

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.156.401, 24.156.409,)
24.156.1306, 24.156.1403, and)
24.156.2701, the adoption of NEW)
RULES I through V, and the repeal of)
ARM 24.156.501, 24.156.603,)
24.156.619, 24.156.625, 24.156.629,)
24.156.802, 24.156.1001,)
24.156.1005, 24.156.1006,)
24.156.1007, 24.156.1301,)
24.156.1303, 24.156.1304,)
24.156.1307, 24.156.1308,)
24.156.1309, 24.156.1401,)
24.156.1404, 24.156.1407,)
24.156.1412, 24.156.1413,)
24.156.1601, 24.156.1617,)
24.156.1625, 24.156.1626,)
24.156.2705, 24.156.2707,)
24.156.2713, and 24.156.2775)
pertaining to the board of medical)
examiners)

TO: All Concerned Persons

1. On July 5, 2022, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment, adoption, and repeal of the above-stated rules. 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/85639923009>
Meeting ID: 856 3992 3009, Passcode: 900353

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 856 3992 3009, Passcode: 900353

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 Medical Examiners (board) no later than 5:00 p.m., on June 28, 2022, to advise us of the nature of the accommodation that you

need. Please contact Samuel Hunthausen, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 711; facsimile (406) 841-2305; or dlibsmed@mt.gov (board's e-mail).

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

24.156.401 MEDICAL ASSISTANT – DELEGATION AND SUPERVISION

(1) through (3)(b) remain the same.

(c) personally provide onsite or direct supervision as defined by ARM 24.156.501 [NEW RULE IV] to a medical assistant to whom the health care provider has delegated:

(i) through (4) remain the same.

AUTH: 37-3-104, 37-3-203, MCA

IMP: 37-3-102, 37-3-104, MCA

REASON: Reasonable necessity exists to amend the rule to correct the cross-reference, based on the proposed repeal of ARM 24.156.501 in this proposal notice. Necessity exists to insert "or" to adjust for the revised definitions of supervision proposed in this rulemaking.

24.156.409 FEE SCHEDULE (1) and (1)(a) remain the same.

(b) Physician letter of qualification for interstate compact 225 300

(c) through (2)(i) remain the same.

(j) Emergency medical responder 20

(k) Emergency medical technician 35

(l) Advanced emergency medical technician 55

(m) Paramedic 75

(3) through (6) remain the same.

AUTH: 37-1-134, 37-3-203, 37-3-307, 37-3-308, 37-3-356, 37-3-802, 37-3-804, 37-6-106, 37-13-201, 37-20-202, 37-25-201, 50-6-203, MCA

IMP: 37-1-134, 37-1-141, 37-3-305, 37-3-307, 37-3-308, 37-3-309, 37-3-313, 37-3-356, 37-3-804, 37-6-302, 37-13-302, 37-13-304, 37-20-302, 37-25-302, 50-60-203, MCA

REASON: There is reasonable necessity to amend (1)(b) because the board is without discretion to adopt a lower fee for the interstate compact than that fee set by the compact itself. There were approximately 50 compact license applications in the last year. As a result, this increase is expected to generate approximately \$3,750 in revenue. There is reasonable necessity to adopt (2)(j) through (m) to set rates for license renewals. These rates are identical to initial licensure fees but were inadvertently excluded from adoption in prior rulemaking. Because the rates for initial and renewal licensure are the same, the fees are expected to be revenue neutral for the board.

24.156.1306 PROFESSIONAL CONDUCT AND STANDARDS OF PROFESSIONAL PRACTICE (1) A licensee shall conform to generally accepted principles and the standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the Academy of Nutrition and Dietetics or ~~commission~~ Commission on Dietetic Registration, and other professional or governmental bodies.

(2) A licensee who demonstrates appropriate education and experience may engage in the practice of diabetes education as defined and credentialed by the Academy of Nutrition and Dietetics and the American Association of Diabetes Educators.

~~(3) A licensee shall maintain knowledge and skills required for continuing professional competence.~~

AUTH: 37-1-131, 37-25-201, MCA

IMP: 37-1-131, 37-25-201, 37-25-301, MCA

REASON: Amendments to (1) and (2) are proposed to facilitate the repeal of ARM 24.156.1301, which includes definitions for "Academy" and "Commission." Because those terms are used only once in the administrative rules, it is more concise to include the full Academy and Commission names referred to, rather than define the term. Further, such definition required reading multiple rules to understand a single rule. Section (3) is proposed to be stricken because it is duplicative of New Rule III.

