

Notice of Agency Rule-making Proposal

AGENCY: 02M DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

373 BOARD OF LICENSURE IN MEDICINE

CHAPTER NUMBER AND TITLE: Chapter 3- Physician Supervision of Advanced Practice Registered Nurse Under Medical Delegation

PROPOSED RULE NUMBER (*leave blank; assigned by Secretary of State*):

CONTACT PERSON FOR THIS FILING: Jean M. Greenwood

CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different):

PUBLIC HEARING (if any): No public hearing is planned.

COMMENT DEADLINE: August 6, 2011

BRIEF SUMMARY: Chapter 3, Physician Supervision of Advanced Practice Registered Nurse Under Delegation, is being repealed and not replaced because the statutory basis for Chapter 3, 32 M.R.S.A. § 2205-B(3) entitled "Delegated performance of services," was repealed in 2009 (PL 2009, c. 512, Section 1).

IMPACT ON MUNICIPALITIES OR COUNTIES (if any) n/a

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S.A. § 3269(7), § 2205-B(3)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different): n/a

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* Check one of the following two boxes.

The above summary is for use in both the newspaper and website notices.

The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

FUND	AGENCY AMOUNT	ORG	APP	JOB	OBJT
014	02M	0376	01-2		

Rule-Making Fact Sheet
(5 MRS A §8057-A)

AGENCY: 02M DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

373 BOARD OF LICENSURE IN MEDICINE

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE TITLE: Chapter 3- Physician Supervision of Advanced Practice Registered Nurse Under Medical Delegation

STATUTORY AUTHORITY: 32 M.R.S.A. § 3269(7), § 2205-B(3)

DATE AND PLACE OF PUBLIC HEARING: None Planned

COMMENT DEADLINE: August 6, 2011

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

Chapter 3, Physician Supervision of Advanced Practice Registered Nurse Under Delegation, is being repealed and not replaced because the statutory basis for Chapter 3, 32 M.R.S.A. § 2205-B(3) entitled "Delegated performance of services," was repealed in 2009 (PL 2009, c. 512, Section 1).

ANALYSIS AND EXPECTED OPERATION OF THE RULE: N/A

FISCAL IMPACT OF THE RULE: N/A

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

BENEFITS OF THE RULE:

Note: If necessary, additional pages may be used.

~~Chapter 3: PHYSICIAN SUPERVISION OF ADVANCED PRACTICE REGISTERED
NURSE UNDER MEDICAL DELEGATION~~

~~**SUMMARY:** A nurse midwife or nurse practitioner who is approved by the Maine State Board of Nursing as an advanced practice registered nurse may work as a licensed independent practitioner and/or may choose to perform medical diagnosis or prescribe therapeutic or corrective measures when these services are delegated by a licensed physician, as authorized by 32 M.R.S.A. §2205 B.3. When working under the delegation of a physician the APRN / physician relationship must be registered with the Board of Licensure in Medicine. This Chapter constitutes rules governing registration of these advanced nursing classifications when performing under the delegation of a physician, and the physicians who supervise them. Chapter 2 constitutes rules governing Physician Assistants who are supervised by physicians licensed by the Board of Licensure in Medicine.~~

- ~~§1 — Definitions~~
- ~~§2 — Qualifications for Registration~~
- ~~§3 — Exemptions from Registration~~
- ~~§4 — Scope of Practice~~
 - ~~A. — Delegated Authority, Including Prescriptive Privileges~~
 - ~~B. — Practice Setting~~
- ~~§5 — Supervision Criteria~~
 - ~~A. — Supervisors~~
 - ~~B. — Qualifications for Approval as Supervising Physician~~
 - ~~C. — Elements and Technical Requirements for Supervision~~
 - ~~D. — Written Plan of Supervision, Including Required~~
- ~~Updates~~
 - ~~E. — Plan to be Available on Demand~~
- ~~§6 — Assumption of Responsibility~~
- ~~§7 — Notification of Change of Supervision Physician~~
- ~~§8 — Sanctions~~
- ~~§9 — Identification Requirements~~
- ~~§10 — Incorporation~~

