

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.126.301, 24.126.401,)
24.126.412, 24.126.504, 24.126.511,)
24.126.515, 24.126.701, 24.126.704,)
24.126.2103, and 24.126.2301, the)
adoption of NEW RULES I and II, and)
the repeal of ARM 24.126.502,)
24.126.507, 24.126.510, 24.126.2105,)
and 24.126.2304 pertaining to the)
Board of Chiropractors)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT,
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 7, 2024, at 9:00 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/89695465046>
Meeting ID: 896 9546 5046, Passcode: 252282
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 896 9546 5046, Passcode: 252282

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 April 30, 2024, 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. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.126.301 DEFINITIONS ~~(1) "Chaperone" as used in ARM 24.126.2301 means an individual delegated to ensure proper behavior on the part of the provider and the patient during the course of a physical examination or treatment.~~

(1) "Chiropractic physiotherapy" means thermal, sound, light, mechanical, manual, hydrotherapy, rehabilitative, or other modes of care which may be administered, dispensed, ordered, or prescribed for the purpose of assisting a patient to achieve a timely and favorable clinical outcome.

(2) "College of chiropractic approved by the board" as used in 37-12-302, MCA, or "chiropractic college" as used in these rules, means a chiropractic college

accredited by the Council on Chiropractic Education (CCE) or other accrediting body in good standing with the United States Department of Education and the Council for Higher Education Accreditation. For foreign-trained applicants, the term means a chiropractic college accredited by a body in good standing with the Council on Chiropractic Education International (CCEI) or chiropractic education the board finds to be equivalent.

~~(2)~~(3) "Diagnostic x-ray" as used in 37-12-104, MCA, ~~shall mean~~ means any recognized form of diagnostic imaging including, but not limited to, x-ray, CAT scan, and MRI.

~~(3)~~(4) "Dietetic methods" as used in 37-12-104, MCA, ~~shall mean any service, when performed or ordered to be performed by any licensed chiropractor for therapeutic effects, which may employ recommending and/or giving of any food, vitamin, mineral, herb, enzyme, glandular product, homeopathic preparation, diet plan, or other nutritional substance not requiring a medical prescription~~ means the dispensing or prescribing of dietary supplements, nutritional therapies, or natural substances that are not drugs requiring a prescription.

(5) "Examination prescribed by the board" as used in 37-12-304, MCA, means:

(a) Parts I, II, III, and IV, and physiotherapy of the National Board of Chiropractic Examiners (NBCE) licensure examination; and

(b) a Montana jurisprudence examination.

~~(4) "New doc seminar" means a program provided by the board that is targeted to new licensees as a source of information on state laws and rules and other various topics. The program is open to all licensed chiropractors.~~

~~(5) "Physiotherapy" as used in 37-12-104, MCA, shall mean any service, when performed, or ordered to be performed, by any licensee, employing for therapeutic effects, physiological measures, activities, and devices for preventive and therapeutic purposes, physiological agents including, but not limited to, mechanical devices, heat, air, light, water, electricity, sound, exercise, rehabilitative procedures, massage, and mobilization, when performed for the purpose of diagnosis, evaluation, treatment, and instruction of the human body to detect, assess, correct, alleviate, prevent, and limit physical disability, injury, body malfunction, pain, mental condition by the aforementioned agents, or any other procedure taught in chiropractic colleges for the purpose of preventing, correcting, or alleviating a physiological or mental disability or condition.~~

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: It is not necessary to define the term "chaperone" because of its common understanding and use as a generally accepted standard of care in context. In new (1), the term "chiropractic" is added to "physiotherapy" because that is the term used in the statute. The former (5) definition is redrafted at new (1) to be clear and concise, using the Federation of Chiropractic Licensing Boards' (FCLB) model language, except that to acknowledge the practice of unlicensed assistants, the word "ordered" is maintained from the former definition. Several clauses stricken in the former definition of physiotherapy either repeat the statute or improperly expand

