

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.189.601 application procedures,) PROPOSED AMENDMENT
24.189.602 exemptions, 24.189.604)
minimum standards, 24.189.625)
licensure of foreign-trained)
psychologists, 24.189.810 competency,)
24.189.813 limits of confidentiality,)
24.189.2104 continuing education)
program options, 24.189.2107)
continuing education implementation,)
and 24.189.2305 practice of psychology)

TO: All Concerned Persons

1. On August 1, 2017, at 11:00 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 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 Psychologists (board) no later than 5:00 p.m., on July 25, 2017, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibspsy@mt.gov (board's e-mail).

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

24.189.601 APPLICATION PROCEDURES (1) remains the same.

(a) Persons seeking licensure must ~~apply on the board's official forms which may be obtained through~~ submit a completed application on forms prescribed by the department.

(b) Completed applications shall be delivered to the department, accompanied by the application fee, at least 90 days in advance of the examination dates. The examination dates can be found on the board's web site.

(c) Applicants will be notified in writing of any deficiencies in their applications. ~~If the requested information is not received by the board to remedy such deficiencies within six months of the date of the written notice, the application shall be deemed to have been withdrawn.~~

(d) An application must be completed for final board review no more than 18 months after the board receives it or it will expire and a new application and fee will be required. If a temporary practice permit is issued, the application will not expire under this provision until the latter of:

- (i) the temporary practice permit's expiration date;
- (ii) the third failed attempt at the oral examination; or
- (iii) 18 months after the application is submitted.

(e) An applicant applying under 37-17-302(3)(c), MCA, shall submit an application to the board office. The board office will notify the applicant when the application is complete for purposes of review by ~~the Association of State and Provincial Psychology Boards, and the applicant must then submit the curriculum review fee, which is set by the Association of State and Provincial Psychology Boards, directly to the Association of State and Provincial Psychology Boards a~~ board-approved evaluator. The applicant must then submit the curriculum review fee directly to the evaluator. When the ~~Association of State and Provincial Psychology Boards~~ evaluator's recommendation is received in the board office, the application will be scheduled for board review.

(2) A completed application file consists of the following:

- (a) a completed application form with the appropriate fee(s);
- (b) through (f) remain the same.

(g) if applicable, the ~~Association of State and Provincial Psychology Boards~~ evaluator's recommendation as to whether the applicant's course of studies meets minimum standards specified in ARM 24.189.604.

(3) through (6) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-101, 37-1-131, 37-17-302, MCA

REASON: The board determined it is reasonably necessary to generally amend this rule to address application procedure questions from applicants and licensing bureau staff. Clearly delineating the requirements will reduce staff time needed to answer questions and will further streamline the licensure process.

The board is striking an outdated timeline from (1)(c) as the application processes are controlled by standardized department procedures.

The board is amending (1)(e) and (2)(g) because the current board-approved evaluator is no longer able to continue in that function and there are other evaluators able to provide the service. Rather than amending the rules every time the board identifies a qualified evaluator, the board is amending these sections to allow flexibility in approving evaluators as needed. The board will maintain a list of approved evaluators, and the list will be available to all applicants.

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

24.189.602 EXEMPTIONS (1) through (3) remain the same.

(4) "Qualified" members of other professions under 37-17-104(1)(a) and (2), MCA, for purposes of administering tests and making evaluations or assessments means only those individuals who are licensed by:

(a) remains the same.

(b) the Board of ~~Social Work Examiners and Professional Counselors as Licensed Clinical Social Workers and Licensed Clinical Professional Counselors Behavioral Health~~ and who meet the qualifications set by that board in compliance with 37-17-104, MCA.

AUTH: ~~37-1-131~~, 37-17-202, MCA

IMP: 37-17-104, MCA

REASON: The board is amending this rule to update the board's name as changed by Senate Bill 22 in 2015. Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.189.604 MINIMUM STANDARDS (1) and (2) remain the same.

(3) If the applicant is applying based on 37-17-302(3)(c), MCA, the applicant's course of studies must meet the minimum standards specified in this rule. The course of studies must be ~~evaluated by the Association of State and Provincial Psychology Boards~~ assessed by a board-approved evaluator. The board shall consider, but is not bound by, the recommendation of the Association of State and Provincial Psychology Boards when determining whether the course of studies meets minimum standards. A fee may be required by the evaluator and shall be paid by the applicant to the evaluator.

(4) remains the same.

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: The board is amending this rule to align with amendments proposed to ARM 24.189.601 in this notice. The current board-approved evaluator is no longer able to continue in that function and there are other evaluators able to provide the service. Rather than amending the rules every time the board identifies a qualified evaluator, the board is amending this rule to allow flexibility in approving evaluators as needed. The board will maintain a list of approved evaluators, and the list will be available to all applicants.

