

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.150.401 fees, 24.150.402)	PROPOSED AMENDMENT AND
record retention, 24.150.404 fee)	REPEAL
abatement, 24.150.503 traineeship)	
requirements and standards,)	
24.150.601 minimum testing,)	
24.150.602 transactional document)	
requirements - form and content,)	
24.150.2201 continuing education)	
requirements, 24.150.2301)	
unprofessional conduct,)	
and the repeal of 24.150.2204)	
standards for approval)	

TO: All Concerned Persons

1. On June 14, 2019, at 10:30 a.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 no later than 5:00 p.m., on June 7, 2019, 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)(g) remain the same.

~~(h) Copies of law and rules~~ _____ 5

(2) 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: The board is amending this rule to strike an obsolete fee. The board anticipates that eliminating this fee will result in no impact to the board's annual

revenue because board laws and rules have been available at no cost online for several years.

24.150.402 RECORD RETENTION (1) through (3) remain the same.

~~(4) Upon the board's request, and in a form or manner as may reasonably be required by the board, a licensee shall timely provide the board a copy of an electronic audiometer calibration made within the 12 months preceding the date of the board's request.~~

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

IMP: 37-1-131, 37-16-301, 37-16-303, 37-16-304, 37-16-411, MCA

REASON: The board is striking (4) to align with changes proposed to ARM 24.150.601 in this notice. See the REASON for ARM 24.150.601. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.150.404 FEE ABATEMENT (1) ~~The Board of Hearing Aid Dispensers board~~ adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry ~~found~~ at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board is amending this rule for drafting and language consistency.

24.150.503 TRAINEESHIP REQUIREMENTS AND STANDARDS (1) ~~For the purposes of 37-16-405, MCA, a "qualified licensed hearing aid dispenser," who will serve as the supervisor of~~ To supervise a trainee, a hearing aid dispenser shall meet the following criteria:

(a) be currently licensed and have been actively engaged in the business of selling, dispensing, and the fitting of hearing aids in ~~the state of~~ Montana for at least one year; and

(b) through (6) remain the same.

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

IMP: ~~37-1-404~~, 37-1-131, 37-16-301, 37-16-405, MCA

REASON: The board is amending this rule for consistency in drafting and ease of use for the reader. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.150.601 MINIMUM TESTING (1) remains the same.

(2) At the time of fitting or during ~~the course of~~ the trial period, the dispenser will verify and validate the hearing aid fitting and document the results. ~~Verification refers~~ according to generally accepted standards of practice to objectively analyze

aided performance, ~~while validation establishes~~ and establish the patient's perceived improvement.

(3) remains the same.

(4) The board may randomly audit up to 50 percent of renewed licensees for calibration compliance.

AUTH: 37-16-202, MCA

IMP: 37-16-202, ~~37-16-411~~, MCA

REASON: Section 37-16-202, MCA, requires the periodic inspection and calibration of licensees' audiometric testing equipment. Historically, the board audited all licensees annually for compliance and found no violations. Because licensees are complying with this requirement, the board determined it is reasonably necessary to no longer conduct mandatory audits, but instead require that licensees affirm the inspection and calibration of their equipment as a part of annual renewal. Following amendment, the board will be able to utilize the standard processes of the department's audit unit to determine licensees' compliance. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.150.602 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) through (6) remain the same.

(7) The dispensing fee may be deducted from the purchase price only after the hearing aid or related device is delivered to the patient and within the 30-day right to cancel period.

AUTH: 37-16-202, MCA

IMP: 37-16-202, 37-16-303, 37-16-304, MCA

REASON: The board is adding (7) following a request for clarification from the board's screening panel. While this has been the board's intent regarding licensee receipt of the dispensing fee, the board is amending the rule to clearly address this question.

24.150.2201 CONTINUING EDUCATION REQUIREMENTS (1) through (3) remain the same.

(4) The board/staff will not preapprove CE programs or sponsors. It is the responsibility of the licensee to select quality programs that:

(a) contribute to the licensee's knowledge and professional competence;

(b) contain significant intellectual or practical content; and

(c) deal primarily with substantive issues relating to the use of hearing aids for aiding or compensating the hearing impaired and current developments in the practice of fitting, testing, or dispensing hearing aids.

~~(4)~~ (5) 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 CE courses offered in related disciplines will be reviewed and approved by the board on a case-by-case basis.~~

(6) A CE program means a class, institute, lecture, conference, workshop, audio, video, internet or correspondence course, or peer-reviewed publication of a journal article(s) or textbook(s) that meets the requirements of (4). Programs that promote a company, individual, or product are excluded.

(5) through (11) remain the same but are renumbered (7) through (13).

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

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

REASON: The board is amending this rule to help facilitate the department's standardized renewal, administrative suspension, and audit procedures. As a part of the standardization, the board is placing the responsibility on licensees to select quality continuing education (CE) programs that contribute to their knowledge and competence. Following amendment, the board will no longer approve sponsors or courses as the licensees must choose CE that meets the education objectives described in this rule.

The board is relocating (6) from ARM 24.150.2204 which is proposed for repeal in this notice.

24.150.2301 UNPROFESSIONAL CONDUCT (1) ~~For the purpose of implementing the provisions of Title 37, chapters 1 and 16, MCA, and in In addition to the unprofessional conduct provisions set forth in statute of 37-1-316, MCA,~~ the board defines unprofessional conduct as follows:

(a) through (g) remain the same.

~~(h) filing a complaint with, or providing information to, the board which the licensee knows, or ought to know, is false or misleading (does not apply to any filing of a complaint or providing information to the board when done in good faith);~~

(i) remains the same but is renumbered (h).

~~(j) using any dangerous drug or controlled substance illegally while providing professional services;~~

~~(k) acting in such a manner as to present a danger to public health or safety, or to any patient including, but not limited to, incompetence, negligence, or malpractice;~~

~~(l) (i) performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure, including but not limited to:~~

~~(i) the purposeful removal of cerumen from a patient's ear is unprofessional conduct;~~

~~(m) 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;~~

~~(n) promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;~~

~~(o) (i) failing to render adequate supervision, management, training, or control of auxiliary staff or supervisees other persons, including licensees practicing~~

~~under the licensee's supervision or control, according to generally accepted standards of practice;~~

(p) remains the same but is renumbered (k).

~~(q) (l) delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license, or certification to perform the delegated task;~~

(r) through (x) remain the same but are renumbered (m) through (s).

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA

IMP: 37-1-131, ~~37-1-144~~, 37-1-316, 37-1-319, 37-16-411, MCA

REASON: Following an in-depth review, board legal counsel recommended several amendments to this rule to ensure no unnecessary duplication with 37-1-316, MCA, the unprofessional conduct statute. The board determined it is reasonably necessary to update this rule to remove duplication with statute, simplify and streamline the rule for ease of use and readability, and more clearly set forth the actions considered by the board as unprofessional conduct. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

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

24.150.2204 STANDARDS FOR APPROVAL

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

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

REASON: The board is repealing this rule to align with changes proposed to the continuing education process elsewhere in this notice. Following the changes, the board will no longer preapprove CE courses or providers. The board has relocated any remaining relevant 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., June 21, 2019.

6. An electronic copy of this notice of public hearing is available at www.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, 24.150.402, 24.150.404, 24.150.503, 24.150.601, 24.150.602, 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 24.150.2204 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 dlibsddhad@mt.gov.

10. Linda Grief, Executive Officer, 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 May 14, 2019.