on date set by Board; inserted (4) concerning certificate renewal fee set by Board and payable when certificate renewed; inserted (5) concerning Department sending renewal notice no later than 60 days before renewal date set by Board and certified letter to delinquent certificate holder's last-known address constituting notice of intent to revoke certificate; and inserted (6) concerning Board's ability to revoke certificate for nonpayment of renewal fee upon giving 30 days' notice unless fee plus penalty set by Board is paid on or before date set for revocation.

1989 Amendment: Throughout section changed "physician's assistant" to "physician assistant-certified"; and inserted (4) regarding locum tenens utilization plan fee.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment — Transfer of Function: As enacted, subsection (2) referred to "the department of professional and occupational licensing". The code commissioner changed that reference to "the department of commerce" as required by sec. 3, Ch. 274, L. 1981.

Administrative Rules

ARM 24.156.1617 Application for physician assistant license.

ARM 24.156.1618 Physician assistant fees.

ARM 24.156.1620 Physician assistant license renewal.

37-20-303. Exemptions from licensure requirement. (1) This chapter does not prohibit or require a license as a physician assistant for the rendering of medical or medically related services if the service rendered is within the applicable scope of practice for any of the following individuals:

- (a) a physician assistant providing services in an emergency or catastrophe, as provided in 37-20-410;
- (b) a federally employed physician assistant;
- (c) a registered nurse, an advanced practice registered nurse, a licensed practical nurse, or a medication aide licensed or authorized pursuant to Title 37, chapter 8;
- (d) a student physician assistant when practicing in a hospital or clinic in which the student is training;
- (e) a physical therapist licensed pursuant to Title 37, chapter 11;
- (f) a medical assistant, as provided in 37-3-104;
- (g) an emergency care provider licensed pursuant to Title 50, chapter 6; or
- (h) any other medical or paramedical practitioner, specialist, or medical assistant, technician, or aide when licensed or authorized pursuant to laws of this state.

(2) A licensee or other individual referred to in subsection (1) who is not a licensed physician assistant may not use the title "PA" or "PA-C" or any other word or abbreviation to indicate or induce others to believe that the individual is a physician assistant.

History: En. Sec. 6, Ch. 380, L. 1981; amd. Sec. 16, Ch. 97, L. 1989; amd. Sec. 25, Ch. 224, L. 2003; amd. Sec. 4, Ch. 243, L. 2003; amd. Sec. 13, Ch. 519, L. 2005; amd. Sec. 9, Ch. 220, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 220 in (1)(g) substituted "emergency care provider" for "emergency medical technician". Amendment effective July 1, 2019.

2005 Amendment: Chapter 519 deleted "This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapter 3, 4, 6 through 17, or 31"; inserted (1) listing scope of services not required to be licensed under chapter; and inserted (2) restricting use of PA and PA-C titles or abbreviations. Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 224 near end after "chapters 3" deleted reference to chapter 5; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 243 at end deleted reference to chapter 32. Amendment effective October 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Section 25, Ch. 243, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1989 Amendment: Near beginning substituted "physician assistant-certified" for "physician's assistant" and inserted "or locum tenens utilization plan".

Part 4

Regulation of Practice

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 97, L. 1989, provided: "A statement of intent is required for this bill because [sections 4 and 13] [37-20-404 and 37-20-202] grant or extend rulemaking authority to the board of medical examiners in order to implement the provisions of this bill.

At a minimum, it is intended that the rules address the following topics:

(1) authorization for prescribing, dispensing, and administering drugs by a physician assistant-certified, including the extent and limitations of the prescribing and dispensing authority, required recordkeeping, and refilling of prescriptions; and

(2) considerations pertinent to approval of locum tenens utilization plans."

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

Part Cross-References

Coverage required for services provided by physician assistants, 33-22-114.

37-20-401. Definitions.

As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1731.

(2) "Duties and delegation agreement" means a written contract between the supervising physician and the physician assistant that meets the requirements of 37-20-301.

(3) "Physician assistant" means a member of a health care team, licensed by the board, who provides medical services that may include but are not limited to examination, diagnosis, prescription of medications, and treatment under the supervision of a physician licensed by the board.

(4) "Supervising physician" means a medical doctor or doctor of osteopathy licensed by the board who agrees to a supervision agreement and a duties and delegation agreement.

