

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.156.403, 24.156.405,) REPEAL
24.156.813, 24.156.1622, and)
24.156.1623 and the repeal of ARM)
24.156.1621, 24.156.1624, and)
24.156.1701 pertaining to physician)
assistants)

TO: All Concerned Persons

1. On August 25, 2023, the Board of Medical Examiners (agency) published MAR Notice No. 24-156-94 regarding the public hearing on the proposed changes to the above-stated rules, at page 813 of the 2023 Montana Administrative Register, Issue No. 16.

2. On October 6, 2023, the agency published a notice of extension of comment period for MAR Notice No. 24-156-94 at page 1149 of the 2023 Montana Administrative Register, Issue Number 19.

3. On November 17, 2023, the agency published a second notice of extension of comment period for MAR Notice No. 24-156-94 at page 1591 of the 2023 Montana Administrative Register, Issue Number 22.

4. A public hearing was held on September 15, 2023, and a subsequent public hearing was scheduled for October 30, 2023, but not held due to technical difficulties. A subsequent public hearing was held on December 11, 2023. Comments were received by the deadline.

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

Comment 1: Several commenters questioned whether the definition of "postgraduate clinical experience" applied solely to clinical experience acquired in Montana while in a collaborative agreement.

Response 1: The board believes that clinical experience should be accepted whenever and wherever it is verifiably obtained.

Comment 2: Numerous commenters request the board add a requirement that physician assistants (PA) who change medical practice areas enter into a new collaborative agreement and get an additional 6000 hours of training.

Response 2: The board appreciates the comments. The board realizes this is an area of ongoing concern. However, the statute as presently written does not allow the board to impose additional training requirements when PAs are switching areas of specialty. Facilities, employers, and collaborators may still require additional training of PAs. The board will continue to monitor how the law is implemented. See also response to comment 12 for further information.

Comment 3: Numerous commenters requested the addition of a definition of "medical specialty."

Response 3: See response to comment 2.

Comment 4: Several commenters questioned whether clinical experience gained by PAs prior to the transition to collaborative agreements would count toward the 8000 hours.

Response 4: See response to comment 1.

Comment 5: Several commenters questioned whether experience gained outside Montana would count toward the 8000 hours.

Response 5: The board believes that clinical experience should be accepted whenever and wherever it is verifiably obtained.

Comment 6: Several commenters asked why an affirmation of achieving the 8000 hour threshold was not required.

Response 6: Physician assistants who wish to practice independently will have to affirm the 8000 hours and also have the collaborating or supervising provider affirm the 8000 hours as well. The board has also amended its unprofessional conduct rule to indicate it is unprofessional to practice without the agreement when necessary.

Comment 7: One commenter supported the amendment to ARM 24.156.813, eliminating the required in person visit before a prescriber can prescribe an opioid medication, stating that the amendment will allow for easier treatment of addiction and chronic pain sufferers in isolated or underserved communities.

Response 7: The board aligns the rules with Drug Enforcement Administration guidelines and retains the definition of patient-provider relationship that must be established before providing a controlled substance.

Comment 8: Several commenters requested the supervision language remain in rule.

Response 8: The board has repealed ARM 24.156.1622 after an informal objection from the Economic Affairs Interim Committee, as part of MAR Notice No. 24-156-97.

House Bill (HB) 313 mandates the change from the term "supervision" to "collaboration."

Comment 9: Several commenters support the repeal of ARM 24.156.1622, noting there is no national standard for PA collaboration and no training available.

Response 9: The board has repealed this rule in a separate rules package.

Comment 10: Numerous commenters oppose the repeal of ARM 24.156.1624 for transparency purposes.

Response 10: The board evaluated whether to amend the rule to reflect a PA's ability to practice independently, and determined it was unnecessary to retain the language in this rule. PAs, as well as any provider licensed by this board, have a duty to refer patients to another provider at the patient's request.

Comment 11: Several commenters opposed the repeal of ARM 24.156.1701, stating that repeal would expand the scope of practice of PAs without ensuring competence.

Response 11: PAs in any area of practice are expected to develop and maintain competence. Standards of practice are set out by the Board of Radiologic Technologists.

Comment 12: Numerous commenters requested the board adopt administrative rules defining how competency will be determined, stating it will ensure patient safety and be of use to a PA if employment settings change or collaborating providers change.