The board further concluded it is important to advise applicants with non-APA accredited courses of studies that the expense of the additional evaluation is borne by the applicant. Current applicants are already paying for such an evaluation and this change merely places the requirement in rule.

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

24.189.625 LICENSURE OF FOREIGN-TRAINED PSYCHOLOGISTS

(1) remains the same.

(2) In addition, foreign-trained applicants shall provide documentation of receipt of a doctoral degree in clinical psychology with educational standards substantially equivalent to those established by a graduate program approved by the American Psychological Association, as evidenced by the ~~evaluation of educational~~

credentials by the National Register of Health Service Providers in Psychology, Inc., 1120 G Street NW, Suite 330, Washington, DC, 20005, www.nationalregister.org assessment of a board-approved evaluator. ~~A fee is required by this service and~~ If a separate fee is required for this service, the fee shall be paid by the applicant. Final approval of the substantial equivalence of the educational standards lies with the board.

(3) remains the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, 37-17-309, MCA

REASON: See REASON for ARM 24.189.604.

24.189.810 COMPETENCY (1) remains the same.

~~(2) Psychologists performing parenting plan evaluations must comply with the board's rules regarding unprofessional conduct.~~

(3) remains the same but is renumbered (2).

~~(4) Psychologists may only operate within their areas of competence and shall seek appropriate supervision when necessary.~~

~~(5) A psychologist must understand the construction/administration/interpretation of the test procedures the psychologist employs.~~

~~(6) Psychologists must maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence and use that knowledge, consistent with accepted clinical and scientific standards, in selecting current data collection methods and procedures for an evaluation.~~

(7) remains the same but is renumbered (3).

~~(8) The psychologist shall be aware of personal and societal biases and engage in nondiscriminatory practice. The psychologist shall be aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture and socioeconomic status may interfere with an objective evaluation and recommendations, and shall strive to overcome any such biases or withdraw from the evaluation.~~

(9) and (10) remain the same but are renumbered (4) and (5).

~~(11) Psychologists shall recognize and state any limitations of their assessments and reports.~~

(12) remains the same but is renumbered (6).

AUTH: 37-1-131, 37-1-136, 37-17-202, MCA

IMP: 37-1-136, 37-17-202, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the board's conclusion that these provisions should apply to all psychologists and not just parenting plan evaluators. As a result, the board is relocating the provisions to ARM 24.189.2305 regarding the general practice of psychology. The reorganization will better protect the public health and safety by applying clear standards to all psychologists. Additionally, (2) is stricken as unnecessary because all licensees are subject to the unprofessional conduct rules.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.189.813 LIMITS OF CONFIDENTIALITY (1) through (4) remain the same.

~~(5) Psychologists shall provide judges, attorneys and other appropriate parties with access to the results of the evaluation, but make reasonable efforts to avoid the release of notes, test booklets, structured interview protocols and raw test data to persons untrained in their interpretation. If legally required to release such information to untrained persons, psychologists shall first offer alternative steps such as providing the information in the form of a report, or releasing the information to another psychologist who is qualified in the interpretation of the data and who will discuss or provide written interpretations of the data with the person(s) who are seeking the information.~~

(6) and (7) remain the same but are renumbered (5) and (6).

AUTH: 37-1-131, 37-1-136, 37-17-202, MCA

IMP: 37-1-136, 37-17-202, MCA

REASON: See REASON for ARM 24.189.810.

24.189.2104 CONTINUING EDUCATION PROGRAM OPTIONS

(1) Acceptable continuing education may be chosen from (a) through (e). ~~No more than 30 of the total continuing education units required can be met by (b) and up to 15 continuing education units can be met by (c).~~

(a) Acceptable continuing education includes:

(i) Any American Psychological Association-approved, any Montana Psychological Association-approved, or a PESI-approved continuing education activity or program for psychologists that meets ARM 24.189.2101(3)(a) through (c) will qualify for continuing education credit.

(ii) through (1)(e) remain the same.

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-306, 37-17-202, MCA

REASON: The board is amending this rule to clarify the board-approved continuing education (CE) courses for licensees and for department audit staff. The board reviewed its approved CE courses and agreed that it is reasonably necessary to add these approved providers as qualified to provide CE courses. This change will provide additional preapproved courses for licensees to choose from when selecting CE and will help streamline the CE audit process. Additionally, the board is striking the second sentence in (1) as unnecessarily duplicative as the provisions are stated adequately in (1)(b) and (c).

24.189.2107 CONTINUING EDUCATION IMPLEMENTATION (1) remains the same.

(2) A licensed psychologist must earn at least 40 continuing education credits during two consecutive calendar years. ~~Continuing education activities and courses taken after January 1, 1991, will be accepted by the Board of Psychologists.~~

Continuing education credit shall be reported as follows:

(a) Licensees with even-numbered licenses shall ~~submit~~ obtain 40 hours of continuing education credit on or before the renewal date set by ARM 24.101.413 of each even-numbered calendar year. Licensees in this category will not report continuing education on the odd-numbered years but must renew their licenses each year.

