

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

In the matter of the amendment of)
ARM 24.156.1304 and 24.156.1404)
application for licensure, 24.156.1623)
chart review, 24.156.2701 definitions,)
24.156.2711 ECP licensure)
qualifications, 24.156.2713 ECP)
license application, 24.156.2718)
continuing education and refresher)
requirements, 24.156.2720 ECP)
training courses, 24.156.2732 medical)
direction, 24.156.2751 levels of ECP)
licensure including endorsements,)
24.156.2771 ECP scope of practice,)
and the adoption of New Rule I CIHC)
endorsement)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On February 11, 2020, at 2:00 p.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

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 no later than 5:00 p.m., on February 4, 2020, 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 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdmed@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonably necessary to amend the rules throughout to provide consistency, simplicity, better organization, and ease of use for the reader and update out-of-date processes with current, standardized department procedures.

The 2019 Montana Legislature enacted Chapter 220, Laws of 2019 (Senate Bill 38), an act generally revising emergency care provider laws and allowing emergency care providers to be involved in community-integrated health care services. The bill was signed by the Governor on May 1, 2019 and became effective July 1, 2019. Department staff, with collaboration from the Department of Public Health and Human Services, recommended new rules and rule amendments to the board. The board is now proposing to amend certain rules and adopt one new rule

to implement the legislation by establishing the qualifications and process for licensees to obtain the emergency care provider endorsement for community-integrated health care. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

Authority and implementation citations are being amended throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority.

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

24.156.1304 APPLICATION FOR LICENSURE (1) and (1)(a) remain the same.

(b) the initial license fee; and

(c) a copy of the registration by the commission; ~~and~~

~~(d) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report.~~

(2) The board or its designee will obtain a query from the National Practitioner Data Bank for each applicant.

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

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

REASON: Submitting a "self-query" from the National Practitioner Data Bank (NPDB) involves an applicant seeking a report from the NPDB, waiting to receive the report via the U.S. Postal Service, then mailing the unopened envelope containing the report to the board. If an applicant accidentally or intentionally opens the envelope prior to mailing it to the board, the board cannot accept the report and must seek a new one, which delays the licensure process.

Previously, the board removed the requirement for physicians, physician assistants, podiatrists, and emergency care providers to request and submit the unopened paper NPDB self-queries. Currently, only nutritionist and acupuncturist license applicants are still required by rule to obtain self-queries. The board is amending this rule and ARM 24.156.1404 to remove the self-query requirement for nutritionist and acupuncturist licensees for consistency and to reduce licensure processing time.

Department staff are trained and prepared to obtain NPDB reports for all applicants and the financial cost to the board and department will be minimal. Further, the applications will be processed faster and with less effort by applicants.

24.156.1404 APPLICATION FOR LICENSURE (1) An applicant for an acupuncture license shall submit an application, ~~on a form prescribed by the department. The application must be complete and accompanied by the appropriate fees, and the following information and/or documentation:~~

~~(a) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report;~~

(b) remains the same but is renumbered (a).

~~(c)~~ (b) applicant's clean needle exam results from the Council of Colleges of Acupuncture and Oriental Medicine or its successor; and

~~(d)~~ (c) acupuncture certification examination results provided by the National Commission for the Certification of Acupuncture and Oriental Medicine; and

~~(e) copy of birth certificate or driver's license.~~

(2) The board or its designee will obtain a query from the National Practitioner Data Bank for each applicant.

(2) remains the same but is renumbered (3).

~~(3) Applicants whose applications are received, processed, and determined to be incomplete will be sent a letter from the board office specifying the deficiencies which may include, but not be limited to, appropriate fees, verifications, character references, and any other supplemental information the board or its designee deems appropriate. An incomplete application will be held for a period of one year at which time the application will be treated as an expired application and all fees will be forfeited. The applicant may correct any deficiencies and submit missing or additionally requested information or documentation necessary to complete the application within one year from the date the initial application is received in the board office.~~

(4) The applicant may voluntarily withdraw the application prior to ~~the one-year deadline set forth in (3)~~ being placed on a board agenda by submitting a written request for withdrawal in writing to the board office. All application fees submitted will be forfeited.