the scope of practice at 37-12-101 and 37-12-104, MCA. For example, defining the scope of practice as procedures taught in chiropractic college repeats the statute and treatment of a "mental disability" expands treatment beyond "adjustment or manipulation of the articulations and tissues of the body . . ." It is not necessary to define "new doc seminar" because the seminar is proposed to be repealed. See Reason under ARM 24.126.2104. New (2) and (5)(a) are moved to this rule from the application rule ARM 24.126.504 nearly verbatim. This placement makes it clear the board has rulemaking authority to define approved chiropractic schools and the licensing examination. In (2), the Council on Chiropractic Education (CCE) is maintained as the primary accrediting body, with new language referring to the United States Department of Education and the Council for Higher Education Accreditation (CHEA) noted as secondary sources for accreditation, especially if the CCE for some reason ceased to exist. CHEA is the non-governmental coordinating agency approved by the U.S. Department of Education to accredit individual institutions and programs in the U.S. The rule formerly referred to CCEI as an alternate accrediting body for the CCE when in fact the CCEI recognizes accrediting bodies in Australia, Europe, and Canada. The proposal correctly distinguishes the CCE from the CCEI and creates a pathway for foreign-educated persons whom the board deem to be equivalently educated. The definition of "examination" in (5) includes both the NCBE and the jurisprudence examination, and is necessary to authorize the board's examination requirements. New (4) is drafted to be clear and concise, again using FCLB model language. New (5)(b) is necessary to authorize the board's historical requirement for the jurisprudence exam. In the implementation citations, there is an unnecessary comma.

24.126.401 FEE SCHEDULE

(1) remains the same.

~~(2) Reexamination fee of jurisprudence (written) _____ 100~~

(3) through (7) remain the same but are renumbered (2) through (6).

AUTH: 37-1-134, 37-12-201, MCA

IMP: 37-1-134, 37-1-141, 37-12-201, 37-12-302, 37-12-304, MCA

REASON: The fee is not necessary because the cost of administration of the jurisprudence examination should be included with the application fee, including retakes. Historically, the number of retakes has been negligible.

24.126.412 PREPAID TREATMENT PLANS (1) ~~Licensed chiropractors accepting~~ Any chiropractor who accepts prepayment for services planned, but not yet delivered must enter a written contract with the client that describes:

(a) ~~Establish an escrow account to hold all prepayment funds. the services included;~~

~~(i)(b) Funds may be removed from the escrow account following the delivery of services, in such amounts equal to the chiropractor's usual and customary charges for like services, with any discounted percentage contained in a written contract. the amount of payment for those services;~~

~~(ii) Funds received in advance of the day services are delivered must be deposited into the escrow account in a timely manner.~~

~~(b)(c) Maintain a contract for prepayment of services. any discounts to be applied; and~~

~~(d) a clear process for cancellation of the contract and refund of the prepayment, less reasonable administrative fees.~~

~~(2) Chiropractors must:~~

~~(a) deposit the prepayment amounts in a federally insured financial institution within 10 business days of receipt of the prepayment;~~

~~(b) hold the money in trust in a separate account from all other accounts; and~~

~~(c) withdraw the amount of money stated in the contract only after providing the service.~~

~~(3) Chiropractors must document compliance with this rule.~~

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-1-319, 37-12-201, MCA

REASON: It is redundant to describe a "chiropractor" as "licensed" for the purpose of these rules. The remainder of (1) is redrafted to be clear, concise, and in chronological order. In (1), the rule proposes more specific consumer disclosures about the terms of the contract and replaces the ambiguous phrase "timely manner" with a 10-business-day period. In new (2), consistent with unprofessional conduct currently in effect at ARM 24.126.2103(1)(s) (to be replaced by new ARM 24.126.2103(3)(d)), it is a reasonable consumer protection measure to provide a right to cancel when circumstances no longer warrant treatment, when it is impossible to carry out the treatment, or when the treatment is not received in a reasonable amount of time. The proposal strikes the requirement to use an "escrow" account as too administratively burdensome and instead, requires the licensee to keep the funds separate from other funds and to document the intake and release of the money held in trust.

24.126.504 APPLICATION FOR CHIROPRACTOR LICENSE BY

~~EXAMINATION (1) Applicants for chiropractic licensure by examination must apply on forms provided by the department, accompanied by the appropriate fee per ARM 24.126.401, and submit the following:~~

~~(a) official transcripts sent directly from the educational institution to demonstrate the applicant achieved:~~

~~(i) a minimum of a bachelor's degree from an accredited college or university, except as provided in 37-12-302(3), MCA; and~~

~~(ii) graduation from a chiropractic college accredited by the Council on Chiropractic Education (CCE) or another accrediting body in good standing with the Council on Chiropractic Education International (CCEI);~~

