

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

In the matter of the amendment of)
ARM 24.168.411 general practice)
requirements, 24.168.2101 continuing)
education requirements – audit,)
24.168.2104 approved continuing)
education, 24.168.2301)
unprofessional conduct, and the)
repeal of 24.168.203 board meetings)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On March 9, 2020, at 9:00 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 no later than 5:00 p.m., on March 2, 2020, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; 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:

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

(a) the practice ~~must be~~ is owned and under the direct supervision of an a Montana licensed optometrist; with valid Montana license, except that a duly licensed optometrist is not prohibited from associating

(b) the licensee associates with other duly licensed optometrists and/or medical doctors for the purpose of practicing optometry; or

(c) the licensee is an employee of or contracts with a hospital, medical center, or other similar health care facility. in the following manners:

~~(i) a professional partnership;~~

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

~~(iii) a professional limited liability company, pursuant to 35-8-1301, et seq.,~~

~~MCA, in which all managers or shareholders are licensed to practice optometry or medicine; or~~

~~(iv) a trust in which both the trustor and any trustees are licensed to practice optometry or medicine; and~~

~~(b) all professional signs and advertising, etc., must include the optometrist's name and the title "Optometrist," "Doctor of Optometry," or initials "O.D."~~

~~(2) The board will consider all advertising appearing over the signature of an individual as having been inserted and approved by that individual, and will hold the individual responsible for such advertising. If advertising appears over the signature of a company, firm, or corporation, all the individual officers or partners of the organization will be considered individually responsible for such advertising.~~

~~(3) (2) Each licensed optometrist must Licensees shall maintain accurate patient records for not less than five years from the last time the patient was treated.~~

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

IMP: 37-1-131, 37-10-202, ~~37-10-304~~, MCA

REASON: Following staff review of the rules and several board discussions, the board is amending this rule to more accurately align with modern optometry practice while still ensuring public protection. The board concluded that the public is better served when optometric health care decisions are made by optometrists and medical doctors. The board is concerned that when such health care decisions are primarily driven by non-practitioner business owners, it may result in ordering more tests and procedures than what may be necessary for each individual patient. While such owner direction may benefit a business' bottom line, the board is concerned that it would ultimately detract from quality consultation and patient care. Therefore, the board is amending this rule to no longer specify the acceptable business ownership models, but instead provide the current optometry practice situations that ensure that optometric health care decisions are directed by the appropriate health care practitioners.

The board is striking (1)(b) and (2) to eliminate the regulations on signage and advertising in optometric practice and further align with modern optometric practice. Optometrists are prohibited from engaging in misleading, deceptive, false, or fraudulent advertising or other representations in their professional conduct by 37-1-316(5), MCA. It is not necessary to repeat the prohibition in board rule.

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

24.168.2101 CONTINUING EDUCATION REQUIREMENTS - AUDIT

~~(1) Each licensed optometrist Licensed optometrists shall obtain a minimum of complete 36 hours of continuing education (CE) every two years in scientific clinics, forums, or optometric educational studies ~~approved by the board~~. The board will accept:~~

~~(a) up to four hours of practice management continuing education credit every two years; and~~

~~(b) twelve hours of credit for approved continuing education correspondence courses or Internet courses every two years.~~

~~(2) Licensees shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.~~

~~(2)~~ (3) A person who graduates from an accredited school of optometry and becomes a licensee within one year of graduation is excused from the ~~continuing education~~ CE requirement during the first year ~~the person is a licensee~~ applicable CE cycle.

~~(3)~~ (4) A licensee who is enrolled in a residency program accredited by the ACOE is excused from the ~~continuing education~~ CE requirement while the licensee is in the residency program and ~~for the year in which the licensee successfully completed the residency program~~ during the first applicable CE cycle.

(4) (5) The board may ~~conduct random audits of~~ randomly audit up to 50 percent of all renewed licensees. It is the responsibility of each optometrist to maintain ~~the optometrist's own~~ adequate records of participation and completion, and make them available upon board request.

(a) Random audits will be conducted in odd-numbered years.

~~(b) (6) A three month extension will be provided for all licensees who fail to meet the continuing education requirements as a result of an audit. Failure to meet this extension may result in disciplinary action.~~ Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline the rule for better organization and ease of use for the reader.