(b) Licensees with odd-numbered licenses shall ~~submit~~ obtain 40 hours of continuing education credit on or before the renewal date set by ARM 24.101.413 of each odd-numbered calendar year. Licensees in this category will not report continuing education on the even-numbered years but must renew their licenses each year.

(c) remains the same.

(d) All licensed psychologists must ~~submit attestation~~ affirmation of understanding to the board on the appropriate year's license renewal that they ~~have obtained the required continuing education~~ understand their duty to comply with the continuing education requirements established by this subchapter for maintaining their license. The board may randomly audit up to 50 percent of the licensees attesting to continuing education. Certificates of completion or programs for continuing education credits reported must be submitted upon request of the board. Notices of continuing education audit will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure can be used to meet the continuing education requirements for the next continuing education reporting period. Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.

(e) remains the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-17-202, MCA

REASON: It is reasonably necessary to strike the provision from (2) as outdated and no longer necessary. The board is further amending this rule to align with current Montana law regarding continuing education (CE) requirements at 37-1-306(2), MCA. The change from an affidavit of completion to an affirmation of understanding is consistent with the statutory requirement that prohibits auditing or requiring proof of CE or certification as a precondition for license renewal. This clarification will also assist the standardized department CE audit process in enforcing the board's CE requirements.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.189.2305 PRACTICE OF PSYCHOLOGY (1) through (3) remain the same.

(4) Psychologists may only operate within their areas of competence and shall seek appropriate supervision when necessary.

(5) A psychologist must understand the construction/administration/interpretation of the test procedures the psychologist employs.

(6) Psychologists must maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence and use that knowledge, consistent with accepted clinical and scientific standards, in selecting current data collection methods and procedures for an evaluation.

(7) The psychologist shall be aware of personal and societal biases and engage in nondiscriminatory practice. The psychologist shall be aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status may interfere with an objective evaluation and recommendations, and shall strive to overcome any such biases or withdraw from the evaluation.

(8) Psychologists shall recognize and state any limitations of their assessments and reports.

(9) Psychologists shall provide judges, attorneys, and other appropriate parties with access to the results of the evaluation, but make reasonable efforts to avoid the release of notes, test booklets, structured interview protocols, and raw test data to persons untrained in their interpretation. If legally required to release such information to untrained persons, psychologists shall first offer alternative steps such as providing the information in the form of a report, or releasing the information to another psychologist who is qualified in the interpretation of the data and who will discuss or provide written interpretations of the data with the person(s) who are seeking the information.

(10) Psychologists shall avoid dual relationships and other situations which might produce a conflict of interest.

(11) Psychologists shall inform all participants, including clients, as to the limits of confidentiality which can be expected with regard to any information they may provide to the psychologist over the course of the evaluation. This includes the limits of confidentiality applicable to the general practice of psychology, such as a duty to warn in instances of possible imminent danger to a participant or to others, or legal obligations to report suspected child or elder abuse.

(12) Psychologists shall not commit an act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of psychology.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-17-101, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions considered by the board as unprofessional conduct for all Montana licensed psychologists. The board proposes relocating (4) through (9) from ARM 24.189.810 and 24.189.813, which currently apply only to parenting plan evaluators. The board concluded that these provisions are basic ethical obligations and should apply generally to all psychologists, not just those acting in cases of

parenting plans. These amendments will further the board's protection of the public health, safety, and welfare.

The board is adding (10) and (11) as drawn from ARM 24.189.807(1) and 24.189.813(1), respectively. The board determined these also are basic ethical standards applicable to all psychologists and that application of these provisions to all licensees will allow the board to better protect public health, safety, and welfare. The amendments will help clarify expectations of licensees so licensees do not place clients at risk or confuse them.

The board is adding (12) following the screening panel's recent review of a complaint involving sexual misconduct. While the acts did constitute unprofessional conduct under the board's statutes and rules, the board concluded that adding this section creates a clear rule for licensees to abide by and protects public health, safety, and welfare.

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

4. 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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibspsy@mt.gov, and must be received no later than 5:00 p.m., August 4, 2017.

5. An electronic copy of this notice of public hearing is available at www.psy.mt.gov (department and board's web site). 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.

6. 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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibspsy@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.601, 24.189.602, 24.189.604, 24.189.625, 24.189.810, 24.189.813, 24.189.2104, 24.189.2107, and 24.189.2305 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibspsy@mt.gov.

9. L'Joy Griebenow, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
JAMES MURPHEY, PH.D, CHAIRPERSON

/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 June 26, 2017.