24.156.1403 REQUIREMENTS FOR LICENSURE (1) Applicants for licensure ~~must meet the prerequisites for and pass the~~ Foundations of Oriental Medicine, Acupuncture with Point Location, and Biomedicine examinations required for certification in acupuncture by the National Commission for the Certification of Acupuncture and Oriental Medicine, or its successor.

(2) Applicants for licensure must pass the examination in clean needle technique administered by the Council of Colleges for Acupuncture and ~~Oriental~~ Herbal Medicine, or its successor.

AUTH: 37-13-201, MCA

IMP: 37-13-201, MCA

REASON: There is reasonable necessity to amend the rule to reflect the currently accurate name of the Council for Colleges for Acupuncture and Herbal Medicine. The examination requirements are proposed to be updated in keeping with licensure requirements from other states as well as standard educational requirements.

24.156.2701 DEFINITIONS (1) For purposes of the rules set forth in this subchapter, the following definitions apply:

~~(a) "AEMT" means an individual licensed by the board at the level of advanced emergency medical technician.~~

~~(b) "Board" means the Board of Medical Examiners.~~

~~(c) "CIHC" means community-integrated health care as defined under 37-3-102, MCA.~~

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

~~(g) "ECP" means an emergency care provider as defined under 37-3-102, MCA.~~

~~(h) "EMR" means an individual licensed by the board at the level of emergency medical responder.~~

~~(i) "EMS" means an emergency medical service licensed by the Department of Public Health and Human Services pursuant to Title 50, chapter 6, MCA.~~

~~(j) "EMT" means an individual licensed by the board at the level of emergency medical technician.~~

~~(k) through (n) remain the same but are renumbered (d) through (g).~~

~~(o) "NPDB" means the National Practitioner Databank established by Public Law 99-660 (42 USC 11101, et seq.).~~

~~(p) "NREMT" means the National Registry of Emergency Medical Technicians.~~

~~(q) and (r) remain the same but are renumbered (h) and (i).~~

~~(s) "USDOT" means United States Department of Transportation.~~

AUTH: 37-3-203, 50-6-203, MCA

IMP: 37-3-102, 37-3-203, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

REASON: The sections removed are proposed to be relocated in New Rule IV.

4. The proposed new rules are as follows:

NEW RULE I MANAGEMENT OF INFECTIOUS WASTES (1) Each person licensed by the board shall store, transport off premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005, MCA, when this is done as required by the Occupational Safety and Health Administration (OSHA).

AUTH: 37-1-131, 37-6-106, 37-13-201, 37-25-201, 50-6-203 75-10-1006, MCA

IMP: 37-1-131, 50-6-203, 75-10-1006, MCA

REASON: There is reasonable necessity for the adoption of New Rule I to simplify and shorten the administrative rules. While presently multiple rules set forth virtually identical language to what is proposed here, these rules may be consolidated.

NEW RULE II APPLICATION FOR LICENSURE (1) Each application for licensure from the board must include:

- (a) a completed application form;
- (b) the initial license fee; and

- (c) verification of applicable educational requirements.
- (2) The board's designee will obtain a query from the National Practitioner Data Bank. Applicants for podiatric licensure shall cause a disciplinary report from the Federation of Podiatric Medical Boards to be transmitted directly to the board.
- (3) An applicant licensed in any other jurisdiction at any time shall cause the other jurisdictions to submit a current verification of licensure directly to the board.
- (4) An applicant may voluntarily withdraw their application by written request if the application has not appeared on a board agenda. Application fees are not refundable.

AUTH: 37-1-131, 37-3-203, 37-6-106, 37-20-202, 37-25-201, 50-6-203, MCA
IMP: 37-1-131, 37-6-302, 37-20-203, 37-20-302, 37-20-402, 37-25-302,
50-6-203, MCA

REASON: There is reasonable necessity to adopt New Rule II to shorten and simplify the administrative rules. Presently, the board has multiple rules governing license applications. This proposal seeks to simplify the rules by consolidating all such rules into one location, applicable to most all license types.

NEW RULE III UNPROFESSIONAL CONDUCT (1) It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing their scope of practice.

