

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

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

TO: All Concerned Persons

1. On August 6, 2012, at 1:00 p.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 Medical Examiners (board) no later than 5:00 p.m., on July 30, 2012, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdmed@mt.gov.

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

24.156.618 TESTING REQUIREMENT (1) A physician seeking to reactivate a Montana license, which has been inactive for the two or more years preceding the request for reactivation, and who has ceased the clinical practice of medicine in all jurisdictions for the entire time during which the license has been inactive, must either have been board certified/recertified during the two years preceding the request for reactivation or pass the special purpose examination (SPEX) or the comprehensive osteopathic medical variable-purpose examination (COMVEX) given by the Federation of State Medical Boards, and may also be required to complete a reentry plan to the satisfaction of the board. The board must review and approve a reentry plan as determined appropriate by the board prior to the applicant beginning the reentry plan. Depending on the amount of time out-of-practice, the applicant may also be required to do one or more of the following:

(a) practice for a specified period of time under a mentor/supervising physician who will provide periodic reports to the board;

(b) obtain certification or recertification by a specialty board recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (AOA-BOS);

(c) complete one year of accredited postgraduate or clinical fellowship training, which must be preapproved by the board, or;

(d) complete any other requirements as determined by the board. The applicant who fails the SPEX or COMVEX examination three times, whether in Montana or other states, must successfully complete one year of an accredited residency or an accredited or board-approved clinical training before retaking the SPEX or COMVEX examination.

(2) remains the same.

(3) A physician seeking to reactivate a Montana license, which has been inactive for the two or more years preceding the request for activation, and who has practiced medicine on an active license in another state or jurisdiction for the five years preceding the request to reactivate, may be required to appear before the board, and must:

(a) provide verification of one or more active licenses maintained during the time period the physician has held an inactive Montana license;

(b) identify all locations and dates of practice during the five years preceding the request for reactivation; and

(c) pay the difference between the fee for an inactive and active license.

AUTH: 37-1-319, 37-3-203, 37-3-802, MCA

IMP: 37-1-319, 37-3-101, 37-3-202, 37-3-802, MCA

REASON: The board is amending this rule following a determination that requiring the SPEX test for all physicians whose Montana licenses have been on inactive status for more than two years is unnecessarily punitive for physicians who have maintained an active practice in another state. The board decided that a distinction must be made between reactivation requirements for physicians who have been actively practicing outside Montana and those who have been completely inactive prior to reactivating.

4. The proposed new rules provide as follows:

NEW RULE I OBLIGATION TO REPORT TO BOARD (1) A physician shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the physician is a named party.

AUTH: 37-1-131, 37-1-319, 37-3-202, MCA

IMP: 37-1-131, 37-1-319, 37-3-323, 37-3-401, 37-3-405, MCA

REASON: The board is proposing to adopt New Rules I through V to require mandatory reporting of licensees' final discipline, misconduct, and court actions. The board determined it is reasonably necessary to require this reporting to ensure that the board has accurate and current information on licensees, and to enable the board to discipline licensees who do not report. These new rules will be consistent with reporting obligations for physician assistants and nutritionists already in place.

NEW RULE II OBLIGATION TO REPORT TO BOARD (1) An EMT shall report to the board within three months from the date of a final judgment, order, or

agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the EMT is a named party.

AUTH: 37-1-131, 37-1-319, 50-6-203, MCA

IMP: 37-1-131, 37-1-319, 50-6-203, MCA

NEW RULE III OBLIGATION TO REPORT TO BOARD (1) A podiatrist shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the podiatrist is a named party.

AUTH: 37-1-131, 37-1-319, 37-6-106, MCA

IMP: 37-1-131, 37-1-319, 37-6-311, MCA

NEW RULE IV OBLIGATION TO REPORT TO BOARD (1) A telemedicine practitioner shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the telemed is a named party.

AUTH: 37-1-131, 37-1-319, 37-3-202, MCA

IMP: 37-1-131, 37-1-319, 37-3-323, 37-3-401, 37-3-405, MCA

NEW RULE V OBLIGATION TO REPORT TO BOARD (1) An acupuncturist shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the acupuncturist is a named party.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA

IMP: 37-1-131, 37-1-319, 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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., August 14, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.medicalboard.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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsmed@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. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
ANNA EARL, MD, 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 July 2, 2012