

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

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to medical assistants)
and NEW RULE II pertaining to fee)
abatment)

TO: All Concerned Persons

1. On October 6, 2005, the Board of Medical Examiners published MAR Notice No. 24-156-62 regarding the public hearing on the proposed adoption of the above-stated rules at page 1882 of the 2005 Montana Administrative Register, issue no. 19.

2. A public hearing on the proposed adoption was held on November 17, 2005. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on November 25, 2005.

3. The Board of Medical Examiners (board) adopted NEW RULE II (ARM 24.156.410) on December 12, 2005, at page 2676 of the 2005 Montana Administrative Register, issue no. 24.

4. The Board of Medical Examiners has thoroughly considered all of the comments made regarding New Rule I. A summary of the comments received and the board's responses are as follows:

General Comment: Fifty-eight written comments were submitted prior to the closing of the comment period on November 25, 2005. Included in these written submissions were the texts of 11 oral comments that were made during the public hearing on November 17, 2005. Twenty-one written comments were in favor of adoption of the new rule. Thirty-six comments opposed the adoption of the new rule.

General Response: The board thanks all commentors for their comments.

Comment 1: Nine comments were received from physicians who thanked the board for its work and supported the new rule. All nine physicians stated that they rely on medical assistants as an indispensable part of their practice and applauded the new rule's supervision requirements and the guidelines for immunizations.

Response 1: The board thanks these physicians for their support of the new rule.

Comment 2: Seven comments were received from medical assistants who thanked the board for drafting the new rule to allow flexibility in education and assignment of

tasks, and who discussed the important role medical assistants play in assisting physicians and podiatrists in providing health care in Montana.

Response 2: The board thanks these medical assistants for their support of the new rule.

Comment 3: Three comments were received that supported the New Rule I, but which sought a more narrowly defined scope of practice, including additional duties to be delegated.

Response 3: The board thanks these commentors for their support. After an extended discussion of the scope of practice the board did narrow the tasks that could be performed by a medical assistant to exclude monitoring blood products in New Rule I(7)(e).

Comment 4: Twenty-two written comments from nurses, eight comments from lay members of the public, one comment from a medical doctor, and one comment from a certified medical assistant expressed concern about perceived lack of guidelines necessary to ensure patient safety, the expanded scope of a medical assistant's practice, the definition of "physician's office," the education and training of medical assistants, the definition of "direct supervision," and the protocol for immunizations and invasive procedures.

Response 4: The board thanks all of these individuals for their comments and directs them to responses 7, 8, 9, 10, 11, and 12 where these concerns are addressed in detail.

Comment 5: Two comments that were opposed to New Rule I questioned how the legislature could allow physicians to act as licensing boards.

Response 5: The board thanks these individuals for their comments. The legislature did not intend that physicians act as licensing boards. Section 37-3-104, MCA is not a licensing statute. Medical assistants are unlicensed in Montana.

Comment 6: The Montana Nurses' Association and AARP commented on all of the concerns raised in comment 4 and, additionally, commented on "routine" and "technical" tasks and sections 3, 6, and 7 of the New Rule.

Response 6: The board thanks the Montana Nurses' Association and AARP for their comments and directs them to responses 7, 8, 9, 10, 11, and 12 where their concerns are addressed in detail.

Comment 7: The Montana Board of Nursing (BON) commented in detail and at length about the new rule. The BON thanked the board for revising the new rule from its original form that was withdrawn, endorsed the changes made by the board, and recommend further changes. Specifically, the BON recommended that New Rule I(5), which requires that the supervising physician or podiatrist's office inform

patients when a medical assistant is seeing them, be changed to allow flexibility in how and by whom a patient is informed.

Response 7: The board votes to amend New Rule I(5) to conform with the BON's suggested language: "The supervising physician or podiatrist shall ensure that patients are informed when a medical assistant is seeing them" and to further amend (5) by adding a final sentence: "A medical assistant shall wear a name badge that includes the title 'medical assistant'."

Comment 8: The BON recommended that New Rule I(6) be amended by deleting that part of the rule that appears after the "or" so that the rule would read, "A medical assistant must be a graduate of an accredited medical assisting program." The BON in its comments conceded that a grandfather clause might be acceptable.

