

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.156.401, 24.156.403,)	PROPOSED AMENDMENT,
24.156.405, 24.156.409, 24.156.450,)	ADOPTION, AND REPEAL
24.156.612, 24.156.613, 24.156.615,)	
24.156.617, 24.156.2711, and)	
24.156.2751, the adoption of New)	
Rule I, and the repeal of ARM)	
24.156.415, 24.156.604, 24.156.608,)	
24.156.609, 24.156.616, 24.156.628,)	
24.156.801, and 24.156.2715)	
pertaining to the Board of Medical)	
Examiners general revisions)	

TO: All Concerned Persons

1. On September 15, 2023, at 10:30 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/82827831157>
Meeting ID: 828 2783 1157, Passcode: 244863
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 828 2783 1157, Passcode: 244863

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.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Consistent with the Red Tape Relief initiative as well as its ongoing obligation to review its own rules, the Board of Medical Examiners (board) undertakes this rulemaking to simplify, shorten, and clarify its own rules for improved usability by the public. Some changes proposed additionally remove citations to acupuncturists, since that license type was moved to the Alternative Health Care Board pursuant to Senate Bill (SB) 453.

4. 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 (4)(b) remain the same.

(c) surgery as defined in ARM ~~24.156.504~~ 24.156.403;

(d) through (e) 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 (4)(c) to correct a cross reference to the appropriate rule.

24.156.403 DEFINITIONS AND ABBREVIATIONS (1) and (2) remain 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: Reasonable necessity exists to amend the authorizing and implementation citations due to passage of SB 453 (2023), which transfers acupuncture from this board to the Alternative Health Care Board.

24.156.405 UNPROFESSIONAL CONDUCT (1) remains the same.

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

(a) through (l) remain the same.

(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) remains the same.

(ii) practicing medicine as the partner, agent, or employee of, or in joint venture with, ~~a hospital, medical assistance facility,~~ a licensed health care facility or other licensed health care provider; however:

(A) through (C) remain the same.

(n) for physicians and physician assistants, involuntary loss of or failure to report to the board any involuntary 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: Reasonable necessity exists to amend (2)(n) to clarify that the loss of privileges is unprofessional conduct. Reasonable necessity exists to amend the

authorizing and implementation citations due to passage of SB 453 (2023), which transfers acupuncture from this board to the Alternative Health Care Board.

24.156.409 FEE SCHEDULE (1) Initial and active license renewal application fees:

- (a) through (f) remain the same
- (g) ~~Acupuncturist~~ 75
- (h) through (m) remain the same.
- (2) License Inactive status license renewal application fees:
 - (a) ~~Physician (active status)~~ 375
 - (b)(a) ~~Physician (inactive status)~~ 190
 - (c) ~~Resident~~ 75
 - (d) ~~Podiatrist (active status)~~ 375
 - (e)(b) ~~Podiatrist (inactive status)~~ 190
 - (f) ~~Nutritionist~~ 75
 - (g) ~~Acupuncturist~~ 75
 - (h) ~~Physician assistant (active)~~ 190
 - (i)(c) ~~Physician assistant (inactive)~~ 115
 - (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, 50-6-203, MCA

REASON: Reasonable necessity exists to amend the authorizing and implementation citations due to passage of SB 453 (2023), which transfers acupuncture from this board to the Alternative Health Care Board. Reasonable necessity exists to amend the renewal rule to reflect that fees for initial application and renewals are the same for licenses in active status. As a result, fees need not be duplicated.

24.156.450 MANAGEMENT OF INFECTIOUS WASTES (1) and (2) remain the same.

AUTH: 37-1-131, 37-3-203, 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: Reasonable necessity exists to amend the authorizing and implementation citations due to passage of SB 453 (2023), which transfers acupuncture from this board to the Alternative Health Care Board.

24.156.612 APPLICATION FOR TEMPORARY NON-DISCIPLINARY PHYSICIAN LICENSE (1) through (1)(b) remain the same.

(c) pay the physician license application fee as prescribed in ARM ~~24.156.604~~ 24.156.409; and

(d) remains the same.

AUTH: 37-3-203, 37-3-301, 37-3-305, MCA

IMP: 37-3-301, 37-3-305, MCA

REASON: Reasonable necessity exists to amend this rule to correct the incorrect citation to the fee rule.

24.156.613 APPLICATION FOR PHYSICIAN LICENSURE IN ANOTHER STATE VIA INTERSTATE COMPACT (1) and (1)(a) remain the same.

(b) pay an application fee for licensure in another state via interstate compact per ARM ~~24.156.604~~ 24.156.409; and

(c) through (2) remain the same.

AUTH: 37-3-203, MCA

IMP: 37-3-356, MCA

REASON: Reasonable necessity exists to amend this rule to correct the incorrect citation to the fee rule.

24.156.615 RENEWALS (1) and (2) remain the same.

(3) A physician with an active license who is not actively engaged in the clinical practice of medicine in this state, or who is absent from this state for a period of one or more years, may renew as an inactive licensee and pay the inactive fee listed in ARM ~~24.156.604~~ 24.156.409.

(a) through (4) remain the same.

AUTH: 37-1-131, 37-1-319, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-1-319, MCA

REASON: Reasonable necessity exists to amend this rule to correct the incorrect citation to the fee rule.

