

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.156.618 testing requirement) ADOPTION
and the adoption of NEW RULES I)
through V reporting obligations)

TO: All Concerned Persons

1. On July 12, 2012, the Board of Medical Examiners (board) published MAR notice no. 24-156-76 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1319 of the 2012 Montana Administrative Register, issue no. 13.

2. On August 6, 2012, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the August 14, 2012, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

ARM 24.156.618 Testing Requirement

COMMENT 1: Five commenters supported eliminating the requirement for physicians practicing in other jurisdictions to take the SPEX test. The commenters stated that the amended reactivation process will be more logical, appropriate, and streamlined. One commenter believed that separating reactivating physicians who had not practiced from those who practiced in other jurisdictions will help remove unnecessary barriers to patient care.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: One commenter supported the removal of the testing requirement, but objected to requiring physicians with active licensure in other states to appear before the board, and suggested that ARM 24.156.603(3) may need to be amended for consistency.

RESPONSE 2: The board notes that a physician actively practicing in another jurisdiction could have discipline, be enrolled in a professional assistance program, or be deemed a nonroutine applicant for other reasons. The board points out that this appearance is not always required, but ensures that the board has the continued flexibility to protect the public from physicians who may have issues worthy of concern.

Additionally, the board notes that ARM 24.156.603 applies to physicians seeking initial Montana licensure who have not actively practiced anywhere in the two years prior to application.

COMMENT 3: One commenter stated that requiring reactivating physicians to pay the difference between inactive and active license fees for every year on inactive status is a "transparent money grab."

RESPONSE 3: The board notes that the only time the difference between the inactive and active fee is paid is when the request to reactivate is submitted to the board. There is only a one-time difference in fee payment.

NEW RULES I-V Reporting Obligations

COMMENT 4: One commenter stated that allowing licensees 90 days to report final judgments or agency actions is too lenient and recommended a 30 day timeline.

RESPONSE 4: The board points out that the reporting requirement exists to better protect the public and, for purposes of crosschecking information, is also required at license renewal. Section 37-3-402, MCA, requires insurers to report malpractice claims within 30 days of claim initiation. A physician who renews and does not reveal a malpractice claim, or who fails to inform the board under this new rule, may be found to have committed unprofessional conduct. Disciplinary action is reported to the National Practitioner Data Bank and by the Federation of State Medical Boards. Criminal matters are public and typically appear in newspaper reports.

COMMENT 5: One commenter objected to having to report malpractice claims and described being sued for transporting a patient to a closer, smaller facility that the patient disliked.

RESPONSE 5: As shown in response four, the board points out that insurance carriers are also required to report this information, and that malpractice claims do not necessarily result in complaints filed against licensees.

COMMENT 6: Two commenters addressed the more expansive EMT rule changes that were proposed in a different rulemaking notice, MAR 24-156-77.

RESPONSE 6: The board is unable to respond to these comments as they are outside the scope of this notice.

4. The board has amended ARM 24.156.618 exactly as proposed.

5. The board has adopted NEW RULES I (24.156.619), II (24.156.2706), III (24.156.1007), and IV (24.156.812) exactly as proposed.

6. The board is not adopting NEW RULE V following a determination by staff that the substance of the rule already exists in ARM 24.156.1407.

BOARD OF MEDICAL EXAMINERS
ANNA EARL, MD, PRESIDENT

/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 November 26, 2012