- (2) In addition, the following is unprofessional conduct:
 - (a) failure to cooperate in any investigation of the board or to provide any information requested by the board or its agents;
 - (b) failure to report to the board within thirty days from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the licensee or applicant is a party;
 - (c) abusive billing practices;
 - (d) testifying in court on a contingency basis;
 - (e) administering, dispensing, prescribing, ordering, or otherwise diverting a controlled substance as defined by the federal Food and Drug Administration or its successors, otherwise than in the course of legitimate or reputable professional practice;
 - (f) regarding patient records, to fail to:
 - (i) appropriately secure records;
 - (ii) appropriately document patient care; or
 - (iii) transfer records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;
 - (g) termination of an existing relationship with a patient for whatever reason without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other medical care to be secured;
 - (h) sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice;
 - (i) failure to supervise, appropriately direct, or train individuals under the licensee's supervision according to applicable law, rule, or standards;

- (j) failure to comply with an agreement entered into by the licensee with the medical assistance program;
- (k) for physician assistants, failure to submit to the board a completed supervision agreement prior to commencing practice in Montana;
- (l) while under investigation or during a pending complaint, in Montana or elsewhere, but prior to a determination:
 - (i) withdrawing an application for licensure, certification, or registration; or
 - (ii) voluntarily relinquishing or surrendering of professional or occupational license, certification, or registration;
- (m) engaging in practice under a license issued by the board as the partner, agent, or employee of, or in joint venture with, a person who does not hold an equivalent license for practice. However, this rule does not prohibit:
 - (i) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, MCA, a professional limited liability company under Title 35, chapter 8, MCA, or a professional limited liability partnership under Title 35, chapter 10; or
 - (ii) practicing medicine as the partner, agent, or employee of, or in joint venture with, a hospital, medical assistance facility, or other licensed health care provider; however:
 - (A) there must be a written agreement that the relationship may not affect the independent judgment of the licensee;
 - (B) the independent judgment of the licensee must, in fact, not be affected by the relationship; and
 - (C) the licensee may not be required to refer any patient to a particular provider or supplier or take any other action that the physician or physician assistant determines not to be in the patient's best interest;
- (n) for physicians and physician assistants, failure to report to the board any loss of privileges within 30 days.

AUTH: 37-1-131, 37-1-319, 37-3-202, 37-6-106, 37-13-201, 37-25-201, 50-6-203, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-3-323, 37-3-401, 37-3-405, 37-6-311, 37-25-201, 50-6-203, MCA

REASON: The board presently has one unprofessional conduct rule for each license type. There is reasonable necessity, as part of ongoing efforts to shorten, simplify, and clarify the administrative rules, to consolidate these rules into this single new rule. This new rule further eliminates duplication of statutory provisions in rule.

NEW RULE IV DEFINITIONS AND ABBREVIATIONS (1) As used in this chapter, the following terms are defined:

(a) "Act" means the statutory provisions governing the licensee's scope of practice.

(b) "Applicant" means a person who has applied to take a licensing examination in Montana or who has applied for licensure in Montana.

(c) "Board" means the Board of Medical Examiners created by 2-15-1731, MCA.

(d) "Foreign medical graduate" means a graduate of a medical school that is listed in the World Health Directory of Medical Schools but is not located in a state or territory of the United States or the District of Columbia.

(e) "Health corps physician" means a physician who has applied to participate in the health corps and completed the registration requirements set by the board.

(f) "Intern," "in post-graduate year 1" or "PGY-1" means a person who:

(i) has graduated from an approved medical school;

(ii) is enrolled in a training program approved for first year post-graduates;

(iii) has passed USMLE Steps 1 and 2 or the AOA equivalent; and

(iv) is preparing for or awaiting the results of USMLE Step 3 or the AOA equivalent.

(g) "Licensee" means the current holder of an active license issued by the board.

(h) "Medical student" means a person currently enrolled in or who has graduated from an approved medical school who has not yet entered PGY-1.

(i) "Paramedic" means a level of emergency care provider as established in 50-6-202, MCA.

(j) "Resident" means a person who:

(i) has the degree of medical doctor or doctor of osteopathy from an approved medical school;

(ii) is in post-graduate year 2 (PGY-2) or above;

(iii) has either completed the USMLE Steps 1 and 2 or the AOA equivalent or holds a certificate from the ECFMG; and

(iv) is enrolled in an approved residency program.

(k) "Retired," applicable to the Montana Health Corps Act, means no longer maintaining a private, institutional, or governmental practice for the purposes of monetary remuneration within the United States. Occasional locum tenens work for monetary remuneration will not disqualify a physician from retired status.

