

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

In the matter of the amendment of )  
ARM 24.156.403, 24.156.405, )  
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 )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
REPEAL

TO: All Concerned Persons

1. On September 15, 2023, at 8:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to 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/86910652552>  
Meeting ID: 869 1065 2552, Passcode: 634780  
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 869 1065 2552, Passcode: 634780

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 department no later than 5:00 p.m., on September 8, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail [laborlegal@mt.gov](mailto:laborlegal@mt.gov).

3. General Statement of Reasonable Necessity: The 2023 Legislature enacted House Bill (HB) 313, which allows for the independent practice of physician assistants (PA) upon reaching 8,000 hours of postgraduate clinical experience. The Board of Medical Examiners (board) is amending existing rules to implement the provisions of the bill. Specific statements will follow when needed.

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

24.156.403 DEFINITIONS AND ABBREVIATIONS (1) through (1)(e) remain the same.

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

(i) and (ii) remain the same.

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

(iv) remains the same.

(g) through (i) remain the same.

(j) "Postgraduate clinical experience" means the delivery of health care directly to patients, after licensure as a physician assistant, pursuant to a collaborative agreement with a physician or physician assistant.

(j) through (l) remain the same but are renumbered (k) through (m).

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

(i) remains the same.

~~(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) remains the same but is renumbered (ii).

(n) remains the same but is renumbered (o).

(2) remains the same.

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: The board is repealing "general supervision" as HB 313 eliminated the need for levels of supervision for physician assistants. The board is adding a definition for "postgraduate clinical experience" to assist physician assistants and physicians in determining when a physician assistant is qualified for independent practice.

24.156.405 UNPROFESSIONAL CONDUCT (1) remains the same.

(2) In addition, the following is unprofessional conduct:

(a) through (j) remain the same.

~~(k) for physician assistants, failure to submit to the board a completed supervision agreement prior to commencing practice in Montana with fewer than 8,000 hours of postgraduate clinical experience, practicing without a collaborative agreement meeting the requirements of 37-20-203, MCA;~~

(l) while under investigation or during a pending complaint, in Montana or elsewhere, but prior to a determination:

(i) remains the same.

~~(ii) voluntarily relinquishing or surrendering of professional or occupational license, certification, or registration, or privileges;~~

(m) remains the same.

~~(n) for physicians and physician assistants, failure to report to the board any loss of privileges within 30 days;~~

~~(o) when used, failure to maintain a collaborative practice agreement meeting the requirements of 37-20-203, MCA; or~~

(p) for emergency care providers, violation of facility patient care policy or procedure while providing services in a health care facility.

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: Physician assistants (PA) are no longer required to practice under supervision if they have reached 8,000 hours of postgraduate clinical experience. Therefore, the board will no longer require the submission of supervision agreements and will not discipline PAs for failing to submit them. HB 313 requires a collaborative agreement for a PA who has not met the experience requirements. HB 313 further defines the requirements of a collaborative agreement, which does not require submission to the board unless requested for a specific purpose. The board is adding new (2)(o) to reflect the responsibility of both PAs and collaborating providers to maintain a collaborative practice agreement meeting the requirements of 37-20-203, MCA. The board is adding (2)(p) after staff recommendations to align with other health care professions.

24.156.813 PRACTICE REQUIREMENTS FOR PHYSICIANS AND PHYSICIAN ASSISTANTS USING TELEMEDICINE (1) and (2) remain the same.

(3) A ~~physician-patient~~ provider-patient relationship may be established for purposes of telemedicine:

(a) through (c) remain the same.

(4) The licensee using telemedicine in patient care may prescribe Schedule II drugs ~~to a patient only after first establishing a physician-patient relationship through an in-person encounter which includes a medical interview and physician examination~~ in compliance with Drug Enforcement Agency requirements and 37-20-404, MCA.

(5) The licensee using telemedicine in patient care shall:

(a) and (b) remain the same.

(c) establish a ~~physician-patient~~ provider-patient relationship prior to initiating care;

(d) obtain a medical history sufficient for diagnosis and treatment in keeping with the applicable standard of care prior to providing treatment, or issuing prescriptions, or delegating the patient's medical services to other health care providers;

(e) and (f) remain the same.

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

IMP: 37-3-301, MCA

REASON: The board is updating this rule to implement changes needed to comply with HB 313, including that a PA may provide telemedicine. The board is further updating (4) to standardize with drug enforcement agency requirements and not impose a separate requirement on licensees.

