

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF ATHLETIC TRAINERS
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.101.413 renewal dates and)
requirements, 24.118.402 fee)
schedule, and the adoption of NEW)
RULES I through VII pertaining to)
licensure of athletic trainers)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On February 17, 2011, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption 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 Athletic Trainers (board) no later than 5:00 p.m., on February 11, 2011, to advise us of the nature of the accommodation that you need. Please contact Priscilla Bode, Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2037; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdatr@mt.gov.

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Montana Legislature enacted Chapter 388, Laws of 2007 (House Bill 665), an act creating the Board of Athletic Trainers (board) and setting forth licensure requirements. The bill was signed by the Governor on May 3, 2007, and became effective October 1, 2007. The board determined it is reasonably necessary to adopt New Rules I through VII to further implement the statutory provisions for the licensure, conduct, and continuing education of athletic trainers in Montana. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following the rule.

3. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(c) remain the same.

(d)	Athletic Trainers	Athletic Trainers	Triennially <u>Annually</u>	August 31
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(e) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The 2009 Montana Legislature enacted Chapter 109, Laws of 2009 (House Bill 80), an act revising professional and occupational licensing laws. The bill was signed by the Governor on April 1, 2009, became effective on October 1, 2009. The bill changed the licensure period for athletic trainers from three years to an annual license period. The department is amending the renewal cycle in this rule to align with the statutory change.

24.118.402 FEE SCHEDULE (1) Fees for original examination and license, and original endorsement and license ~~are based on a calendar year beginning with calendar year 2008, are effective for three years, and must be renewed annually~~ by the date specified in ARM 24.101.413. The following is the fee schedule for licensed athletic trainers:

(a) Original examination application and license fee	\$750 <u>175</u>
(b) Original endorsement application and license fee	750 <u>175</u>
<u>(c) License renewal fee</u>	<u>175</u>

(2) and (3) remain the same.

AUTH: 37-1-134, 37-36-102, MCA
IMP: 37-1-134, 37-36-201, 37-36-202, MCA

REASON: The board is amending this rule to further implement and align with HB 80, which changed the licensure period for athletic trainers from three years to an annual license period. The original licensure fees were set to ensure sufficient operating funds for the board's business over a three-year licensure period. In providing administrative services to the board, department staff determined that the actual costs associated with original and renewal licensure processes were lower than originally estimated. The board is statutorily required by 37-1-134, MCA, to set licensure fees at a level commensurate with related board costs. Therefore, the board is amending the licensure fees to accurately reflect annual licensure costs.

Licenses obtained under the initial legislation are valid until August 31, 2011, when they can be renewed for one year at the new annual renewal fee. The board estimates that the new fees will affect approximately 110 new and renewal applicants and result in an \$8,250 reduction in annual board revenue.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

4. The proposed new rules provide as follows:

NEW RULE I BOARD ORGANIZATION (1) The Board of Athletic Trainers adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title.

AUTH: 2-4-201, 37-36-102, MCA
IMP: 2-4-201, MCA

REASON: The board is adopting New Rules I and II to adopt and incorporate the department's organizational and procedural rules for consistency among all the professional and occupational licensing boards. Adopting the rules by reference lowers rulemaking costs and avoids repetition within administrative rules.

NEW RULE II PROCEDURAL RULES (1) The Board of Athletic Trainers adopts and incorporates by this reference the public participation rules of the Department of Labor and Industry as listed in ARM chapter 101, subchapters 3 and 4.

AUTH: 2-4-201, 37-36-102, MCA

IMP: 2-4-201, MCA

NEW RULE III DEFINITIONS (1) In addition to the terms defined in 37-36-101, MCA, the following definitions apply to the rules in this chapter:

(a) "Approved clinical instructor" means a BOC certified athletic trainer, licensed physician, or other individual credentialed in a health care profession, for no less than one year and who:

(i) is not currently enrolled in the entry level athletic training education program at the instructor's institution; and

(ii) whose training curriculum follows the standards of the Commission on Accreditation of Athletic Training Education (CAATE), June 30, 2008 edition, which are adopted and incorporated by reference. A copy of the CAATE standards may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, PO Box 200513, Helena, Montana, 59620-0513.

(b) "Board of Certification" means the Board of Certification, Inc. (BOC), the only accredited, certifying body accepted by the Board of Athletic Trainers, and which sets the standards of practice of athletic training.

(c) "Clinical instructor" means an individual credentialed in a health care profession for no less than one year, who may supervise students during clinical and/or field experiences, and who is not currently enrolled in the entry level athletic training education program at the instructor's institution. An individual credentialed in a health care profession for less than one year may serve as a clinical instructor if the instructor's institution has developed, documented, and implemented a plan for supervision of that instructor by an experienced, credentialed clinical instructor that ensures the quality of instruction provided to athletic training students.

(d) "Clinical instructor educator" means a clinical instructor educator as defined by the CAATE standards, June 30, 2008 edition, which are adopted and incorporated by reference. A copy of the CAATE standards may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, PO Box 200513, Helena, Montana, 59620-0513. A clinical instructor educator must also:

(i) have been recognized and designated by the institution as the clinical instructor educator for the individual's institution;

(ii) have been BOC credentialed for no less than three years;

(iii) have been designated and authorized by the institution to oversee approved clinical instructor training;

(iv) be knowledgeable in the content areas required for the training of approved clinical instructors; and

(v) if more than one individual is designated as the clinical instructor educator for the institution, then at least one of those individuals must be a BOC credentialed athletic trainer.

(e) "Graduate assistant" means a person who has graduated from a postsecondary institution with a baccalaureate degree, and has taken and passed the BOC's examination, and who is in the process of attaining a higher level of education.

