

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.168.402 licensure) PROPOSED AMENDMENT AND
requirements, 24.168.406 military) REPEAL
training or experience, 24.168.411)
general practice requirements,)
24.168.2301 unprofessional conduct,)
and 24.168.2307 screening panel,)
and the repeal of 24.168.711)
ophthalmological diagnostic)
permissible drugs)

TO: All Concerned Persons

1. On October 3, 2017, at 10:00 a.m., a public hearing will be held in the Large 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 Optometry (board) no later than 5:00 p.m., on September 26, 2017, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 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 dlibsdopt@mt.gov (board's e-mail).

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

- 24.168.402 LICENSURE REQUIREMENTS (1) remains the same.
- (2) The application material must include the following:
 - (a) through (d) remain the same.
 - (e) a copy of a self-query of the National ~~Practitioners~~ Practitioner Data Bank ~~and the Healthcare Integrity Data Bank;~~
 - ~~(f) three affidavits from individuals not related to the applicant attesting to the good moral character of the applicant;~~
 - (g) and (h) remain the same but are renumbered (f) and (g).
 - (3) through (6) remain the same.
 - ~~(7) Applications not completed within one year will expire and the applicant will be required to reapply.~~

AUTH: 37-1-131, 37-10-202, 37-10-302, MCA

IMP: 37-1-131, 37-1-304, 37-10-301, 37-10-302, 37-10-304, MCA

REASON: The board is amending (2)(e) to utilize the correct entity name as the two data banks merged in 2013.

The board determined it is reasonably necessary to amend this rule to no longer require affidavits regarding good moral character. The board concluded that adequate information to demonstrate this is obtained through the application's disciplinary/criminal history questions and the results of each applicant's National Practitioner Data Bank (NPDB) self-query.

The board is deleting (7) since the one-year application "time out" provisions are adequately set forth in standardized department application procedures.

24.168.406 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 an optometrist. ~~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: Since adopting this rule, the board has become aware that certain military personnel (Reservists and National Guardsmen who have never been activated) in fact do not receive a DD 214 form upon discharge from the military. Because the current rule may be interpreted to require a DD 214 from all applicants who submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending the rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.168.411 GENERAL PRACTICE REQUIREMENTS (1) Optometrists may conduct a practice in or at any desired location, under the following conditions:

(a) the practice must be owned and under the direct supervision of an optometrist with valid Montana ~~certificate of registration~~ license, except that a duly licensed optometrist is not prohibited from associating with other duly licensed optometrists and/or medical doctors for the purpose of practicing optometry in the following manners:

(i) remains the same.

(ii) a professional corporation, pursuant to ~~35-4-101~~ 35-4-108, et seq., MCA;

(iii) through (3) remain the same.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-10-301, MCA

REASON: The board is amending (1)(a) to utilize the correct term "license" as changed by House Bill 203 in 2005. The board is further amending (1)(a)(ii) to correct an erroneous statutory citation. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.168.2301 UNPROFESSIONAL CONDUCT (1) ~~Unprofessional~~ The following constitutes unprofessional conduct by licensees or license applicants includes, but is not limited to, the following items or combination thereof:

(a) through (l) remain the same.

(m) ~~failure to respond to board inquiry or furnish the board, its investigators, or representatives, information legally requested by the board, department~~ investigators, or board representatives;

(n) through (s) remain the same.

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-10-301, MCA

REASON: The board is amending this rule for clarity and ease of use for the reader. Additionally, the board is striking "legally" from (1)(m) as the current language implies that the board would request information illegally from a licensee or applicant.

24.168.2307 SCREENING PANEL (1) The board screening panel shall consist of ~~at least two~~ three board members including the optometrist board member who has served longest on the board, and the public member of the board. The ~~chairperson~~ board president may reappoint screening panel members, or replace screening panel members as necessary at the chairperson's discretion.

~~(2) The screening panel shall not review anonymous complaints.~~

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-1-307, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align the screening panel makeup with the recent increase to five board members through Senate Bill 70 (2017). The board is also amending the rule to utilize the correct statutory term for the board president.

The board is striking (2) to align with the standardized department complaint procedure, which provides for preliminary review and informal investigation of anonymous complaints. This procedure will help ensure the boards consider all complaints that state a violation of law or rule, and that are supported by sufficient information.

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.

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

24.168.711 OPHTHALMOLOGICAL DIAGNOSTIC PERMISSIBLE DRUGS

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-10-101, 37-10-103, 37-10-304, MCA

REASON: The board is repealing this rule to align with the requirements of 2-4-305, MCA, that administrative rules may not unnecessarily repeat statutory language. During a review of the rules, the board found that the rule language is identical to that provided in 37-10-101(1)(b), MCA, and it is not necessary to keep in rule.

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 Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdopt@mt.gov, and must be received no later than 5:00 p.m., October 6, 2017.

6. An electronic copy of this notice of public hearing is available at www.optometry.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 Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdopt@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 24.168.402, 24.168.406, 24.168.411, 24.168.2301, and 24.168.2307 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 24.168.711 will not significantly and directly impact small businesses.

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

10. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OPTOMETRY
DOUG KIMBALL, O.D., PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 28, 2017.