

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.150.401 fees, 24.150.505)
inactive status, 24.150.507 military)
training or experience, 24.150.2201)
continuing education requirements,)
and 24.150.2301 unprofessional)
conduct, and the repeal of ARM)
24.150.2203 proof of attendance)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On October 30, 2018, at 1:00 p.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

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 Hearing Aid Dispensers (board) no later than 5:00 p.m., on October 23, 2018, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsddhad@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.150.401 FEES (1) through (1)(e) remain the same.

(f) Renewal active license

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(g) through (4) remain the same.

AUTH: 37-1-131, 37-1-134, 37-16-202, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-16-402, 37-16-405, 37-16-406,

MCA

REASON: Between 2010 and 2014, the board experienced financial shortfalls and had to raise fees three times to continue board functions. This was due to a severe loss of renewal revenue in 2011 when a change in the law exempted licensed audiologists from needing a hearing aid dispenser (HAD) license and was coupled with a consistent number of complaints to process every year.

Over the past four years, the reduced number of licensees has remained constant while the number of complaints has decreased due in part to a 2014

agreement in which the Office of Consumer Protection, Montana Department of Justice, processes certain complaints regarding HAD contracts. During this time the board's budget stabilized and the board began building a cash reserve. Following the department's recommendation and pursuant to 17-2-302, MCA, the board abated fees for the 2017 and 2018 renewal cycles, but still has a cash balance exceeding twice its annual appropriation. The board determined it is reasonably necessary to now reduce the active status renewal fee to comply with 17-2-302, MCA, by reducing the cash balance. The board estimates that the proposed decrease will affect approximately 59 active licensees and result in a \$56,050 decrease in annual revenue.

24.150.505 INACTIVE STATUS (1) through (4) remain the same.

(5) ~~Inactive licensees reactivating their license shall submit for board review and prior approval, proof of completion of~~ Licensees shifting from inactive to active status must complete a minimum of ten hours of additional formal training or continuing education, which shall not include on-the-job experience.

AUTH: 37-1-319, ~~37-16-202~~, MCA

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

REASON: The board is amending this rule to eliminate board preapproval of continuing education (CE) providers. The board determined that the preapproval process is confusing and cumbersome for both licensees and the board, and notes that late approval or denial of a provider often resulted in licensees scrambling to obtain CE prior to renewal. Following amendment, licensees will be responsible to select appropriate CE courses within the guidelines provided in board rules.

The board is also amending (5) to align with the provisions of 37-1-306, MCA, and standardized department procedures. As occurs in license renewal, licensees changing from inactive to active status will affirm an understanding of their CE requirement and the potential of being audited for compliance.

Authority citations are being amended to accurately reflect all statutes implemented through the rule.

24.150.507 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a hearing aid dispenser. ~~At a minimum, satisfactory~~ Satisfactory evidence shall ~~include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214) or other discharge documentation;

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: It has come to the department's attention that certain military personnel (reservists and national guardsmen who have never been activated) in fact do not receive a DD 214 form upon their discharge from the military. Because the rule may be interpreted to absolutely require a DD 214 from all applicants who wish to submit evidence of relevant military training, service, or education as part of the licensure process, the department recommended these amendments to allow the board to consider other evidence of military discharge in addition to or in lieu of a DD 214.

24.150.2201 CONTINUING EDUCATION REQUIREMENTS (1) Except as provided in (2) and (3), licensees are required to complete ten clock hours of continuing education (CE) each renewal period and ~~must attest to their compliance on renewal applications~~ shall affirm an understanding of their recurring duty to comply with CE requirements as a part of annual license renewal.

~~(2) A licensee may request an exception or extension of time to complete the continuing education requirements for good cause shown. The request must be received prior to the renewal date. The board may extend the time for completion of the continuing education to a certain date. The licensee must submit documentary proof of continuing education compliance by that date, if it is after the date the license would have expired, had no extension been granted. A licensee may request an exemption from CE requirements due to certified illness or undue hardship. Requests will be considered by the board.~~

~~(3) A licensee whose initial Montana license was issued within the six months immediately preceding the annual renewal date is exempt from the continuing education requirements during that six-month period. CE is not required for licensees renewing their license for the first time.~~

~~(4) Continuing education CE courses on fitting and dispensing hearing aids sponsored by the Montana Hearing Aid Society, the International Hearing Society, the American Speech Language Hearing Association, the American Conference of Audioprosthology, the Montana Speech and Hearing Association, the Academy of Dispensing Audiologists, and the American Academy of Audiology are preapproved. College courses and continuing education CE courses offered in related disciplines will be reviewed and approved by the board on a case-by-case basis.~~

~~(5) and (6) remain the same.~~

~~(7) Credit recognition will not be granted for course work which is substantially similar to course work which was successfully completed in the preceding two years and used to meet the continuing educational CE requirements of the board.~~

~~(8) Clock hours of continuing education CE in excess of the ten required hours per renewal period may not be accumulated and carried forward to another renewal period.~~

~~(9) The board may randomly audit up to 50 percent of renewed licensees.~~

~~(10) All CE must be documented to show proof of completion. The licensee is responsible for maintaining these records for one year following the renewal cycle reporting period and for making those records available upon request.~~

Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

- (c) presenter or sponsor;
- (d) course date(s); and
- (e) number of CE hours earned.

(11) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next education reporting period.

AUTH: 37-1-131, 37-1-319, ~~37-16-202~~, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

The board is amending (2) by removing licensees' ability to request CE extensions to align CE provisions with standardized department procedures. Under the standardized audit processes, licensees are provided with adequate time to cure any audit deficiencies and additional extensions are no longer necessary.

The board is simplifying (3) to address licensee confusion by clearly stating that new licensees do not have CE requirements their first renewal period.

The board is adding (9) to allow flexibility in conducting random CE audits. Currently, the board randomly audits 10 percent of all renewed licensees for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

It is reasonably necessary to add (10) and specify the CE documentation requirements for responding to a random audit. The board is relocating these provisions from ARM 24.150.2203 which is proposed for repeal in this notice.

The board is adding (11) to specify that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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

24.150.2301 UNPROFESSIONAL CONDUCT (1) through (1)(u) remain the same.

~~(v) failing to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.150.2201 or supplying misleading, incomplete, or false information relative to continuing education taken by the licensee;~~

(w) through (y) remain the same, but are renumbered (v) through (x).

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA
IMP: 37-1-131, 37-1-141, 37-1-316, 37-1-319, 37-16-411, MCA

REASON: The board is striking (1)(v) to comply with the department's administrative suspension procedure and 37-1-321, MCA, that licensees not in compliance with CE may be subject to administrative suspension according to standardized audit processes. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

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

24.150.2203 PROOF OF ATTENDANCE

AUTH: 37-1-319, 37-16-202, MCA

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

REASON: The board is repealing this rule to further facilitate the department's standardized CE audit procedures and locate all necessary CE provisions to ARM 24.150.2201.

5. 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 Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsddhad@mt.gov, and must be received no later than 5:00 p.m., November 2, 2018.

6. An electronic copy of this notice of public hearing is available at hearingaid.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.

7. 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 Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsddhad@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.150.401, 24.150.505, 24.150.507, 24.150.2201, and 24.150.2301 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 24.150.2203 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to dlibsdhad@mt.gov.

10. Sara Hansen-Baiamonte, board counsel, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS
MICHAEL SPINTI, PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 25, 2018.