(l) "Standards of dietetic practice" means Academy of Nutrition and Dietetics Standards of Practice in Nutrition Care and Standards of Professional Performance for Registered Dietitian Nutritionists and the Academy of Nutrition and Dietetics/Commission on Dietetic Registration Code of Ethics for the Nutrition and Dietetics Profession.

(m) "Supervision" may be of the following types:

(i) "Direct supervision" means the supervisor is physically present with the person being supervised;

(ii) "General supervision" means accepting responsibility for, and overseeing the medical services of, a physician assistant by telephone (voice or text), radio, video, or in person as frequently as necessary considering the location, nature of practice, and experience of the physician assistant;

(iii) "On-site supervision" means the supervisor must be in the facility and quickly available to the person being supervised.

(n) "Surgery" means any procedure in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation.

(2) As used in this chapter, the following abbreviations are identified:

(a) "AEMT" means a licensed advanced emergency medical technician.

(b) "ABMS" means the American Board of Medical Specialties.

(c) "ACGME" means the Accreditation Council for Graduate Medical Education.

(d) "AOA" means the American Osteopathic Association.

(e) "CIHC" means community-integrated health care, as defined under 37-3-102, MCA.

(f) "ECFMG" means the Educational Commission for Foreign Medical Graduates.

(g) "ECP" means a licensed emergency care provider.

(h) "EMR" means a licensed emergency medical responder.

(i) "EMS" means a licensed emergency medical service.

(j) "EMT" means a licensed emergency medical technician.

(k) "NPDB" means the National Practitioner Databank established by Public Law 99-660 (42 U.S.C. 11101, et seq.).

(l) "NREMT" means the National Registry of Emergency Medical Technicians.

(m) "USDOT" means the United States Department of Transportation.

(n) "USMLE" means the United States Medical Licensing Examination or its successor.

AUTH: 37-1-131, 37-3-203, 37-3-301, 37-3-802, 37-13-201, 37-25-201, 50-6-203, MCA

IMP: 37-1-131, 37-3-102, 37-3-201, 37-3-203, 37-3-301, 37-3-305, 37-3-307, 37-3-325, 37-3-326, 37-3-802, 37-3-804, 37-13-201, 37-13-302, 37-25-201, 37-25-302, 50-6-101, 50-6-105, 50-6-201, 50-6-202, 50-6-203, 50-6-301, 50-6-302, MCA

REASON: Reasonable necessity exists to adopt this new rule as part of the effort to simplify and shorten the administrative rules. Presently, the board has multiple definitions sections. This proposal consolidates those definitions into a single rule for ease of use by the public.

NEW RULE V. POINT INJECTION EDUCATION AND TRAINING (1) Point injection is the subcutaneous, intramuscular, and intradermal injection of substances consistent with the practice of acupuncture to stimulate acupuncture points, ashi points, trigger points, motor points, and pathways. Point injection includes trigger points as a subset of acupuncture points and ashi points as recognized in the current practice of acupuncture and Eastern medicine.

(a) Substances for point injection include, but are not limited to, saline, sterile water, and herbs, vitamins in liquid, and homeopathic and nutritional substances which are specifically manufactured for injection by means of hypodermic needles.

(b) Point injection also includes injection of local anesthetics, such as lidocaine and procaine, for reduction of pain during point injection, consistent with the practice of acupuncture and Eastern medicine and training requirements as defined in rule.

(2) To perform point injection, an acupuncturist must be trained in point injection. Only acupuncturists who have NCCAOM Oriental Medicine Certification, which includes specific herbal training requirements and testing, may perform point injection with herbs.

(3) Point injection training requires:

(a) twenty-four contact hours of training including at least eight hours of in person, hands-on experience;

(b) indications, contraindications, and universal precautions;

(c) compounding and administration of the substances authorized for point injection, including aseptic technique, recordkeeping, and storage;

(d) emergency procedures, such as administration of oxygen and responding to adverse reactions and including the use of intramuscular epinephrine. Up to two hours of training in the use of intramuscular epinephrine may be counted toward point injection training. An acupuncturist who holds an additional active license with a scope of practice that includes the authority to prescribe, dispense, or administer epinephrine does not need to meet the requirements of this subsection;

(e) an instructor with the following credentials:

(i) a health care license in good standing with a scope of practice that includes point injection; and

(ii) at least five years of experience in a health care practice that includes point injection; and

(f) providing a successful candidate with:

(i) a certificate of successful completion of the training; and

(ii) a course syllabus which outlines the schedule and curriculum of the training.