Response 8: The board thanks the BON for this suggestion. After lengthy discussion, the board decided to adopt New Rule I(6) as noticed because the language as proposed allows for experienced individuals who might not fall within a grandfather clause to work in Montana. For instance, the board hypothesized that an Army corpsman who had worked for four or five years in a military or combat situation would have training and experience that would be exceptionally valuable but not fall within a grandfather clause. The physician would be able to determine that the training and experience is appropriate and the physician would be responsible for the Army corpsman's work as a medical assistant.

Comment 9: The BON asked the board to affirm the BON's understanding that New Rule I(1)'s definition of "Office" does not authorize the use of medical assistants in the ER, hospital, long-term care, or other acute-care settings although physicians and podiatrists may use medical assistants at their outreach clinics where the outreach clinic is conducted in the same building as houses a hospital, ER, or long-term care facility.

Response 9: The board thanked the BON for this comment and offered the BON the assurance it sought. The board voted to amend New Rule I(1)(b) to read, "'Office' means a location that a physician or podiatrist designates as the physician's or podiatrist's office, but excludes acute care or long-term care facilities. However, the physician or podiatrist may utilize an office in a building which houses an emergency room, an acute-care, or long-term facility for scheduled services."

Comment 10: The BON commented that "routine and technical" language of New Rule I(4) is "very appropriate and provides good guidance to physicians and podiatrists," but recommended substituting "shall" for "should" in sentence 4.

Response 10: The board thanked the BON for this comment and voted to amend New Rule I(4) by substituting "shall" for "should be" in sentence 4.

Comment 11: The BON commented that the term "assigned" was used in all but one place and asked that "assigned" be used throughout the rule instead of "assigned" and "delegated."

Response 11: The board thanks the BON for this comment and votes that the term "assigned" be used consistently in every place where the word "delegated" appears.

Comment 12: The Montana Nursing Association commented that New Rule I(7) is too broad and that the tasks listed are not "routine and technical."

Response 12: The board thanks the Montana Nursing Association for this comment. The board has worked hard to create a list of restrictions to protect the public while, at the same time, avoiding creating a list of allowable tasks that would require constant updating. The board has learned that delivery of blood products by IV is not taught in medical assistant programs at this time and votes to amend New Rule I(7) by deleting "blood product" from (7)(d) and creating a new (7)(e) that prohibits "administering blood products by IV."

5. After consideration of the comments, the board has adopted New Rule I (ARM 24.156.640), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.156.640) MEDICAL ASSISTANT (1) and (1)(a) remain as proposed.

(b) "Office" means a location that a physician or podiatrist designates as the physician's or podiatrist's office, but excludes acute care or long term care facilities, ~~unless~~ However, the physician or podiatrist ~~utilizes the~~ may utilize a building which houses an emergency room, acute care, or long term care facility for scheduled services.

(c) through (3) remain as proposed.

(4) The supervising physician or podiatrist is responsible for determining the competency of a medical assistant to perform the administrative and clinical tasks assigned to the medical assistant. Assigned tasks must be consistent with the supervising physician or podiatrist's education, training, experience, and active practice. Assigned tasks must be the type that a reasonable and prudent physician (or podiatrist) would find within the scope of sound medical judgment to assign. Assigned tasks, other than those tasks enumerated in 37-3-104(1)(b), MCA, ~~should~~ shall be routine, technical tasks for which the medical assistant has been appropriately trained. A physician (or podiatrist) may only ~~delegate~~ assign tasks that the physician (or podiatrist) is qualified to perform and tasks that the physician (or podiatrist) has not been legally restricted from performing. Any tasks performed by the medical assistant will be held to the same standard that is applied to the supervising physician or podiatrist.

(a) remains as proposed.

(5) The supervising physician or podiatrist's office shall ~~inform~~ ensure that patients are informed when a medical assistant is seeing them and shall ensure that assigned tasks are provided in the context of an appropriate physician/patient

relationship. A medical assistant shall wear a name badge that includes the title "medical assistant".

(6) through (7)(b) remain as proposed.

(c) conscious sedation monitoring, unless under the direct supervision of a physician or podiatrist; ~~and~~

(d) administering fluids, ~~blood products~~, or medications through an IV, unless under the direct supervision of a physician or podiatrist; ~~and~~

(e) administering blood products by IV.

(8) remains as proposed.

AUTH: 37-3-104, 37-3-203, MCA

IMP: 37-3-104, MCA

BOARD OF MEDICAL EXAMINERS
MICHAEL LAPAN, D.P.M., Chairperson

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 13, 2006