~~(b) results of the national board examination (Part I, II, III, and IV, and physiotherapy) sent directly from the National Board of Chiropractic Examiners (NBCE);~~

~~(c) verification of licensure sent directly from all states in which the applicant has held or holds a license; and~~

- (d) ~~an original, unopened self-query of the National Practitioner Databank (NPDB).~~
- ~~(2) Applicants must also pass the state jurisprudence examination with a minimum score of 75 percent.~~
- (1) Each applicant for licensure must submit:
- (a) a completed application form;
- (b) the applicable fee; and
- (c) documentary evidence satisfactory to the department that the applicant:
- (i) meets the education and examination requirements for licensure set by board statute or rule (application by examination); or
- (ii) meets the criteria for licensure by substantial equivalency under 37-1-304, MCA (application by endorsement) and 37-12-302(3), MCA; and
- (iii) meets the character and fitness requirements to practice.
- (2) The department will verify character and fitness through:
- (a) the applicant's personal history questions submitted with the application;
- (b) the license history in any jurisdiction where the applicant has held a chiropractic license;
- (c) a query from the National Practitioner Databank (NPDB); or
- (d) other sources of unprofessional conduct allegations.
- (3) Applicants under (1)(c)(i) must take the jurisprudence examination with a minimum score of 75 percent.
- (4) Applicants under (1)(c)(ii) are exempt from:
- (a) taking the jurisprudence examination; and
- (b) meeting the bachelor's degree requirement under 37-12-302(3), MCA.
- (5) The board authorizes the department to deem applications from applicants who hold an active license in another state as routine and substantially equivalent to Montana if the state requires:
- (a) graduation from a college of chiropractic approved by the board; and
- (b) passage of parts I through IV of the NBCE. An applicant from a state that does not require passage of the physiotherapy portion of the NBCE must submit evidence of having passed that portion of the exam; and
- (c) passage of the jurisprudence examination.
- (6) All license applications expire within 1 year of initial submission to the department.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-105, 37-1-131, 37-1-304, 37-12-302, 37-12-304, MCA

REASON: The rule is rewritten to be clear and concise and avoid repeating the statute, except as needed to give guidance. The rule includes applicants by endorsement, formerly included at ARM 24.126.510 and proposed for repeal because of its redundancy to this rule. It is more efficient to address both types of applicants in a single rule. The distinction between applicant types is addressed in (1)(c)(i) and (ii). In (2) and (7), the rules are necessary to describe the department's authority and process to determine character and fitness for licensure and to issue the license. Section (3) expresses the board's requirement of the jurisprudence examination and defines the passing score. It is further necessary at (4)(a) to clarify

that eligible applicants by endorsement are eligible for licensure "without examination" per 37-1-304, MCA, and are exempt from the jurisprudence examination requirement. Section (4) acknowledges a unique exemption granted licensees from other states and certain graduates regarding the bachelor's degree based on 37-12-302, MCA. Section (5) guides staff to process applicants from a state that does not have substantially equivalent licensing standards to Montana. Section 37-12-302, MCA, specifically exempts licensees licensed in other states from having a bachelor's degree. Given this exemption, the board will recognize a doctorate degree from a board-approved college as the minimum requirement for out of state applicants. For the examination, all states currently require parts I through IV of the NBCE examination. According to the Federation of Chiropractic Licensing Boards, approximately 18 jurisdictions currently do not accept or require the physiotherapy portion of the exam. The proposed language replaces ARM 24.126.510(4) and requires applicants from these jurisdictions to prove they have taken the examination as a condition of qualifying for licensure. Focusing instead on the missing examination (i.e., the physiotherapy examination) is more tailored to determine the applicant's minimum qualifications than requiring the SPEC, which is broad in scope, addressing all parts of the NBCE, and is more costly than the physiotherapy portion (\$1,500 versus \$450 as of the date of this notice). Finally, the SPEC is intended for a different purpose: to address licensed individuals who have lapses, suspensions, or revocations of licenses. The board retains authority to require the SPEC in these instances. See, e.g., ARM 24.126.701 regarding inactive status. Section (6) provides an expiration for the application to maintain incentive for the applicant, maintain current information about the applicant, and allow a termination of applications for those not interested in following through with the application.