~~(5) After withdrawal of an application, the applicant will be required to submit a new application, including supporting documentation and appropriate fees, to begin the licensing and verification process again.~~

~~(6) Completed applications shall be reviewed by the board or its designee, which may request such additional information or clarification of information provided in the application as deemed reasonably necessary.~~

AUTH: 37-13-201, MCA

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

REASON: See REASON for ARM 24.156.1304.

Additionally, board legal counsel recommended the board strike several provisions from this rule since application processing for all boards is addressed in the department's standardized application and licensure procedures. To align with the standardized procedures, the board is also simplifying (4) regarding voluntary application withdrawal.

24.156.1623 CHART REVIEW (1) Chart review for a physician assistant having less than one year of full-time practice experience from the date of initial licensure in Montana must be 20 percent for the first six months of practice, and then may be reduced to 10 percent for the next six months, on a monthly basis, for each supervision agreement.

(2) remains the same.

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-131, 37-20-101, 37-20-301, MCA

REASON: At the June 2019 meeting of the Montana Academy of Physician Assistants (MTAPA) the board's executive officer was questioned about whether ARM 24.156.1623(1) applied to all newly licensed PAs in Montana, or whether "initial licensure" could mean licensure in other states, in which case (1) would not apply to PAs with more than one year of full-time experience outside of Montana prior to Montana licensure. The board concluded that all PAs who receive a Montana license must be subject to the minimums stated in (1) regardless of other licensure or experience in other states prior to Montana licensure. The board determined that the rule could be clearer in this regard and is amending the rule to specify that initial licensure in Montana is the trigger for the minimums stated in (1).

24.156.2701 DEFINITIONS (1) through (1)(b) remain the same.

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

(c) through (s) remain the same but are renumbered (d) through (t).

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

24.156.2711 ECP LICENSURE QUALIFICATIONS (1) and (1)(a) remain the same.

(b) possesses a current active or inactive NREMT certification equal to or greater than the level applied for, or successfully completes a written and practical third-party examination approved by the board, or provides a current unrestricted EMR, EMT, AEMT, or paramedic substantially equivalent ECP license or certification in another state ~~in which the applicant was originally tested and~~ which has a complaint process;

~~(c) provides all the information necessary to establish eligibility for licensure according to the board's requirements;~~

(d) and (e) remain the same but are renumbered (c) and (d).

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

IMP: 37-1-304, 50-6-203, MCA

REASON: Following a request by the department's licensing bureau, board legal counsel recommended the board amend this rule to allow ECP licensees without NREMT registration to provide a "substantially equivalent" license or certification from another state as their credential for licensure rather than a specified type of license. This amendment reflects the 2019 Legislature's passage of House Bill 105, which requires boards to issue licenses to out-of-state applicants if the out-of-state licensure standards are substantially equivalent to Montana's. Following staff recommendations to address unnecessary licensure delays, the board is deleting the requirement from (1)(b) that out-of-state applicants must have tested for that

credential in that licensure state. The board is striking (1)(c) as it is addressed in the department's standardized application procedures.

24.156.2713 ECP LICENSE APPLICATION (1) remains the same.

(2) The board or its designee will obtain a query from the NPDB for each applicant.

(3) and (4) remain the same.

(5) Applicants licensed in another state or jurisdiction shall cause all states and jurisdictions in which the applicant holds or has ever held a license or certification to submit a current verification of licensure directly to the board on behalf of the applicant.

(6) remains the same.

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

IMP: ~~37-1-104~~, 37-1-131, 50-6-203, MCA

REASON: The board is amending (2) to ensure that designated department staff can request the NPDB query for an ECP applicant. The department's licensing bureau requested this change following the adoption and implementation of amendments in MAR Notice No. 24-156-85 in 2019. Additionally, the licensing bureau suggested the board amend (5) to add "or certification" because some jurisdictions issue a certificate as opposed to a license.