~~§ 1~~ **DEFINITIONS**

- ~~A. "Advanced Practice Registered Nurse" for the purposes of this chapter means a nurse midwife or a nurse practitioner as approved by the Maine State Board of Nursing who has successfully completed the 24 month supervision requirement and is eligible for independent practice.~~
- ~~B. "APRN" means "Advanced Practice Registered Nurse"~~
- ~~C. "Board" means the Board of Licensure in Medicine.~~
- ~~D. "Group Practice" means two or more physicians providing medical services in a shared setting, and includes associations, corporations, and partnerships where the essential commonality is cross coverage, but does not include organized health care delivery systems.~~
- ~~E. "Medical Delegation" means to delegate to an APRN the right to perform medical services, as specified in the written plan of supervision.~~
- ~~F. "Multiple Work Site" means the APRN practices at more than one address and the APRN's primary supervising physician and/or scope of practice as defined by the plan of supervision in each location are different. Each such site requires a separate registration with the board. Multiple locations of the same supervisory relationship, such as more than one office address of a practice in which the primary supervising physician and the scope of practice do not change, are not multiple work sites.~~
- ~~G. "Organized Health Care Delivery System" means an institutionalized or structured entity that provides medical services, and directly employs multiple categories of health care providers. Physician supervision of APRNs employed in these systems is provided by the employing institution, agency, or other entity, through a PSP.~~
- ~~H. "Physician" means a person who has an active license issued by the Board of Licensure in Medicine or the Board of Osteopathic Licensure to practice medicine in the state.~~
- ~~I. "Primary Supervising Physician" (PSP) means a physician who has been approved by the Board to provide supervision of APRNs or, who has been approved by the Board to serve as the principal physician providing supervision or, overseeing supervision to Physician Assistants and/or APRNs for an Organized Health Care Delivery System or Group Practice.~~
- ~~J. "Secondary Supervising Physician" means a physician who has agreed in writing to provide supervision as~~

~~defined in this section and has agreed to accept delegation of supervision from the PSP according to the written Plan Of Supervision in Section 5.D, and has agreed to accept liability for the physician assistant or APRN.~~

~~K. "Supervision" means overseeing and accepting responsibility and liability for the medical activities delegated by a physician to an APRN.~~

~~§2 QUALIFICATIONS FOR REGISTRATION~~

~~A. REGISTRATION REQUIREMENTS~~

~~Except as otherwise provided in these rules, in order to practice as an APRN under delegation of a physician the individual must be a fully approved APRN nurse midwife or an APRN nurse practitioner according to the statutes and regulations of the Maine State Board of Nursing.~~

~~To register a supervisory relationship with this Board the PSP must:~~

- ~~1. Obtain from the APRN and submit to this Board a current Letter of full Approval to Practice as an APRN from the Maine State Board of Nursing. If the proposed APRN under delegation is a nurse practitioner, also obtain from that nurse practitioner and submit to the Board a copy of the letter issued by the Maine State Board of Nursing confirming that this nurse practitioner has completed the twenty four (24) month supervision requirement and is eligible for independent practice.~~
- ~~2. Submit at least one of the following:
 - ~~a. If an APRN is employed by or a principal in an individual practice, a signed statement from the PSP agreeing to provide supervision; or~~
 - ~~b. If an APRN is to be employed by or a principal in an Organized Health Care Delivery System, a statement from the Organized Health Care Delivery System certifying employment and signed by a physician in the Organized Health Care Delivery System facility who has been approved as a PSP; or~~
 - ~~c. If an APRN to be employed by or practice in a Group Practice, a statement from a PSP in the Group Practice agreeing to provide supervision;~~~~
- ~~3. Comply with the requirements of Section 5 C, D, and E;~~

- ~~4. Submit an application including the appropriate fees. An application received without the required fees is considered incomplete and will not be processed.~~
- ~~5. The physician shall submit the statement described in § 2, ¶A, Sub ¶2 at the beginning of the supervisory relationship and shall renew the registration every two (2) years, including paying appropriate fees, on August 1 of the odd or even year based on initial registration.~~

~~An individual may not practice until granted a certificate of registration by the Board.~~