24.126.511 DISPLAY OF LICENSE (1) Licensees shall display their licenses in a publicly accessible location at any premises where the licensee practices, or present proof of current licensure upon request ~~of department personnel or members~~ of the public.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-201, MCA

REASON: The rule is vague as to whether the license must be displayed for the public to access. It is necessary to make licenses available so the public can scan the QR code on the license or in the alternative, to require the practitioner to provide proof of current licensure to the public upon request. It is not necessary to require proof to department personnel, because the department does not inspect chiropractic offices and would have digital access to real time license status if it did.

24.126.515 DRY NEEDLING (1) through (5) remain the same.

(6) Chiropractors performing dry needling must maintain proof of ~~appropriate~~ training as required by this rule. ~~Failure to provide proof of training upon the board's request may result in disciplinary action.~~

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-12-101, 37-12-104, MCA

REASON: In (6), it is not necessary to state that failure to follow a law or rule is grounds to take disciplinary action because one unprofessional conduct rule makes that true for all laws and rules related to the practice of chiropractic. These clauses appear intermittently in the rules and are being systematically removed.

24.126.701 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS

(1) Licensees may ~~obtain an~~ request inactive status ~~chiropractic license upon submission of an application during renewal or at any other time in writing. While on inactive status, chiropractors may not practice chiropractic in Montana.~~

(2) Inactive licensees must pay the inactive renewal fee annually to avoid lapse, expiration, or termination of the license.

~~(2)(3)~~ (3) To convert to active status, inactive licensees must submit ~~an~~ the conversion to active status application form, pay the ~~required~~ difference between the inactive renewal and the active renewal fee, pay any accrued inactive renewal or late fees, and provide evidence that the applicant has:

(a) ~~all chiropractic licenses currently held in other jurisdictions are unrestricted with no pending discipline, and proof of either:~~

(i) ~~having practiced full-time (no less than at least 1500 hours each year on inactive status) under a chiropractic license in good standing in another state that requires continuing education substantially equivalent to that required in Montana; or~~

~~(ii)(b)~~ (b) completion of completed 12 hours of approved continuing education in the year preceding the conversion before applying for active status.

(4) Unless a licensee has been active in another jurisdiction, the board may require a licensee seeking to reactivate a license who has been inactive for five or more years preceding the reactivation request, to re-establish competency through examination, education, or supervised practice.

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

REASON: The rule is rewritten to be clear and concise and to include standardized procedures and provisions, such as in (2), that are important to note and applicable to all boards and programs. More details are inserted in (3) to distinguish the type of application to be used, payment, and additional fees that may apply. It is not necessary to specify (3)(a), because that information is addressed in ARM 24.126.504. In (3)(b), a year can be more precisely measured from the date of the application than the ambiguous "conversion" date. New (4) implements board discretion to define the number of years of inactivity after which a licensee must demonstrate competency to reactive the license. The board determined that five years is an amount of time after which hands-on skill is likely to be lost and new technical information to emerge.

24.126.704 INTERN AND PRECEPTOR REGISTRATION (1) ~~Prior to acting as a preceptor to interns, licensees must register all interns with the board. An~~

intern may perform "chiropractic" and the "functions of a licensed chiropractor" as provided in Title 37, chapter 12, MCA and by this rule.

(2) "Intern" as used in 37-12-201, MCA, means a chiropractic student who has been approved by a chiropractic college to engage in a program to obtain clinical experience.

(3) "Preceptor" as used in 37-12-201, MCA, means a chiropractor licensed for at least three years in good standing and who has been accepted by a chiropractic college to act as a preceptor to an intern.

(4) Before acting as a preceptor to an intern, a chiropractor must provide to the department:

(a) the name and contact information of the intern; and

(b) the name and address of the chiropractic college sponsoring the preceptorship program and approving the chiropractor to act as the preceptor.

(5) The preceptor must:

(a) have and maintain a license in good standing during the preceptorship;

(b) be responsible for the acts and omissions of the intern;

(c) supervise no more than one intern at any time;

(d) identify the intern to patients in a manner that clearly identifies him or her as a student;

(e) require each patient to provide informed consent to treatment by the intern and provide the patient the option for the chiropractor to be present;

(f) provide direct supervision of the intern on the premises and while the intern is engaged in any patient care, be readily available to the patient and the intern;

(g) not allow the intern to sign insurance claims, workers' compensation claims, or other documents that require the signature of a chiropractor; and

(h) comply with the preceptorship program requirements.

