

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.165.302 definitions, and the )  
repeal of 24.165.505 deep modality )  
endorsement ) NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
REPEAL

TO: All Concerned Persons

1. On June 24, 2021, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of 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/84926792334>  
Meeting ID: 849 2679 2334, Passcode: 736688  
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 849 2679 2334, Passcode: 736688

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 Occupational Therapy Practice no later than 5:00 p.m., on June 17, 2021, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov) (board's e-mail).

3. REASONABLE NECESSITY STATEMENT: The term "deep" was added to the board's fee rule in 2006 as meaning the same as a "sound and electrical" modality. In 2015, the board struck "deep" from the fee rule to align with terminology used in board statutes and also by rule established a "deep modality endorsement" and definitions for "deep modalities" and "deep modality endorsement."

In 2019, Senate Bill 59 eliminated the requirement for occupational therapists to obtain an endorsement to utilize sound and electrical physical agent modalities in practice. Later that year, the board amended the rules to implement the 2019 statutory changes. While reviewing and comparing the board's statutes and rules to existing application processes, staff noticed that only "superficial" (37-24-105, MCA) and "topical medications" (37-24-107, MCA) endorsements are now provided for in

statute. "Deep modality" endorsement does not appear in Title 37, chapter 24, MCA, and is not statutorily authorized.

The board determined it is reasonably necessary to strike the definitions of "deep modalities" and "deep modality endorsement" in ARM 24.165.302 and repeal ARM 24.165.505 to remove obsolete and inaccurate rule language. These amendments will align the board's rules with the statutes to reflect superficial and topical medications endorsements as the only two modality endorsements the board has authority to issue. These changes will not alter or impact the scope of practice for Montana licensed occupational therapists.

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

24.165.302 DEFINITIONS For the purpose of this chapter the following definitions apply:

(1) remains the same.

~~(2) "Deep modalities" means the use of a sound or electrical physical agent modality which penetrates past the subcutaneous layer of fat into the muscle through the application of heat, cold, ultrasound, phonophoresis, or iontophoresis.~~

~~(3) "Deep modality endorsement" means that a licensed occupational therapist has met the statutory requirements in the use of sound and electrical physical agent modalities and occupational therapy techniques involving topical medications.~~

(4) through (11) remain the same but are renumbered (2) through (9).

AUTH: ~~37-1-131~~, 37-24-201, 37-24-202, MCA

IMP: ~~37-1-101~~, 37-24-103, 37-24-105, 37-24-106, 37-24-107, 37-24-108, MCA

REASON: Authority and implementation citations are amended to accurately reflect the statutes implemented through the rule and the complete sources of the board's rulemaking authority.

5. The rule proposed to be repealed is as follows:

24.165.505 DEEP MODALITY ENDORSEMENT

AUTH: 37-1-131, 37-24-202, MCA

IMP: 37-1-131, 37-24-105, 37-24-106, 37-24-107, 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 Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov), and must be received no later than 5:00 p.m., June 25, 2021.

7. An electronic copy of this notice of public hearing is available at [www.ot.mt.gov](http://www.ot.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 Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdotp@mt.gov](mailto:dlibsdotp@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, do not apply.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.165.302 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.165.505 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to [dlibsdotp@mt.gov](mailto:dlibsdotp@mt.gov).

11. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL  
THERAPY PRACTICE  
TWYLLA KIRCHEN, OTR/L  
PRESIDING OFFICER, ACTING

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

/s/ LAURIE ESAU  
Laurie Esau, Commissioner  
DEPARTMENT OF LABOR AND  
INDUSTRY

Certified to the Secretary of State May 18, 2021.