~~§ 3 EXEMPTION FROM REGISTRATION~~

~~Nothing herein shall be construed to require registration under these rules of an APRN employed in the service of the federal government while performing duties incident to that employment, or to APRNs working in independent practice under their own scope of practice.~~

~~§ 4 SCOPE OF PRACTICE~~

~~The scope of practice of an APRN independent of any delegation by a physician is defined by the Maine State Board of Nursing, as statutorily identified in 32 M.R.S.A. §2102-2 A.~~

~~An APRN (nurse midwife or nurse practitioner) may choose to perform medical acts beyond the scope of practice of an APRN as defined by the Maine State Board of Nursing, when these services are delegated by a licensed physician. When working under the delegation of a physician, the delegated relationship must be registered with the Board of Licensure in Medicine. This registration must occur before the performance of delegated acts commences.~~

~~A. DELEGATED AUTHORITY~~

~~APRNs may expand their scope of practice when delegated and supervised by a physician as specified in this rule in the following ways:~~

- ~~1. The ordering of diagnostic, therapeutic and other medical services;~~
- ~~2. The prescribing and dispensing of drugs and medical devices to the extent permitted by state and federal law. Prescribing and dispensing drugs may include schedule III through V substances and all legend drugs. A PSP may request individual consideration from the Board for authorization to delegate the prescribing of schedule II drugs under specific individual guidelines detailed by the Board. APRNs under delegation may request, receive, and sign for professional samples and~~

~~may distribute professional samples to patients,
and~~

- ~~3. The performance of tasks that are not routinely within the scope of practice of an APRN as defined by the Maine State Board of Nursing or regularly performed by the PSP so long as adequate oversight, secondary supervisory, and referral arrangements are in place to ensure competent provision of services by the APRN.~~

~~B. PRACTICE SETTING~~

~~An APRN under medical delegation of a physician may perform medical activities only in a practice setting in which the supervising physician agrees to provide supervision.~~

~~§ 5 SUPERVISION CRITERIA~~

~~Supervision shall be continuous but shall not be construed as necessarily requiring the physical presence of the supervising physician at the time and place that the services are rendered.~~

~~A. SUPERVISORS~~

~~APRNs may perform medical activities outside their defined scope of practice only when under medical delegation and when provided supervision by the following:~~

- ~~1. A Primary or Secondary Supervising Physician; or~~
- ~~2. A physician in an Organized Health Care Delivery System in which there is a PSP; , or~~
- ~~3. A physician licensed by the Board of Osteopathic Licensure who is permitted under rules promulgated by that Board to be a secondary supervisor of an APRN.~~

~~B. QUALIFICATION FOR APPROVAL AS A PSP~~

- ~~1. Except as otherwise provided in this chapter, any physician must be approved by the Board before the physician may become a PSP, for each individual wishing to be supervised. The Board may grant approval to a physician to become a PSP who:~~
 - ~~a. Holds an active, unrestricted, permanent license to practice medicine in this state;~~
 - ~~b. Submits a statement to the Board that the licensee will oversee and accept responsibility and liability for the medical activities delegated to the APRN. If the physician is to serve as the PSP for an Organized Health Care Delivery System or Group Practice, the statement must so indicate;~~
 - ~~c. Submits an affidavit that a written Plan Of Supervision addressing the technical requirements of supervision as set forth in §5, ¶C of this Chapter is on file in the practice setting; and~~
 - ~~d. Pays the appropriate fee as determined by the Board.~~

~~2. Prohibited Physician Conduct~~

- ~~a. No physician shall delegate to any person other than another physician licensed by the Board of Licensure in Medicine or the Board of Osteopathic Licensure the performance of duties which constitute the practice of medicine or surgery, except in full compliance with this chapter or pursuant to 32 M.R.S.A. §3270-B.~~
- ~~b. No physician shall supervise an APRN who does not hold a current active license as a Registered Professional Nurse and a Letter of full Approval to Practice as an APRN, both issued by the Maine State Board of Nursing.~~
- ~~c. No physician shall supervise an APRN under medical delegation unless:
 - ~~1. The physician has been approved by the Board to become a PSP and has completed a statement that the physician agrees to provide supervision to a particular APRN (as required by section 5 or 6) and has ensured that the statement has been provided to the Board; or~~
 - ~~2. The physician has ensured that the APRN has a PSP, or is supervised by a physician licensed by the Board of Osteopathic Licensure who is permitted to exercise primary supervision of APRNs by that board, and provides supervision only in an Organized Health Care Delivery System; or~~
 - ~~3. The APRN has a PSP or is supervised by a physician licensed by the Board of Osteopathic Licensure who is permitted to exercise primary supervision of APRNs by that board, and agrees in writing to accept delegated responsibility as a Secondary Supervising Physician from the PSP under the Plan Of Supervision.~~~~