24.156.2718 CONTINUING EDUCATION AND REFRESHER

REQUIREMENTS (1) All licensed ECPs are required to complete continuing education (CE) and refresher requirements prior to their license expiration date.

(a) through (4) remain the same.

(5) The lead instructor is responsible for the quality, consistency, and management of the refresher training at the EMR and EMT levels and shall maintain records of all courses conducted including an agenda and detailed student performances that document the licensee's ability demonstrated during the refresher.

(6) The medical director is responsible for the quality, consistency, and management of the refresher training at the EMT with endorsement(s), AEMT, and paramedic levels. The medical director may assign duties as appropriate, but retains the overall responsibility for the refresher.

(7) All ECPs shall ~~submit upon renewal an affidavit stating that the ECP is competent in the licensure level skills, including endorsement skills~~ affirm understanding of their recurring duty to comply with CE requirements as part of license renewal.

~~(a) Affidavits of EMR and EMT levels shall be signed by both the ECP and a lead instructor or medical director.~~

~~(b) Affidavits of EMT with endorsement(s), AEMT, and paramedic levels shall be signed by both the ECP and their medical director.~~

(a) The ECP is responsible for maintaining documentation of completed CE and refresher and their medical director's authorization/attestation of continued

competence (including endorsement skills) on a board-approved form which shall be made available to the board upon request.

(c) remains the same but is renumbered (b).

~~(8) Documentation of all CE and continued competence must be retained by the ECP, and made available to the board upon request.~~

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: Following the 2019 rule amendments of MAR Notice No. 24-156-85, licensing staff recommended several changes to this rule to address potential confusion during future ECP renewal periods and continuing education audits. Board counsel concurred, and the board is now amending (1) to specify that "expiration date" means the license expiration date and not a different date. Further, the board is amending (5) and (6) to clarify the responsibilities of lead instructors and medical directors for refresher trainings and mirror the provisions of ARM 24.156.2720.

Following a recommendation by department legal staff, the board is amending (7) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion. Other amendments to (7) clarify that licensees must maintain CE documentation and provide it to the board upon request. With these amendments, the board is striking (8) as unnecessarily duplicative.

24.156.2720 ECP TRAINING COURSES (1) through (1)(c) remain the same.

(d) a final competency evaluation including a practical skill evaluation; and

(e) certificate of successful completion which states:

(i) full name of student;

(i) through (iii) remain the same but are renumbered (ii) through (iv).

(2) remains the same.

~~(3) All EMR and EMT level courses must designate a lead instructor who shall maintain overall responsibility for the quality, consistency, and management of the course.~~

(4) (3) All AEMT and paramedic level levels of ECP courses must designate a lead instructor and a medical director. The lead instructor is under the supervision of the board and medical director for these courses.

(5) remains the same but is renumbered (4).

~~(6) (5)~~ The lead instructor of an EMR course shall:

(a) document student skill and proficiency on board-approved forms issue a certificate as provided under (1)(e);

(b) remains the same.

(c) provide at least one instructor per six students when practical skills are taught or evaluated.

~~(7) (6)~~ The lead instructor of an EMT course shall:

~~(a) document student skill and proficiency on board-approved forms issue a certificate as provided under (1)(e);~~

~~(b) remains the same.~~

~~(c) provide at least one instructor per six students when practical skills are taught or evaluated; and~~

~~(d) provide the clinical experience as specified under (2)(a); and,~~

~~(e) have access to a medical director who is available for consult.~~

~~(8) (7) The lead instructor and medical director of an AEMT or paramedic course shall:~~

~~(a) document student skill and proficiency on board-approved forms issue a certificate as provided under (1)(e);~~

~~(b) through (d) remain the same.~~

~~(e) provide sufficient patient ~~volume~~ accessibility to allow students to complete all clinical experiences within the course dates.~~

~~(9) (8) Requests for extension of required course completion times stated in (8)(c) (7)(c) must be submitted in writing and may be granted by the board or its designee.~~

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: Since this rule's April 27, 2019 effective date, licensing staff provided several suggested amendments to board legal counsel to clarify the reporting requirements of this rule and avoid potential licensee confusion. Following the recommendations and additional discussion, the board is amending several sections to increase clarity and reduce staff and licensee questions.