AUTH: 37-12-201, MCA

IMP: 37-12-201, MCA

REASON: The 1993 legislature mandated the board to adopt rules to address "the registration of interns and preceptors . . .," Ch. 275, L. Montana 1993. The board adopted ARM 24.126.704 setting requirements and limitations under which chiropractic students could gain their clinical experience and "obtain practical experience" with the supervising chiropractor being "present within the practice environment at all times when an intern is seeing patients." See, Notice of Proposed Rulemaking 1993 MAR p. 1592; Adoption Notice 1994 MAR p. 2713, eff. 10/14/94. On March 31, 2018, the board repealed the substantive provisions of the rule on the basis that the board "lacked authority to issue licenses to interns." MAR Notice No. 24-126-36. While accurate, this conclusion did not negate the authority of the board to define the registration process and the practice and conduct of the intern and the preceptor. The current rule merely repeats the statute and has resulted in practitioners asking the department for clarification on the scope of practice and requirements for a preceptorship. Testimony before the House Business & Economic Development Committee on January 20, 1993, shows intent to provide an exception to 37-12-301, MCA (unlawful to practice without chiropractic license) and

"allow interns in their last year to practice under the supervision of a licensed doctor. . . ." The department submitted written testimony that the amendment would provide the legal authority to carry out a program that had been in effect "for years" allowing "interns from chiropractic colleges to practice under the direct, physical supervision of a licensed doctor of chiropractic . . ." Senate Public Health, Welfare & Safety Committee Hearing on HB 148, March 19, 1993, Exhibit 1. The proposed rule once again articulates the policy to allow an intern to practice as a licensed chiropractor under direct supervision, using clear and concise language and adding consumer protection measures about the identification of and consent for treatment by the intern.

~~24.126.2103 CONTINUING EDUCATION REQUIREMENTS (1) Active licensees shall affirm an understanding of the duty to complete a minimum of 12 hours of continuing education (CE) during each renewal period per ARM 24.101.413.~~

~~(2) Licensees shall complete four hours of CE in professional boundaries and ethics every four year reporting period. These hours shall be in addition to and not count toward the 12 hours of CE required each renewal period.~~

~~(3) New licensees shall:~~

~~(a) complete 12 hours of CE between the date of original Montana licensure and the end of the first full renewal period; and~~

~~(b) affirm their understanding of the requirement on the second renewal application.~~

~~(4) Licensees converting from inactive to active status shall comply with the CE requirements of ARM 24.126.701.~~

~~(5) The board may randomly audit up to 50 percent of renewed licensees.~~

~~(6) CE hours cannot be accumulated and carried over from one renewal period to the next.~~

~~(7) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

~~(8) A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.~~

(1) Each active licensee must complete 12 continuing education (CE) hours annually on or before the renewal date, September 1, subject to random audit. The CE requirement does not apply until the licensee's first full year of licensure. Each licensee is responsible to select continuing education in compliance with this rule.

(2) Only two of the 12 hours in (1) may be in the philosophy of chiropractic or practice management.

(3) CE hours do not accumulate or carry over to following years.

(4) The board and department do not preapprove CE programs unless they are provided by one of the following entities:

(a) national, regional, or state chiropractic associations;

(b) state licensing boards;

(c) academies;

(d) approved chiropractic colleges; or

(e) the Federation of Chiropractic Licensing Boards (FCLB) Providers of Approved Continuing Education (PACE).

(5) To be eligible to receive credit for continuing education, including from preapproved programs in (4), a CE program must:

(a) directly relate to the scope of practice and professional conduct of chiropractic defined in Title 37, chapter 12, MCA;

(b) be designed to maintain or increase competent or ethical practice, stay current in the profession, and enhance professional skills; and

(c) contain significant academic or practical content.

(6) CE programs that primarily promote, sell, or offer goods, products, or services to the profession or that primarily focus on personal growth or general well-being do not qualify for credit.

(7) A "CE program" means:

(a) an in-person class, lecture, conference, workshop, or seminar;

(b) virtual conferences or webinars with an opportunity for interactive discussion;

(c) a college or university course other than one required for initial qualification for licensure; and

(d) teaching, self-study, or publication of content that meets the eligibility criteria in (5).

(8) The licensee must maintain and make available for audit, certification of completion of the CE program, including course description, outline, agenda, or syllabi for two years from the date of CE program. Certification must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) full name of the CE program provider;

(d) CE program date or dates; and

(e) number of CE hours earned.

(9) Licensees must affirm their understanding of the CE requirement on their renewal forms.