(4) Acupuncturists shall order and use traditional oriental and modern medical diagnostic techniques to assist in acupuncture diagnosis, corroboration, monitoring of an acupuncture treatment plan, or referral of a patient to other health care providers.

AUTH: 37-13-201, MCA

IMP: 37-13-103, 37-13-302, MCA

REASON: Reasonable necessity exists to adopt this rule to define the scope of training and education required to perform point injection. This rule implements the requirements of Senate Bill 121 (2021), which are included within the definition of acupuncture point injection. To ensure the safe practice of this technique and to protect public safety and health, the board proposes this new rule.

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

24.156.1006 MANAGEMENT OF INFECTIOUS WASTES

AUTH: 37-1-131, 37-6-106, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1006, MCA

24.156.1308 MANAGEMENT OF INFECTIOUS WASTES

AUTH: 37-1-131, 37-25-201, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1006, MCA

24.156.1413 MANAGEMENT OF INFECTIOUS WASTES

AUTH: 37-1-131, 37-13-201, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1006, MCA

24.156.1626 MANAGEMENT OF INFECTIOUS WASTES

AUTH: 37-1-131, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1006, MCA

24.156.2775 MANAGEMENT OF INFECTIOUS WASTES

AUTH: 50-6-203, MCA
IMP: 37-1-131, 50-6-203, MCA

REASON: There is reasonable necessity to repeal the foregoing rules because they are substantively identical and are proposed to be replaced with New Rule I. Repeal of these rules furthers the interests of the Red Tape Relief Initiative of simplicity, shortening, and clarification of administrative rules.

24.156.603 APPLICATIONS – EXPEDITED LICENSURE

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-101, 37-3-202, 37-3-305, 37-3-306, 37-3-309, MCA

24.156.1001 APPLICATION FOR LICENSURE

AUTH: 37-3-203, 37-6-106, MCA
IMP: 37-6-302, MCA

24.156.1303 LICENSURE APPLICATION

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-25-302, MCA

24.156.1304 APPLICATION FOR LICENSURE

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-1-131, 37-25-302, MCA

24.156.1404 APPLICATION FOR LICENSURE

AUTH: 37-13-201, MCA
IMP: 37-13-201, 37-13-302, MCA

24.156.1617 APPLICATION FOR PHYSICIAN ASSISTANT LICENSE

AUTH: 37-1-131, 37-20-202, MCA
IMP: 37-1-131, 37-20-203, 37-20-302, 37-20-402, MCA

24.156.2713 ECP LICENSE APPLICATION

AUTH: 37-1-131, 50-6-203, MCA
IMP: 37-1-131, 50-6-203, MCA

REASON: Reasonable necessity exists to repeal the foregoing rules because they are incorporated into New Rule II. Repeal of these rules furthers the interests of the Red Tape Relief Initiative of simplicity, shortening, and clarification of administrative rules. In addition, ARM 24.156.603 is no longer necessary because it predates and duplicates the intent of the physician licensure compact. Its continuing relevant provisions are therefore duplicative of 37-3-356, MCA.

24.156.619 OBLIGATION TO REPORT TO BOARD

AUTH: 37-1-131, 37-1-319, 37-3-202, MCA
IMP: 37-1-131, 37-1-319, 37-3-323, 37-3-401, 37-3-405, MCA

24.156.1007 OBLIGATION TO REPORT TO BOARD

AUTH: 37-1-131, 37-1-319, 37-6-106, MCA
IMP: 37-1-131, 37-1-319, 37-6-311, MCA

24.156.1309 OBLIGATION TO REPORT TO THE BOARD

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-1-131, 37-25-201, MCA

24.156.1407 OBLIGATION TO REPORT TO THE BOARD

AUTH: 37-1-131, 37-13-201, MCA
IMP: 37-1-131, MCA

24.156.2707 REPORTING TO THE BOARD

AUTH: 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: Reasonable necessity exists to repeal the foregoing rules because they are incorporated by reference into New Rule III. Repeal of these rules furthers the interests of the Red Tape Relief Initiative of simplicity, shortening, and clarification of administrative rules.