24.156.617 LICENSE CATEGORIES (1) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-3-203, 37-3-802, 37-3-804, MCA

IMP: 37-1-131, 37-1-141, 37-1-319, ~~37-3-304~~, 37-3-305, 37-3-802, 37-3-804, MCA

REASON: Reasonable necessity exists to remove 37-3-304, MCA from the implementation statutes because the statute was repealed in 2015.

24.156.2711 ECP LICENSURE QUALIFICATIONS (1) The board shall license an applicant as an ECP at the appropriate licensure level if the applicant:

(a) has successfully completed an ECP course of instruction at or above the level of requested licensure; and

(b) possesses a current active or inactive NREMT certification equal to or greater than the level applied for or provides a current unrestricted substantially equivalent ECP license or certification in another state which has a complaint process.;

~~(c) has obtained a high school diploma or equivalency; and~~

~~(d) is 18 years of age or older.~~

(2) remains the same.

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

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

REASON: The board has received public comment requesting that the board eliminate its age minimum and high school diploma requirement to align with the National Registry of Emergency Medical Technicians (NREMT) qualifications. NREMT is the certifying body the board recognizes for ECP licensure, and it removed age restrictions in June 2020. A high school diploma is not a requirement for NREMT certification. Commenters state that there has been an increase in the number of colleges and fire departments offering ECP classes to high school seniors and juniors, and that the board's age and diploma requirement prevent them from helping to staff ambulance services.

24.156.2751 LEVELS OF ECP LICENSURE INCLUDING ENDORSEMENTS

(1) The board issues four levels of licenses for ECPs. Each level has endorsements that may be added to an ECP license. Endorsements do not have to be acquired in the order listed below and may consist of one or more combinations within each ECP level. The levels of licensure and endorsements are as follows:

(a) EMR licenses:

(i) remains the same.

~~(ii) naloxone;~~

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

(b) EMT licenses:

(i) through (iv) remain the same.

~~(v) naloxone;~~

(vi) and (vii) remain the same but are renumbered (v) and (vi).

(c) AEMT licenses:

(i) remains the same.

~~(ii) AEMT-99;~~

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

(d) remains the same.

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: Reasonable necessity exists to strike naloxone from the rule because naloxone is now an over the counter medication. As a result, special authorization is not necessary for its administration. Reasonable necessity exists to strike AEMT-99 from the rule because it is no longer issued.

5. The proposed new rule is as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

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

24.156.415 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill (HB) 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.156.604 REFUSAL OF LICENSE

AUTH: 37-3-203, MCA
IMP: 37-3-321, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative. Section 37-3-321, MCA sets forth the authority of the board to deny a license. This is statutorily duplicated at 37-1-137, MCA. Moreover, 37-1-137, MCA specifies the applicability of the Montana Administrative Procedure Act (MAPA) to license denials. MAPA's applicability sets forth specific administrative procedures for contesting a licensing decision, rendering this rule unnecessary.

24.156.608 ECFMG REQUIREMENTS

AUTH: 37-3-203, MCA
IMP: 37-3-305, 37-3-306, 37-3-307, 37-3-311, MCA

REASON: Reasonable necessity exists to repeal this rule because it is out of date based on statutory changes made in 2015. Amendments made at that time incorporated Canadian medical schools as permissible into 37-3-305, MCA, as well as passage of the ECFMG examination.

24.156.609 FIFTH PATHWAY PROGRAM

AUTH: 37-3-203, MCA
IMP: 37-3-102, 37-3-306, 37-3-307, 37-3-309, MCA

REASON: Reasonable necessity exists to repeal this rule because the Fifth Pathway Program was eliminated a number of years ago. See <https://www.ecfm.org/news/2010/05/04/important-announcement-regarding-fifth-pathway-certificates-and-usmle-step-3/>.

24.156.616 REGISTRY

AUTH: 37-3-203, 37-3-802, MCA
IMP: 37-3-205, MCA

REASON: Reasonable necessity exists to repeal this rule because it unnecessarily codifies business operations. Moreover, it is duplicative of the statute it purports to implement. Duplication of statute in rule is impermissible.

24.156.628 MANAGEMENT OF INFECTIOUS WASTES

AUTH: 37-1-131, 37-3-203, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1006, MCA

REASON: Reasonable necessity exists to repeal this rule because it is proposed to be consolidated into ARM 24.156.450 so that the board has only one infectious waste rule applicable to all license types.

24.156.801 PURPOSE AND AUTHORITY

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

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

REASON: Reasonable necessity exists to repeal this rule because it provides no substance.

24.156.2715 SUBSTANTIALLY EQUIVALENT EDUCATION

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

IMP: 37-1-131, 37-1-304, 37-3-203, 50-6-203, MCA

REASON: Reasonable necessity exists to repeal this rule because it does not provide a substantive definition of "substantially equivalent" which is distinct from the definition set forth in statute at 37-1-304, MCA. As such, the rule is unnecessary. It is proposed to be repealed in favor of simplification and shortening of the administrative rules.

7. 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 or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 22, 2023.

8. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and at sosmt.gov/ARM/register.

9. 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 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. 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.

12. Department staff has been designated to preside over and conduct 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.