(10) The department, with respect to CE audits, shall decide the percentage to audit based on a statistically relevant sample of the total number of licensees and the compliance rate of past audits.

(11) The department may grant a request to waive a licensee's CE requirement based on extraordinary circumstances such as medical issues or disability, family or personal emergency, or natural disaster or catastrophic event.

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The rule is rewritten to be clear and concise. A companion rule, ARM 24.126.2105, "acceptable continuing education," is repealed and with two exceptions, its contents are incorporated into this rule. The two exceptions are that licensees may no longer obtain credit for attending board meetings (see Reason for repealing ARM 24.126.2105) or for attending the "new doc seminar." The statement of reasonable necessity supporting the "new doc seminar" stated that providing this information "should alleviate common mistakes new practitioners make" and allow new chiropractors "to ask questions and become more familiar with the board's

statutes and rules." Although well-meaning, providing this educational opportunity may conflict with statutorily mandated education and examinations that set minimum qualifications for licensure. Familiarizing new practitioners with board statutes and rules is the purpose of the jurisprudence examination. A single board member does not have authority to speak on behalf of the whole board and cannot be indemnified by the state for acts or omissions related to the information provided. Therefore, the board must exercise caution in providing informal opinions about its laws and rules. The substantive changes from the original rule include repealing in former (2) the ability to accumulate four ethics credits over four years because of the administrative difficulty of licensees and department auditors to track this information. The rule proposes to eliminate the mandatory ethics credit because the ethics credit is not commonly required by other states, the availability of ethics courses is limited, and there is no evidence to suggest a correlation between the incidence of complaints and the requirement. In new (1), it is not necessary to refer to another rule and including the actual date of the "renewal period" will be helpful to the reader. Section (3) is incorporated from ARM 24.126.2105. Former (3)(a) is restated at new (3) in a much clearer manner but with the same effect, and (3)(b) is moved to new (9). The new language waiving CE for the first year of licensure is easier to administer and understand than the current language. Former (4) and former (7) are unnecessary because they repeat the substance of an administrative rule and a statute, respectively. Former (7) is misleading because it repeats 37-1-321, MCA incompletely. In addition to administrative suspension, an individual may also be disciplined for failing to comply with CE requirements. New (5), (6), (7), and (8) contain language standardized for all boards and programs. New (9) is taken from former (1) and clarifies that under 37-1-306(2), MCA, licensees must not be required to submit evidence of CE to renew their license, and so are required to acknowledge their CE obligations. New (10) strikes language that repeats the statute and delegates to department staff to perform CE audits (which they already do) and to set the audit percentage on a formula applicable to all boards and programs instead of randomly chosen by the board or the department. New (11), formerly at (8), authorizes the department to act on behalf of the board and is another example of the type of discretion that is appropriate to delegate to staff rather than expending resources or time to take the question to the board.

24.126.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of 37-1-316, MCA, the board further defines unprofessional conduct as follows: It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing the practice of chiropractic.

~~(a) any representations to patients or prospective patients, whether communicated verbally, by advertisement, or through any other medium, that contains misstatements, falsehoods, distorted or fabulous statements, relative to:~~

~~(i) diagnosis, palpation, treatment, cure, or cost of services;~~

~~(ii) a fellow licensee, including statements which imply superiority over another licensee or health care professional; or~~

~~(iii) the licensee's particular abilities, qualifications, experience, features, or accomplishments regarding the licensee or the licensee's chiropractic practice.~~

~~(b) violating any provision of ARM 24.126.2304 regarding sexual misconduct or sexual relations with a patient;~~

~~(c) violating any state or federal statute or administrative rule regulating the practice of chiropractic including any statute or rule defining or establishing standards of patient care or professional conduct of practice;~~

~~(d) engaging in, or being involved in, "fee splitting" in which a licensee gives or receives payments or fees in referral of a patient to any professional or company offering payment in exchange for referrals to their products or services;~~

~~(e) soliciting or accepting, for services rendered, assigned payments from any third-party payer as payment in full, if the effect is to eliminate the need of payment by the patient of any required deductible or co-payment applicable on the patient's health benefit plan, except as hereinafter provided;~~

~~(f) billing charges or fees to a third-party payer or collecting from a third-party payer on behalf of a patient at a different rate than the charge or fee actually billed to or collected from the patient. In the case where services are provided at a reduced rate to a patient, any charge or fee billed to or collected from a third party must be based upon the actual reduced rate billed to the patient;~~