24.156.625 UNPROFESSIONAL CONDUCT

AUTH: 37-1-319, 37-3-203, MCA

IMP: 37-1-131, 37-1-316, 37-3-202, 37-3-305, 37-3-309, 37-3-323, MCA

24.156.1005 UNPROFESSIONAL CONDUCT

AUTH: 37-1-319, 37-6-106, MCA

IMP: 37-1-316, 37-6-311, MCA

24.156.1307 UNPROFESSIONAL CONDUCT

AUTH: 37-1-319, 37-25-201, MCA

IMP: 37-1-316, 37-25-308, MCA

24.156.1412 UNPROFESSIONAL CONDUCT

AUTH: 37-1-136, 37-1-319, 37-13-201, MCA

IMP: 37-1-308, 37-1-309, 37-1-310, 37-1-311, 37-1-312, 37-1-316, 37-1-319, 37-13-201, MCA

24.156.1625 UNPROFESSIONAL CONDUCT

AUTH: 37-1-319, 37-20-202, MCA

IMP: 37-1-316, 37-1-319, 37-3-202, 37-20-403, MCA

24.156.2705 UNPROFESSIONAL CONDUCT

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The foregoing rules are proposed to be repealed in favor of a consolidated unprofessional conduct rule applicable to all license types (New Rule III). Additionally, these rules contained a variety of unprofessional conduct types which were duplicative of statute.

24.156.501 DEFINITIONS

AUTH: 37-3-203, MCA

IMP: 37-3-102, 37-3-201, 37-3-305, 37-3-307, 37-3-325, 37-3-326, MCA

REASON: The definitions in this rule are consolidated into New Rule IV.

24.156.629 DEFINITIONS

AUTH: 37-1-131, 37-3-203, 37-3-802, MCA

IMP: 37-1-131, 37-3-802, 37-3-804, MCA

REASON: The terms "board," "health corps physician," "licensee," and "retired" have been recodified in New Rule IV. Transferring these rules serves the interests of shortening, clarifying, and simplifying the administrative rules so that all definitions are centralized, and terms defined in multiple rules are defined only once. The term "Montana Health Corps" was not used in the administrative rules and was therefore unnecessary.

24.156.802 DEFINITIONS

AUTH: 37-3-203, 37-3-301, MCA

IMP: 37-3-102, 37-3-301, MCA

REASON: The definitions in this rule were unnecessary or have been recodified in New Rule IV. Though defined, "in-person encounter" was the plain language meaning of the term. As such, further definition was unnecessary. The defined term "physician-patient relationship" is duplicative of the requirements set forth in ARM 24.156.813 for the establishment of such relationship. The term "practice of telemedicine" solely adopted the statutory definition of the term. Administrative rules are not to duplicate statute unnecessarily. The term "licensee" is incorporated in New Rule IV.

24.156.1301 DEFINITIONS

AUTH: 37-1-131, 37-25-201, MCA

IMP: 37-25-201, 37-25-302, MCA

REASON: Definitions set forth in this rule were unnecessary. The terms Academy and Commission could be readily included in their entirety in ARM 24.156.1306, which was the only rule reliant on the terms. The term "act," though defined, was nowhere used. The definition for standards of dietetic practice is recodified in New Rule IV.

24.156.1401 DEFINITIONS

AUTH: 37-1-131, 37-13-201, MCA

IMP: 37-13-201, 37-13-302, MCA

REASON: The definition of "examinations" is not needed because the term is not used without defining it more specifically in rule. The definition of "Council of Colleges for Acupuncture and Oriental Medicine" is not needed because the

definition defines the substantive work of the organization, which is set forth elsewhere in rule. Definitions (2) and (4) merely set forth predecessor organizations. It is unnecessary to state in rule these predecessor organizations.

24.156.1601 DEFINITIONS

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, 37-20-403, MCA

REASON: The definitions from this rule are proposed to be consolidated into New Rule IV.

6. 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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., July 8, 2022.

7. An electronic copy of this notice of public hearing is available at <http://boards.bsd.dli.mt.gov/med>. Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons wishing to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies the intent to receive notices of all board administrative rulemaking proceedings or a particular subject matter. The request must indicate whether e-mail or standard mail is preferred and may be sent or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to (406) 841-2305; e-mailed to dlibsmed@mt.gov; or by completing a request form at any rules hearing held by the board.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled by telephonic communication on March 7, 2022, and by electronic communication on March 7, 2022, March 8, 2022, and April 18, 2022.

10. Pursuant to 2-4-111, MCA, the board has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
CHRISTINE EMERSON, NUTRITIONIST,
PRESIDENT

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 31, 2022.