(5) "Supervision agreement" means a written agreement between a supervising physician and a physician assistant providing for the supervision of the physician assistant.

History: En. Sec. 1, Ch. 97, L. 1989; amd. Sec. 14, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 inserted definitions of duties and delegation agreement, supervising physician, and supervision agreement; deleted definition of locum tenens that read: "'Locum tenens" means the temporary provision of services within the scope of practice of a physician assistant-certified'; substituted physician assistant for physician assistant-certified as defined term, near beginning after "team" substituted "licensed" for "approved", near middle after "include" inserted "but are not limited to", and near end after "treatment" deleted "as approved by the board"; deleted definition of protocol that read: "'Protocol" means the proper relationship between a physician assistant-certified and other health care practitioners and the manner of their interaction"; and made minor changes in style. Amendment effective October 1, 2005.

37-20-402. Criteria for licensing physician assistant.

A person may not be licensed as a physician assistant in this state unless the person:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program accredited by the accreditation review commission on education for the physician assistant or, if accreditation was granted before 2001, accredited by the American medical association's committee on allied health education and accreditation or the commission on accreditation of allied health education programs; and

(3) has taken and passed an examination administered by the national commission on the certification of physician assistants.

History: En. Sec. 2, Ch. 97, L. 1989; amd. Sec. 13, Ch. 419, L. 1993; amd. Sec. 15, Ch. 519, L. 2005; amd. Sec. 17, Ch. 154, L. 2015.

Compiler's Comments

2015 Amendment: Chapter 154 deleted former (4) that read: "(4) holds a current certificate from the national commission on the certification of physician assistants"; and made minor changes in style. Amendment effective July 1, 2015.

2005 Amendment: Chapter 519 in introductory clause substituted "physician assistant" for "physician assistant-certified"; in (2) substituted "accredited by the accreditation review commission on education for the physician assistant or, if accreditation was granted before 2001, accredited by the American medical association's committee on allied health education and accreditation or the commission on accreditation of allied health education programs" for "approved by the American medical association's committee on allied health education and accreditation"; in (3) substituted "pass an examination administered" for "successfully passed an examination recognized"; deleted former (5) that read: "(5) has submitted to the board detailed information on the person's history, education, and experience"; and made minor changes in style. Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 in introductory clause, near beginning, substituted "licensed" for "approved"; and made minor changes in style. Amendment effective April 20, 1993.

37-20-403. Physician assistant as agent of supervising physician — degree of supervision required — scope of practice. (1) A physician assistant is considered the agent of the supervising physician with regard to all duties delegated to the physician assistant and is professionally and legally responsible for the care and treatment of a patient by a physician assistant licensed in accordance with this chapter. A health care provider shall consider the instructions of a physician assistant as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant.

(2) Onsite or direct supervision of a physician assistant by a supervising physician is not required if the supervising physician has provided a means of communication between the supervising physician and the physician assistant or an alternate means of supervision in the event of the supervising physician's absence.

(3) A physician assistant may diagnose, examine, and treat human conditions, ailments, diseases, injuries, or infirmities, either physical or mental, by any means, method, device, or instrumentality authorized by the supervising physician.

History: En. Sec. 3, Ch. 97, L. 1989; amd. Sec. 74, Ch. 429, L. 1995; amd. Sec. 16, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 in (1) at beginning of first sentence substituted "A physician assistant is" for "In establishing protocol, a physician assistant-certified must be" and at end substituted "physician assistant and is professionally and legally responsible for the care and treatment of a patient by a physician assistant licensed in accordance with this chapter" for "physician assistant-certified under the utilization plan" and in second sentence in two places substituted "physician assistant" for "physician assistant-certified" and at end deleted "under the utilization plan"; in (2) substituted "Onsite or direct supervision of a physician assistant by a supervising physician is not required if the supervising physician has provided a means of communication between the supervising physician and the physician assistant or an alternate means of supervision in the event of the supervising physician's absence" for "The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis"; inserted (3) setting forth scope of practice; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 429 deleted (3) that read: "(3) Nothing in this chapter may be construed to conflict with the provisions of 37-3-322."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

Administrative Rules

ARM 24.156.1701 Physician assistant performing radiologic procedures — routine and advanced procedures.