The board is relocating provisions of (1) to ARM 24.168.2104(6) as a more appropriate and logical location.

Following a recommendation by department legal staff, the board is adding (2) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

The board is amending (6) by removing licensees' ability to request CE extensions to align with standardized department procedures. Under the standardized audit processes, licensees are provided with adequate time to cure any audit deficiencies and additional extensions are no longer necessary.

The board is further clarifying in (6) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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.

24.168.2104 APPROVED CONTINUING EDUCATION PROGRAMS OR COURSES (1) Continuing education consists of educational activities designed to:

(a) review existing concepts and techniques;

(b) convey information beyond the basic professional education; and

(c) update knowledge on the practice of and advances in optometry.

(2) CE approved by the board must directly relate to the scope of practice of optometry as defined in board statutes and rules.

(3) The primary objective of CE is the protection of the health, safety, and welfare of the public, and deals primarily with the scope of practice, professional conduct, or ethical obligations of the license held. Licensees are responsible for selecting quality programs that contribute to their knowledge and competence and meet these objectives.

(a) Courses in which the principal purpose is to promote, sell, or offer goods, products, or services to optometrists, or to promote the personal interests of the licensees do not meet CE requirements.

(1) (4) Educational programs approved by the board shall be Approved CE includes courses:

(a) affiliated with national, regional, or state optometric associations, academies, or colleges of optometry; or

(b) approved by the ARBO's Council on Optometric Practitioner Education (COPE); or

(c) accredited by the Accreditation Council for Continuing Medical Education (ACCME).

~~(a) Any other continuing education course(s) not covered in (1) must be submitted by the licensee and have prior approval by the board. Any course not submitted to the board and approved prior to attendance shall not be allowed for credit. The course program or syllabus, and information on the credentials and qualifications of the course presenter must accompany the application approval form.~~

(2) (5) Continuing education CE courses offered and completed on the Internet or via other similar electronic means must comply with all the requirements in (1) this rule.

(6) The board will grant up to four hours of credit for practice management courses and up to twelve hours of credit for CE correspondence courses or Internet courses every CE cycle.

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

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

REASON: The board is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline the rule for better organization and ease of use.

The board is amending this rule to eliminate board preapproval of CE courses and programs. The board determined that the preapproval process is confusing and cumbersome for both licensees and the board. Further, late approval or denial of a course often results in licensees scrambling to obtain CE prior to renewal. The new process will place the responsibility on the licensee to select appropriate CE courses within the guidelines established in board rule.

The board is relocating certain provisions from ARM 24.168.2101 to (6) as a more appropriate and logical location. 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.

24.168.2301 UNPROFESSIONAL CONDUCT (1) The following constitutes unprofessional conduct by licensees or license applicants:

(a) through (e) remain the same.

(f) allowing one's professional conduct or judgment in the practice of optometry to be directed, managed, or controlled by a person who is not licensed to practice optometry in Montana;

(f) through (s) remain the same but are renumbered (g) through (t).

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 determined it is reasonably necessary to amend this rule and align with proposed changes to ARM 24.168.411 to help ensure health care decisions in modern optometry practices are made by health care practitioners. The board is amending this rule by specifying that when an optometrist allows his or her professional conduct to be controlled by someone who is not a Montana-licensed optometrist, the board will consider it unprofessional conduct which may be cause for license discipline. While this has long been the board's intent, this amendment will provide notice to licensees, so they may guide their actions accordingly. Also see REASON for ARM 24.168.411.

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

24.168.203 BOARD MEETINGS

AUTH: 37-10-201, 37-10-202, MCA

IMP: 37-10-201, MCA

REASON: The board is repealing this rule as unnecessary since written requests are now obsolete and the provisions are adequately addressed in standardized department procedures.

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., March 13, 2020.

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 24.168.411, 24.168.2101, 24.168.2104, and 24.168.2301 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 24.168.203 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; facsimile (406) 841-2305; or to dlibsdopt@mt.gov.

10. Sharon Peterson, Executive Officer, 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/ THOMAS K. LOPACH
Thomas K. Lopach, Interim Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 4, 2020.