Response 12: Collaborative agreements, as required by 37-20-203, MCA, require methods for evaluating the PA's competency, knowledge, and skills. The statute allows flexibility for facilities and collaborating providers to adjust agreements based on practice model, experience of the PA, and facility policies and procedures. The board determined it was unnecessary to draft language in rule based on the specificity of the statute.

Comment 13: One commenter noted that two years of PA training is not equivalent to seven years of physician training.

Response 13: The board agrees with the commenter.

Comment 14: One commenter noted that licensed clinical professionals should practice in a context consistent with their individual education, training, experience, licensure, and appropriate supervision.

Response 14: The board agrees with the commenter. The Legislature sets the collaboration requirements, and statute requires that PAs practice within the scope of their ability, education, training, and licensure with appropriate collaboration.

Comment 15: One commenter indicated the board's proposal to ensure adequate training of PAs was unsatisfactory.

Response 15: The board appreciates all comments. The Legislature has set the minimum requirements for independent practice. See also responses to Comment 2 and 12.

Comment 16: One commenter noted PAs lack any specific education, training, or experience by virtue of their degree and that all knowledge is gained by experience and training after graduation.

Response 16: In general the board agrees, and the Legislature noted this as well and is requiring 8000 hours with a collaborating provider before PAs can practice independently.

Comment 17: One commenter disagreed with allowing PAs to practice independently.

Response 17: HB 313 provides for the independent practice of PAs, so the board cannot countermand a statute by disallowing the practice.

Comment 18: One commenter suggested PAs and NPs work with a doctor in a field for a minimum of 5 years before they can practice independently.

Response 18: NP practice is outside the scope of this rulemaking and is governed by the Board of Nursing. The Legislature has set the minimum requirement for independent practice for PAs at 8000 hours, and the board cannot change that requirement.

Comment 19: One commenter did not agree with the rulemaking.

Response 19: The board appreciates all comments received during the rulemaking process but notes that the Legislature's passage of HB 313 necessitates the board's rulemaking.

Comment 20: One commenter noted that allowing a new PA to practice independently was like letting a YouTube mechanic work on a \$100k truck.

Response 20: The Legislature is requiring 8000 hours of practice with a collaborating provider before PAs can practice independently, so new PAs will not be practicing independently.

Comment 21: One commenter suggested the board consider requiring PAs to maintain NCCPA certification.

Response 21: The Legislature, not the board, sets the minimum requirements for licensure of PAs. The commenter's suggestion would require a legislative change. Any requirements beyond the minimum requirements set by the legislature would be up to facilities and employers.

Comment 22: One commenter noted that the hospital where the commenter works required a PA to get specialized on-the-job training if the PA switched practices.

Response 22: The board agrees and thanks the commenter for the first-hand experience.

Comment 23: Numerous commenters supported the proposal, noting that specialty surgeon PAs will always need an attending surgeon, and that PAs are comfortable collaborating to provide quality medical care.

Response 23: The board agrees and appreciates all comments received during the rulemaking process.

Comment 24: Several commenters supported the rulemaking.

Response 24: The board appreciates all comments received during the rulemaking process.

Comment 25: Numerous commenters noted that physicians are required to receive more training if they change specialties and so the same standard should apply to PAs.

Response 25: The board does not require physicians to obtain additional training to change specialties. Additional training requirements are driven by credentialing bodies for facilities, malpractice insurance, and entities other than the Board of Medical Examiners.

Comment 26: Numerous commenters opposed the idea of making PAs complete 6000 hours when changing medical specialties, noting there is no such corresponding requirement in the board's rules regarding doctors.

Response 26: The board is not adopting any rules requiring extra training for PAs when changing medical specialties. See response to Comment 2. The board will continue to monitor how implementation is happening in practice.

Comment 27: Numerous commenters noted the additional training requirements were part of an agreement struck with the Governor's office.

Response 27: The board understands negotiation and several iterations of HB 313 were considered as part of the legislative process. The final, legislatively approved, signed bill does not contain any additional requirements for PA training beyond the 8000 hours. See also Response to Comment 2.

6. The agency has amended ARM 24.156.403, 24.156.405, 24.156.813, and 24.156.1623 as proposed.

7. The agency has repealed ARM 24.156.1621, 24.156.1624, and 24.156.1701 as proposed.

8. The agency did not amend ARM 24.156.1622 as proposed. This rule was repealed in MAR Notice No. 24-156-97.

BOARD OF MEDICAL EXAMINERS
JAMES GUYER, M.D., PRESIDENT

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2024