The board is amending (1)(d) to require a practical skill evaluation to ensure licensure applicants have appropriate practical skills that may not be evaluated by NREMT during that organization's certification process. Further, the board is amending (1)(e) per board counsel recommendation to require that certificates of successful ECP course completion include the student's full name. Because this is not currently required, licensing staff has received certificates with no name.

The board is amending (6) regarding the responsibilities of lead instructors for EMR and EMT courses in evaluating practical skills and issuing certificates. Board counsel recommended the changes to address questions and confusion in this area.

24.156.2732 MEDICAL DIRECTION (1) through (10) remain the same.

(11) A medical director may not unilaterally alter a patient care plan developed by a physician, PA, or APRN for care provided by an ECP with a CIHC endorsement.

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

24.156.2751 LEVELS OF ECP LICENSURE INCLUDING ENDORSEMENTS

(1) through (1)(a)(i) remain the same.

- (ii) naloxone; ~~and~~
- (iii) lead instructor; and
- (iv) CIHC.
- (b) through (b)(iv) remain the same.
- (v) naloxone; ~~and~~
- (vi) lead instructor; and
- (vii) CIHC.
- (c) and (c)(i) remain the same.
- (ii) AEMT-99; ~~and~~
- (iii) lead instructor; and
- (iv) CIHC.
- (d) remains the same.
- (i) critical care paramedic; ~~and~~
- (ii) lead instructor; and
- (iii) CIHC.

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

24.156.2771 ECP SCOPE OF PRACTICE (1) through (7)(b) remain the same.

(c) practice at the EMR level, even if the ECP is licensed at a higher level in another state, unless the individual is licensed at an EMT with endorsement(s), AEMT, or paramedic level, and the federally managed incident has medical direction provided by a Montana licensed physician approved by the board as a medical director, and the physician authorizes the individual to function beyond the basic EMR level;

(d) through (8) remain the same.

~~(9) In the event of an emergency response in which chemical agents are used or suspected as being used, ECPs at all levels who are appropriately trained are authorized by the board to carry antidote auto-injector kits and administer them as instructed to themselves and any others. Instruction in the use of antidote kits is required in all ECP initial and refresher courses.~~

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: When the board eliminated all references to the "basic" level of ECP licensure in MAR Notice No. 24-156-85, a reference in this rule was overlooked. The board is now removing the remaining reference from (7)(c). Additionally, public comments received in that rulemaking project indicated that (9) is unnecessary and already addressed through statewide practice guidelines. The board was unable to make such a substantial change in that project's final notice and is now amending the rule accordingly.

5. The proposed new rule is as follows:

NEW RULE I CIHC ENDORSEMENT (1) An applicant for CIHC endorsement shall submit an application, the appropriate fees, and:

(a) verification of completion of a board-approved curriculum in community-integrated health care provided by an accredited institution of higher learning, which must include 48 hours of clinical experience; and

(b) attestation of a minimum of one year of experience at the applicant's current level of licensure.

(2) An ECP acting under a current CIHC endorsement shall:

(a) act within their scope of practice according to the Montana ECP Practice Guidelines;

(b) follow the patient care plan developed by the physician, PA, or APRN directing the CIHC to their patient, which may not be unilaterally altered by the ECP's medical director; and

(c) consult their medical director regarding scope of practice.

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

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., February 14, 2020.

7. An electronic copy of this notice of public hearing is available at www.medicalboard.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.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on December 2, 2019, by electronic mail and December 5, 2019, by telephone and U.S. Postal Service mail.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.1304, 24.156.1404, 24.156.1623, 24.156.2701, 24.156.2711, 24.156.2713, 24.156.2718, 24.156.2720, 24.156.2732, 24.156.2751, and 24.156.2771 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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to dlibsmed@mt.gov.

11. Samuel Hunthausen, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
ANA DIAZ, Ph.D.
PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.