(2) In addition to the provisions of 37-1-316, MCA, the following is unprofessional conduct:

(a) committing any act of sexual abuse, sexual misconduct, or sexual exploitation regardless of whether the act is related to the licensee's practice;

(b) soliciting, engaging, or attempting to engage in any form of sexual relationship or sexual contact with a patient or a former patient, unless the chiropractor-patient relationship is terminated in writing and more than 90 days have passed since the termination;

(g)(c) engaging in, or providing services or treatments which are in excess of those warranted by either the patients' condition and response or the practice technique, methodology, or modality applied and are not consistent with the seriousness of diagnosis performing chiropractic services that exceed or do not support the clinical needs of the patient;

~~(h) participating in, or conducting, research projects on patients or the public without first obtaining written authorization from the board;~~

~~(i) and (j) remain the same but are renumbered (d) and (e).~~

~~(k)(f) performing an a sacrum/coccyx adjustment intrarectally unless the following conditions are met:~~

~~(i) remains the same.~~

~~(ii) the intra-rectal adjustment must be diagnosis related;~~

~~(iii)(ii) the adjustment is performed with the use of a disposable finger cot or rubber glove; and~~

~~(iv)(iii) a chaperone is present at all times when the patient is examined and treated intrarectally.~~

~~(l) remains the same but is renumbered (g).~~

~~(m) violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;~~

~~(n) providing professional services while impaired by dangerous drugs or controlled substances;~~

~~(e)(h)~~ failing to obtain an appropriate consultation or make an appropriate referral when the problem of the patient is beyond the licensee's training, experience, or competence;

~~(p)(i)~~ failing to render adequate supervision, management, training, or control of auxiliary staff, interns, or other persons, including preceptors, temporary permit holders, and/or licensees practicing under the licensee's supervision or control according to generally accepted standards of practice;

~~(q)~~ failing to cooperate with a board inspection or investigation in any material respect; or

~~(r)(i)~~ failing to keep adequate patient records that are legible and contain at a minimum:

(i) and (ii) remain the same.

(iii) relevant ~~symptomatology~~ symptomology;

(iv) through (viii) remain the same.

~~(s)~~ entering into a contract which would obligate a patient to pay for care to be rendered in the future, unless the contract provides that the patient is entitled to a complete refund for any care not received within a reasonable amount of time;

~~(t)~~ charging or collecting a clearly excessive fee. In determining if a fee is clearly excessive the board shall consider the fee or range of fees customarily charged in the state for similar services in light of modifying factors such as the time required, the complexity of the service, and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the service was provided;

~~(u)~~ engaging in the practice of chiropractic when the licensee's license is inactive, has expired, or has been suspended or revoked.

(3) It is unprofessional conduct for a licensee to engage in the following billing misconduct:

(a) giving or receiving money for referring patients to a company or another professional, also known as "fee splitting";

(b) charging or collecting from a private insurance company or government-funded insurance program the costs of treatment and waiving a patient's deductible or co-payment in the absence of a documented financial hardship;

(c) charging different fees to insurance companies and patients. A discounted fee to a patient must result in billing the same to the third-party payor; and

(d) charging a patient a clearly excessive fee or charging for services not rendered or not fully rendered.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, 37-1-319, 37-12-301, 37-12-322, MCA

REASON: The changes in (1) and (2) are designed to provide uniform language for all boards and programs and establish the premise in (1) that it is unprofessional conduct to violate any law governing the scope of a professional's practice. Former (1)(a) unnecessarily repeats 37-1-316(4) and (5), MCA, concerning false statements and representations in the conduct of the profession, and it is not necessary and