~~3. PHYSICIAN SANCTIONS~~

~~Any physician licensed by the Board who is determined to have violated this chapter shall be deemed to have violated 32 M.R.S.A. §3282 A.2 and shall be subject to disciplinary action by the Board.~~

~~The Board may terminate a physician from acting as a Secondary or PSP or teaching supervising physician in accordance with due process.~~

~~C. ELEMENTS AND TECHNICAL REQUIREMENTS OF SUPERVISION~~

~~As a part of the PSP/APRN team, the PSP is responsible for ensuring that:~~

- ~~1. The APRN's basic scope of practice and practice setting is identified;~~
- ~~2. The delegation of medical tasks is appropriate to the APRN's level of competence;~~
- ~~3. The relationship of, and access to, a supervising physician is defined; and~~
- ~~4. A process for evaluation of the APRN's performance is established.~~

~~D. WRITTEN PLAN OF SUPERVISION~~

~~PSPs who supervise APRNs registered to practice in accordance with these rules must prepare and have on file in the practice setting a written, dated Plan Of Supervision that is signed by the supervising physician and that contains specified practice descriptions of the elements of supervision as outlined in subparagraph C. This Plan of Supervision must be reviewed and updated as necessary, but in any event whenever the PSP submits a registration or biennial registration renewal to the Board, a copy of the updated plan must be attached. A statement shall be attached to the Plan stating the date the Plan was reviewed and any changes to the plan, and shall be signed by the APRN and PSP. A copy of the Plan of Supervision and referenced Statement shall be simultaneously submitted to the Board.~~

~~If an APRN is to be supervised by a secondary supervising physician(s), the secondary supervising physician(s) must accept delegation of supervision from the PSP in writing as part of the Plan of Supervision. The Plan of Supervision may be in a format convenient to the supervisory relationship. Appendix 1 of these Rules provides one sample format for a written Plan of Supervision.~~

~~E. PLAN TO BE AVAILABLE ON DEMAND~~

~~The PSP shall provide, at the request of any Board member or authorized person, a copy of the Plan Of Supervision and, if applicable, the document showing the delegation of that Plan to a Secondary Supervising Physician. Such request may be made in writing or by appearing at the practice setting in which case the plan shall be provided immediately. The Board may~~

~~require the plan to be amended for purposes of ensuring public safety as required by state law.~~

~~§ 6 ASSUMPTION OF RESPONSIBILITY~~

~~If an APRN under medical delegation is employed by a physician or group of physicians, the APRN must still be provided supervision by an approved Primary or Secondary Supervising Physician. Liability under these rules for the APRN's medical activities shall remain that of the approved Primary or Secondary Supervising Physician, including when the APRN provides care and treatment for patients in an Organized Health Care Delivery System facility. If an APRN is employed by or a principal in an Organized Health Care Delivery System facility, nothing in these rules shall be construed to limit the liability of the Organized Health Care Delivery System facility for the APRN's actions or omissions. An APRN who is employed by or who is a principal in such facilities must still be provided supervision by an approved Primary or Secondary Supervising Physician.~~

~~§ 7 NOTIFICATION OF CHANGE IN OR ADDITION OF SUPERVISING PHYSICIAN~~

~~Upon changing PSPs or adding an additional PSP or multiple worksite, the PSP must notify the Board. Such notification shall include:~~