24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT

COLLABORATION (1) A supervising physician may provide the following types of supervision to a physician assistant:

- (a) direct supervision;
- (b) onsite supervision; or
- (c) general supervision.

(2)(1) A physician or physician assistant who has never previously acted as a supervising physician collaborating provider in Montana, as defined by 37-20-401, MCA, must complete the board-approved online training for physician assistant supervision collaboration and a provide the certificate of completion must be submitted to the board office with the signed supervision agreement prior to the supervision agreement taking effect upon request.

(3) The supervising physician shall communicate with each supervised physician assistant a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues and patient care.

(4) A supervising physician may supervise more than one physician assistant if the supervising physician:

- (a) agrees to supervise more than one physician assistant by signing and filing multiple supervision agreements with the board;
- (b) provides appropriate and real time means of communication or back up supervision for the physician assistants;
- (c) determines the appropriate level of supervision identified in (1), based on the physician assistant's education, training, and experience; and
- (d) assumes professional and legal responsibility for all physician assistants under the supervising physician's supervision regardless of the varying types of supervision.

(5) The supervision agreement and duties and delegation agreement must assure the safety and quality of physician assistant services, considering the location, nature, and setting of the practice and the experience of the physician assistant, and shall provide for:

- (a) an appropriate type or combination of types of supervision identified in (1), including specific supervising physician response and availability times;
- (b) an appropriate scope of delegation of practice authority and appropriate limitations upon the practice authority of the physician assistant; and
- (c) appropriate frequency and duration of meetings.

(6) The supervision agreement and duties and delegation may provide for periodic changes in the type of supervision, scope of delegation, practice limitations, frequency, and duration of face-to-face meetings, and percentage of charts reviewed, based upon the duration and nature of experience gained by the physician assistant, the supervising physician's written assessment and evaluation of the physician assistant's experience and judgment, and other factors relevant to the nature and degree of supervision appropriate to assure the safety and quality of physician assistant services.

~~(7)(2)~~ The duties and delegation collaborative agreement must be available at the practice site at all times and must be submitted to the board or its ~~designee department~~ upon request.

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

IMP: 37-1-131, 37-20-101, 37-20-301, 37-20-403, MCA

REASON: The board is amending this rule to reflect the new requirement of PAs entering into a collaborative agreement if they have not reached 8,000 hours of postgraduate clinical experience. HB 313 contains the requirements for a collaborative agreement. The board is therefore repealing requirements that are no longer required due to the specificity of HB 313.

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.~~ Chart review for a physician assistant shall occur, with frequency and amount to be determined at the practice level and as described in the collaboration agreement.

~~(2) After twelve months, further chart review shall occur. The amount of chart review shall be at the discretion of the physician assistant and the supervising physician to determine in a duties and delegation agreement.~~

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

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

REASON: The board is updating this rule to reflect that chart review by a collaborating provider shall occur as specified in the collaborative agreement, allowing for flexibility in review as dictated by the PA's experience, practice level, and the discretion of the collaborating providers.

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

24.156.1621 REPORTING TO THE BOARD

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

IMP: 37-1-131, 37-3-401, MCA

REASON: The board is repealing this rule as duplicative of the reporting requirements in ARM 24.156.405(2)(n) and statutory language in 37-3-401, MCA.

24.156.1624 PATIENT RIGHTS

AUTH: 37-20-202, MCA

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

REASON: The board is repealing this rule as unnecessary following the passage of HB 313. The board determined the rule was no longer applicable as there may not always be a collaborating provider on site for a patient to see, and that physician assistants maintain a duty to refer patients to another provider if requested.

24.156.1701 PHYSICIAN ASSISTANT PERFORMING RADIOLOGIC PROCEDURES – ROUTINE AND ADVANCED PROCEDURES

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

IMP: 37-1-131, 37-20-101, 37-20-403, MCA

REASON: The board is repealing this rule as unnecessary. Physician assistants may not perform any procedures for which they are not qualified or trained, including radiologic procedures. As no other specific procedures or areas of specialty are in rule, it is unnecessary to keep this rule.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](http://dli.mt.gov/rules) or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 22, 2023.

7. An electronic copy of this notice of public hearing is available at [dli.mt.gov/rules](http://dli.mt.gov/rules) and at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or send a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on May 1, 2023.

10. Pursuant to 2-4-111, MCA, the agency 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 this hearing.

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 August 15, 2023.