37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority. (1) A physician assistant may prescribe, dispense, and administer drugs to the extent authorized by the supervising physician.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232 is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 34 days.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant shall maintain registration with the federal drug enforcement administration if the physician assistant is authorized by the supervising physician to prescribe controlled substances.

(e) A prescription written by a physician assistant must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

History: En. Sec. 4, Ch. 97, L. 1989; amd. Sec. 14, Ch. 419, L. 1993; amd. Sec. 2, Ch. 327, L. 1995; amd. Sec. 17, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 in (1) near beginning substituted "physician assistant" for "physician assistant-certified" and at end substituted "supervising physician" for "board by rule the utilization plan, or both" and deleted former second sentence that read: "The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician may impose additional limitations on the prescribing and dispensing authority granted by the board"; in (3) substituted "physician assistant" for "physician assistant-certified"; in (3)(d) at beginning substituted "physician assistant" for "physician assistant-certified" and at end inserted language relating to whether controlled substances may be prescribed; in (3)(e) substituted "physician assistant" for "physician assistant-certified"; deleted former (1)(f) that read: "(f) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 327 at end of (3)(b) substituted "not to exceed 34 days" for "not to exceed 72 hours".

1993 Amendment: Chapter 419 in (3)(b) increased prescribing, dispensing, and administration authority of physician assistant-certified from 48 hours to 72 hours; deleted former (3)(e) that read: "(e) Drugs dispensed by a physician assistant-certified must be repackaged by a licensed pharmacist, except that samples provided by a pharmaceutical company representative may be dispensed"; and made minor changes in style. Amendment effective April 20, 1993.

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

37-20-405. Billing. A supervising physician, office, firm, institution, or other entity may bill for a service provided by a supervised physician assistant.

History: En. Sec. 5, Ch. 97, L. 1989; amd. Sec. 15, Ch. 419, L. 1993; amd. Sec. 18, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 inserted "a service provided by a supervised" and substituted "physician assistant" for "physician assistant-certified services". Amendment effective October 1, 2005.

1993 Amendment: Chapter 419 after "physician" inserted "office, firm", after "institution" inserted "or other entity", and deleted "where services are delivered"; and made minor changes in style. Amendment effective April 20, 1993.

37-20-406. Liaison to board. The Montana academy of physician assistants may appoint one person to serve as a nonvoting liaison to the board to represent the interests of physician assistants.

History: En. Sec. 6, Ch. 97, L. 1989; amd. Sec. 19, Ch. 519, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 519 substituted "may appoint" for "shall elect". Amendment effective October 1, 2005.

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

37-20-407 and 37-20-408 reserved.

37-20-409. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 419, L. 1993.

37-20-410. Participation in disaster and emergency care — liability of physician assistant and supervising physician. (1) A physician assistant licensed in this state, licensed or authorized to practice in another state, territory, or possession of the United States, or credentialed as a physician assistant by a federal employer who provides medical care in response to an emergency or a federal, state, or local disaster may provide that care either without supervision as required by this chapter or with whatever supervision is available. The provision of care allowed by this subsection is limited to the duration of the emergency or disaster.

(2) A physician who supervises a physician assistant providing medical care in response to an emergency or disaster as described in subsection (1) need not comply with the requirements of this chapter applicable to supervising physicians.

(3) A physician assistant referred to in subsection (1) who voluntarily, gratuitously, and other than in the ordinary course of employment or practice renders emergency medical care during an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is provided somewhere other than in a health care facility as defined in 50-5-101 or a physician's office where those services are normally provided.

(4) A physician who supervises a physician assistant voluntarily and gratuitously providing emergency care at an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in supervising the physician assistant if the injury is caused by simple or ordinary negligence on the part of the physician assistant providing the care or on the part of the supervising physician.

History: En. Sec. 31, Ch. 519, L. 2005.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

37-20-411. Unlawful acts. A person who performs acts constituting the practice of medicine in this state acts unlawfully if the person:

(1) has not been issued a license pursuant to this chapter and is not exempt from the licensing requirement of this chapter; or

(2) has received a license pursuant to this chapter but has not completed a duties and delegation agreement or a supervision agreement.

History: En. Sec. 30, Ch. 519, L. 2005.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.