- ~~A. The name, business address, and telephone number of the new or additional PSP(s);~~
- ~~B. The name, business address, and telephone number of the APRN; and~~
- ~~C. At least one of the following:
 - ~~1. A signed statement (as required in Section 5 and/or 6) from each new or additional PSP;~~
 - ~~2. If an APRN is to be employed by or a principal in an Organized Health Care Delivery System facility, a statement (as required in Section 2) from the Organized Health Care Delivery System facility certifying employment and signed by the physician in the Organized Health Care Delivery System facility who has been approved as a PSP; or~~
 - ~~3. If an APRN is to be employed by or practice in a group practice, a statement (as required in Section 5 and/or 6) from the PSP in the Group Practice agreeing to provide supervision as defined in Section 1.~~~~
- ~~D. The statement of the PSP or the certification of employment by the Organized Health Care Delivery~~

~~System facility must be executed by the physician or an Organized Health Care Delivery System prior to the APRN's initiation of practice under the new supervising physician.~~

~~E. The PSP will notify the Board of any changes in or, additions to, or deletions of PSPs no later than 14 days after the effective date of the change or addition.~~

~~F. Notifications not submitted in writing within 14 days will be subject to a late fee of not more than \$100.~~

~~§ 8 APRN SANCTIONS~~

~~The Board has jurisdiction to take disciplinary action only against its licensees. The Board shall refer to the Maine State Board of Nursing for possible sanction of their Nursing License any APRN about whom a complaint has been received.~~

~~§ 9 IDENTIFICATION REQUIREMENTS~~

~~A. The PSP who registers a PSP/APRN supervisory relationship under these rules, shall keep available for inspection at their primary place of business:~~

- ~~• The registered professional nurse license~~
- ~~• The full letter of approval to practice as an APRN, and~~
- ~~• The registration certificate.~~

~~B. The PSP will require an APRN to wear a name tag identifying him/herself as an APRN.~~

~~§ 10 INCORPORATION~~

~~Nothing in these rules shall be construed to prohibit APRNs from incorporating as a professional corporation or business that provides medical services, so long as all the applicable rules contained herein are executed and followed.~~

APPENDIX 1

Plan of Supervision Instructions:

1. — A Plan of Supervision is to be completed with the initial application for a primary supervisory relationship, as well as at the biennial renewal of the supervisory relationship.
2. — This sample format or any other format of the Plan of Supervision convenient to the supervisory relationship may be used. The format used must conform to the elements of information specified here.
3. — This form is required in accordance with the supervisory requirements identified in Chapter 3, section 5 of the Rules of the Board of Licensure in Medicine

Maine Board of Licensure in Medicine

**ADVANCED PRACTICE REGISTERED NURSE/ PRIMARY SUPERVISING
PHYSICIAN**

PLAN OF SUPERVISION

Sample form

I. — Practice Setting and Scope of Practice:

— Provide a brief description of the practice setting(s), the types of patients and patient encounters common to this practice, and a general overview of the role of the APRN in the practice.

H. Supervision

A. Supervisory Arrangements:

Describe the relationship of, and access to, your primary supervising physician. Provide an explanation of the mechanisms for on-site and off-site physician supervision and communication.

B. Coverage:

Provide a description of supervision when your primary supervising physician is not available.

~~C. Will you be performing medical care tasks, which are outside the normal practice of your primary supervising physician?~~

~~_____ YES _____ NO~~

~~If yes, define and identify the supervisory arrangements that have been delegated by your supervising physician to assure appropriately trained supervision.~~

~~III. Performance Evaluation~~

~~Describe the mechanisms and process of the evaluation of your medical care.~~

IV. Attestation

We have reviewed and agreed to the content of this form.

Printed Name and Signature of APRN License number Date
Signature

Name of Supervising Physician License number Date
Signature

~~STATUTORY AUTHORITY: 32 M.R.S.A. § 3269(7), § 2205(b)(3)~~

~~EFFECTIVE DATE:~~

~~November 8, 1988~~

~~REPEALED AND REPLACED:~~

~~November 1, 1994~~

~~EFFECTIVE DATE (ELECTRONIC CONVERSION):~~

~~October 22, 1996~~

~~NON-SUBSTANTIVE CHANGES:~~

~~January 29, 1999 — converted to Microsoft Word~~

~~REPEALED AND REPLACED:~~

~~May 8, 2001~~

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~~August 23, 2006 — filing 2006-391~~