(f) "Health care professional" means a licensed athletic trainer, chiropractor, naturopathic physician, nurse, nurse practitioner, occupational therapist, physical therapist, physician, physician's assistant, or podiatrist as defined in Title 37, chapters 3, 6, 8, 11, 12, 20, 24, 26, or 36, MCA.

(g) "Student assistant or athletic training student" means an intern or undergraduate currently enrolled in an accredited athletic training curriculum, in an undergraduate or graduate program at a postsecondary institution. An intern or student trainee may be called by the title "student assistant" or "athletic training student."

AUTH: 37-36-102, MCA

IMP: 37-36-101, 37-36-203, MCA

NEW RULE IV LIMIT ON NONLICENSEE CONDUCT (1) "Preventative care and continuous follow up care" permitted by 37-36-203(2)(g), MCA, may not include modalities restricted to licensees in 37-36-101 and 37-36-204, MCA. Specifically, such unlicensed individuals' care may not involve the practice of prevention, recognition, assessment, management, treatment, disposition, or reconditioning of athletic injuries or include the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, or mechanical devices related to the care and conditioning of athletes;

(b) education and counseling of the public on matters related to athletic training;

(c) application and administration of topical medications by:

(i) direct application;

(ii) iontophoresis, a process by which topical medications are applied through the use of electricity; or

(iii) phonophoresis, a process by which topical medications are applied through the use of ultrasound; or

(d) the administration or application of:

(i) bactericidal agents;

(ii) debriding agents;

(iii) anesthetic agents;

(iv) anti-inflammatory agents;

(v) antispasmodic agents; or

(vi) adrenocorticosteroids.

AUTH: 37-1-131, 37-36-102, MCA

IMP: 37-1-131, 37-36-101, 37-36-203, 37-36-204, MCA

REASON: The board is adopting New Rule IV to specify the limits of the licensure exemptions in 37-36-203, MCA, by clarifying "preventative care" and "continuous follow-up care." Those functions declared by the Legislature to be the exclusive province of a licensee cannot be performed by a nonlicensee, and the board elected to include a recitation of the Legislature's expressed intent on restricted conduct.

NEW RULE V SUPERVISION (1) A qualified supervisor of an intern or student trainee studying a course of athletic training must be an approved clinical instructor, clinical instructor educator, licensed athletic trainer, or a health care professional.

(2) Graduate assistants as defined in [New Rule III], are not considered to be student assistants or student athletic trainers, and are required to be licensed if they are practicing athletic training.

AUTH: 37-1-131, 37-36-102, MCA

IMP: 37-1-131, 37-36-101, 37-36-203, MCA

NEW RULE VI UNPROFESSIONAL CONDUCT (1) The BOC's Athletic Trainers Standards of Professional Practice, implemented January 1, 2006, are adopted and incorporated by reference. A copy of the BOC Standards of Professional Practice may be obtained through the Board of Athletic Trainers, 301 S. Park Avenue, PO Box 200513, Helena, Montana, 59620-0513. Violation of BOC practice standards or codes of professional responsibility may be grounds for discipline.

(2) Licensees may be subject to discipline for those forms of unprofessional conduct defined in 37-1-316, MCA.

(3) The following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 36, MCA, and may be grounds for discipline:

(a) exploiting a professional relationship with the patient for personal or financial gain;

(b) using a false, fraudulent, or deceptive statement in any document connected with the practice of athletic training;

(c) having been subject to disciplinary action of another state or jurisdiction, including the BOC, against a license or other authorization to practice athletic training based upon acts or conduct by the licensee, similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 36, MCA, or these rules; a certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(d) willfully disobeying of a rule adopted by the board, or an order of the board regarding evaluation or enforcement of discipline of a licensee;

(e) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(f) failing to cooperate with a lawful investigation conducted by the board;

(g) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

- (h) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;
- (i) abusive billing practices;
- (j) making promises of athletic prowess or ability as a result of athletic training;
- (k) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;
- (l) promoting or involvement in, gambling of any kind on the outcome of an athlete's or team's participation in an athletic competition or event;
- (m) committing any act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of athletic training;
- (n) administering a controlled substance as defined by the U.S. Food and Drug Administration (FDA) or successors; otherwise than in the course of legitimate or reputable professional practice;
- (o) having been convicted of a federal or state law regulating the possession, distribution, or use of a controlled substance as defined by the FDA or successors, whether or not an appeal is pending;
- (p) failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;
- (q) failing to appropriately supervise any student assistant or athletic training student practicing under the licensee's supervision, according to scope of practice and generally accepted standards of practice;
- (r) failing to disclose having voluntarily relinquished or surrendered a license or privileges, or having withdrawn an application for licensure or privileges while under investigation, or prior to the granting or denial of an application in this state or in another state or jurisdiction;
- (s) failing to maintain current BOC certification as required by statute, including adhering to and complying with all BOC continuing education requirements, and obtaining and carrying the proscribed professional liability insurance as required by BOC for certified athletic trainers; or
- (t) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-319, 37-36-102, MCA
IMP: 37-1-316, 37-1-319, 37-36-202, MCA

NEW RULE VII CONTINUING EDUCATION (1) Those continuing education credits required by the BOC to maintain current certification, will also serve as continuing education to maintain licensure as an athletic trainer in Montana.

AUTH: 37-1-319, 37-36-102, MCA
IMP: 37-1-131, 37-1-306, MCA

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 Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdatr@mt.gov, and must be received no later than 5:00 p.m., February 24, 2011.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.athletictrainer.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address 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 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 Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdatr@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, apply and have been fulfilled. The primary bill sponsor was contacted on August 2, 2010 by regular mail.

9. Michael Fanning, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ATHLETIC TRAINERS
CHRIS HEARD, CHAIRPERSON

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

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

Certified to the Secretary of State January 18, 2011