

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

In the matter of the amendment of)
ARM 24.156.1601 definitions,) NOTICE OF AMENDMENT AND
24.156.1604 training of student) REPEAL
physician assistants, 24.156.1617)
application for physician assistant)
license, 24.156.1618 physician)
assistant fees, 24.156.1621 reporting)
to the board, 24.156.1622 supervision)
of physician assistant, 24.156.1624)
patient rights, 24.156.1625)
unprofessional conduct, 24.156.1626)
management of infectious wastes, and)
the repeal of 24.156.1620 physician)
assistant license renewal)

TO: All Concerned Persons

1. On August 28, 2020, the Board of Medical Examiners (board) published MAR Notice No. 24-156-87 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1561 of the 2020 Montana Administrative Register, Issue No. 16.

2. On September 22, 2020, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the September 25, 2020 deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

Comments 1 and 2 relate to ARM 24.156.1601 DEFINITIONS

COMMENT 1: Numerous commenters supported the proposed changes to ARM 24.156.1601 and specifically the amendments to the "direct supervision" definition.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

COMMENT 2: Numerous commenters suggested the board strike the definition of "direct supervision" and change "general supervision" in (3) to "supervision." The commenters stated that circumstances where supervising physicians are "physically present" are rare and believed their proposed changes would more accurately reflect the role of PAs within health care and the movement toward a more collaborative

practice approach. The commenters stated the distinction between "direct" and "general" supervision is already causing confusion among licensees.

RESPONSE 2: The commenters' suggested amendments exceed the scope of the proposed changes and therefore cannot be accomplished in a final notice of adoption.

Comments 3 and 4 relate to ARM 24.156.1617 APPLICATION FOR PHYSICIAN ASSISTANT LICENSE

COMMENT 3: Numerous commenters requested the board provide greater specificity regarding the board-approved online training for PAs and supervising physicians in (1)(d), particularly whether the training is intended to focus on the regulation of the supervision relationship and supervisory obligations. The commenters also suggested the rule specify that a certificate of completion indicates training attendance and not that the PA had passed a test on the training materials.

RESPONSE 3: The commenters' suggested amendments exceed the scope of the proposed changes and therefore cannot be accomplished in a final notice of adoption. Additionally, the board explained in this rule's reasonable necessity its intent to identify a "new online education module and test." The rule as proposed allows the board future flexibility in requirements, platforms, etc.

COMMENT 4: Many commenters requested the board clarify who is responsible for the cost of the National Practitioner Data Base query in (2).

RESPONSE 4: The board pays for the NPDB query. This language was previously added to rules for other license types and the board wishes to maintain consistency.

COMMENT 5: Numerous commenters support the proposed amendments to ARM 24.156.1621.

RESPONSE 5: The board appreciates all comments received during the rulemaking process.

Comments 6 through 10 relate to ARM 24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT

COMMENT 6: Several commenters requested the board provide greater specificity regarding the board-approved online training for PAs and supervising physicians in (2), particularly whether the training is intended to focus on the regulation of the supervision relationship and supervisory obligations. The commenters also suggested the rule specify whether a certificate of completion indicates training attendance or that the PA passed a test on the training materials.

RESPONSE 6: See RESPONSE 3.

COMMENT 7: Numerous commenters fully supported the proposed amendments to (3), stating that it more accurately reflects how supervision occurs, especially with the proliferation of telemedicine.

RESPONSE 7: The board appreciates all comments received during the rulemaking process.

COMMENT 8: One commenter suggested the board remove the minimum requirement that a supervising physician communicate with a supervisee PA once a month in (3). The commenter believed there should be daily communication between the PA and supervising physician and that inadequate supervision is occurring today. The commenter believed the monthly communication requirement is a "waste of time" and is not adequately enforced.

RESPONSE 8: The board cannot make significant amendments to the rule in this final notice of adoption. The board does not believe the requirement is a "waste of time" and concluded that the communication requirement between the supervising physician and supervised PA provides appropriate minimum guidelines for supervision and oversight of PA practice.

COMMENT 9: Numerous commenters suggested the board remove the classification of "general supervision" from (1)(c), believing that direct supervision best protects patients. The commenters pointed to the differences in training between PAs and dermatologist physicians and argued that optimal care occurs when PAs are under the direct supervision of a qualified physician.

RESPONSE 9: The commenters' suggested amendments exceed the scope of the proposed changes and therefore cannot be accomplished in a final notice of adoption.

COMMENT 10: Numerous commenters suggested the board strike the definition of "direct supervision" and change "general supervision" in (1)(c) to "supervision." The commenters stated that circumstances where supervising physicians are "physically present" are rare and stated the distinction between "direct" and "general" supervision is already causing confusion among licensees.

RESPONSE 10: The commenters' suggested amendments exceed the scope of the proposed changes and therefore cannot be accomplished in a final notice of adoption.

COMMENT 11: Numerous commenters supported the proposed amendments to ARM 24.156.1625.

RESPONSE 11: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.156.1601, 24.156.1604, 24.156.1617, 24.156.1618, 24.156.1621, 24.156.1622, 24.156.1624, 24.156.1625, and 24.156.1626 exactly as proposed.

5. The board has repealed ARM 24.156.1620 exactly as proposed.

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

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

/s/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 31, 2020.