perhaps even limiting to list how and when the representations occur, as is provided in (a)(i) through (iii). Further, these prohibitions may invoke First Amendment protection if they are not false or misleading, which is the standard used in 37-1-316, MCA. Former (1)(b) is replaced with standardized language for all boards and programs. It is necessary to extend the prohibition beyond patients and include conduct that is related to the practice. New (2)(c) is taken from ARM 24.126.2304, which is proposed to be repealed. This section will retain the prohibition against sexual contact with a patient or former patient for a period of 90 days after termination of the chiropractor-patient relationship. Former (1)(c) is addressed by inserted standardized language on complying with all laws at (1). Former (1)(d), (e), and (f) regarding billing are rewritten under new (3). Former (1)(g) is restated more concisely. Former (1)(h) is repealed because the department does not receive requests for this authorization. Former (1)(k) inserts "sacrum/coccyx" to specify the specific adjustment at issue, and former (1)(k)(ii) is repealed because it incorrectly implies that other treatments are not required to be based on a diagnosis. Former (1)(m) is replaced with standardized language at (1). Former (1)(n) unnecessarily and inadequately repeats 37-1-316(10), MCA. Former (1)(p) incorrectly used the term "preceptors" instead of "interns." Former (1)(q) is repetitive of former (1)(i). Former (1)(s) is not necessary because the content is covered by ARM 24.126.412 as amended to clarify a refund is due. Former (1)(t) is moved to new (3)(e) and redrafted to be clear and concise. Former (1)(u) is not necessary and covered by standardized language to comply with all laws. New (3)(a) is a revised statement of (1)(d); (3)(b) is revised (1)(e); (3)(c) is revised (1)(f); and (3)(d) is revised (1)(t) but uses concise and clear language suggested by the FCLB model conduct rules.

4. The new rules proposed to be adopted are as follows:

NEW RULE I ADMINISTRATIVE SUSPENSIONS (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 regarding repeated or egregious deficiencies in (1)(a), or deficiencies with 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 against licensees who are out of compliance with administrative licensure requirements. Licensees who fail to meet continuing education requirements, fail to respond to audits of continuing education, fail to pay required fees, fail to meet initial licensing requirements, or fail to comply with final

orders of the board, may be administratively suspended. 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.

NEW RULE II DELEGATION OF TASKS (1) A chiropractor may delegate chiropractic physiotherapy to an auxiliary assistant employed by the chiropractor whom the chiropractor deems to be competent and safe in the context of an individual patient's circumstances.

(2) The chiropractor must:

(a) remain on the premises and supervise the auxiliary assistant; and

(b) assume full legal and ethical responsibility for tasks performed by the auxiliary assistant.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: It is necessary to clarify that a chiropractor may delegate certain tasks to unlicensed assistants who are employed and supervised by the chiropractor, consistent with a long-standing practice in this state and intent that was not clearly articulated in the definition of "chiropractic physiotherapy" at ARM 24.126.301.

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

24.126.502 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: This rule is being repealed because rulemaking is no longer required with the passage of Ch. 390, L. 2023 (House Bill (HB) 583), which addresses the elements that were in this rule.

24.126.507 TEMPORARY PERMIT

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

IMP: 37-1-131, 37-1-305, 37-1-319, MCA

REASON: Only one temporary permit has been issued in 12 years. The issue is whether the board thinks that a chiropractor at that point—waiting to finish sitting for the exam—is qualified to work without supervision. The statute, 37-1-305, MCA, will control and require the temporary permit only be available until passing the first exam available.

24.126.510 LICENSE BY ENDORSEMENT

AUTH: 37-1-131, MCA

IMP: 37-1-131, 37-1-304, MCA

REASON: Section (1) unnecessarily repeats 37-1-304, MCA. Sections (2), (4), and (5) are moved to ARM 24.126.504 and combined with procedures for examination candidates. Section (3) unnecessarily repeats ARM 24.101.401(12), which is a standardized rule for all boards and programs on the consideration of nonroutine applications.

24.126.2105 ACCEPTABLE CONTINUING EDUCATION

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: Except for the "new doc seminar" referenced in (2), the content of this rule is rewritten to be clear and concise and incorporated into ARM 24.126.2103 and allows all content involving continuing education to be covered by a single rule. See Reason statement under ARM 24.126.2104 for repeal of "new doc seminar." In former (4), it is necessary to repeal the opportunity to obtain credits for attending board meetings because of difficulty for the executive officer and staff to track someone's attendance and length of time attending. Board meetings do not necessarily or consistently provide a sufficiently rigorous continuing education opportunity that are "directly related to the scope of practice."

24.126.2304 SEXUAL RELATIONS WITH A PATIENT AND SEXUAL MISCONDUCT

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

IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: Section (2) is incorporated as unprofessional conduct. The remaining conduct is captured under other provisions of the unprofessional conduct rule at ARM 24.126.2301.

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 or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 10, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and 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 or by sending 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, do not apply.

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 and conduct this hearing.

BOARD OF CHIROPRACTORS
JULIE MURACK, DC, 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 April 2, 2024.