

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.101.413 renewal dates and) PROPOSED AMENDMENT AND
requirements, 24.189.601 psychologist) ADOPTION
application procedures, 24.189.604)
minimum standards, 24.189.610 work)
samples - examination, 24.189.630)
licensure as a psychologist by)
experience (senior), and the adoption of)
New Rule I nonroutine psychologist)
applications, and New Rule II)
nonroutine behavior analyst or assistant)
behavior analyst applications)

TO: All Concerned Persons

1. On January 12, 2018, at 11:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, 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 Psychologists no later than 5:00 p.m., on January 5, 2018, 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 department proposes to amend the following rule. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS

(1) through (5)(ad) remain the same.

| | BOARD OR PROGRAM JURISDICTION | LICENSE CATEGORY | FREQUENCY | RENEWAL DATE |
|------|-------------------------------|-----------------------------------|-----------------|--------------------|
| (ae) | Psychologists | Psychologist | Annually | December 31 |
| | | <u>Behavior Analyst</u> | <u>Annually</u> | <u>December 31</u> |
| | | <u>Assistant Behavior Analyst</u> | <u>Annually</u> | <u>December 31</u> |

(af) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The 2017 Montana Legislature enacted Senate Bill 193, an act creating licensure and regulation for certain behavior analysts and providing rulemaking authority for the board to implement the bill. When the board initially implemented the bill in a rulemaking project this summer, the two types of behavior analyst licensees were inadvertently omitted from this department renewal rule. The department is now adding the two new license types to this rule that sets forth renewal dates and requirements for all licensing types.

4. The board proposes to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.189.601 PSYCHOLOGIST APPLICATION PROCEDURES (1) through (2)(d) remain the same.
(e) a copy of a self-query of the National Practitioner Data Bank; and
~~(f) completed reference forms from a minimum of three references attesting to the applicant's good moral character; and~~
(g) remains the same but is renumbered (f).
~~(3) Reference forms must be from people familiar with the quality of the applicant's education and work experience. The references must be licensed psychologists.~~
(4) through (6) remain the same but are renumbered (3) through (5).

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 amend this rule to no longer require reference forms 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.

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

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 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~~ board-approved evaluator 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: Earlier this year in MAR Notice No. 24-189-36, the board amended (3) to allow assessment by any evaluator approved by the board, while removing the Association of State and Provincial Psychology Boards (ASPPB) as the only board-approved evaluator. At that time, the board should have amended (3) further to strike the second reference to the ASPPB, but this was inadvertently missed.

24.189.610 WORK SAMPLES - EXAMINATION (1) through (2)(b) remain the same.

(c) The computerized national examination must be passed before an applicant may be made eligible to take the oral examination.

(3) through (5) remain the same.

(6) Applicants who fail the computerized examination will be required to retake ~~both the computerized and oral examinations~~ examination. Applicants failing the oral examination once will only be required to retake the oral examination. Applicants who fail the computerized or oral examinations twice shall, in addition to being retested, file in advance a plan that must be preapproved by the board and must include a time period for securing further professional training and experience. The license applicant is then obligated to complete the preapproved plan prior to being authorized to take the examination or to being licensed.

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

REASON: The board determined it is reasonably necessary to amend this rule to address questions from psychologist applicants, board members, and staff and set a clear pathway for licensure. While staff has encouraged applicants to take the computerized exam first, the board concluded that establishing the requirement in rule will help ensure consistency in application processing, and streamline the process by simplifying staff resources required to track and manage examination eligibility.

24.189.630 LICENSURE AS A PSYCHOLOGIST BY EXPERIENCE (SENIOR) (1) through (1)(d) remain the same.

(e) submits a complete application form with the proper fees at least 90 days in advance of the April or October examination dates. Such application will include work samples ~~and reference letters~~ as described in ARM 24.189.601;

(f) remains the same.

AUTH: 37-17-202, MCA
IMP: ~~37-17-307~~, 37-17-310, MCA

REASON: See REASON for ARM 24.189.601 in this notice. Implementation citations are being amended to delete reference to a repealed statute.

5. The board proposes to adopt the following new rules:

NEW RULE I NONROUTINE PSYCHOLOGIST APPLICATIONS

(1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

(a) the applicant has a prior felony conviction. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) the applicant has pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;

(c) any of the applicant's occupational or professional licenses have been disciplined or an application for any occupational or professional license was denied in this state, another state, or jurisdiction;

(d) the applicant voluntarily or involuntarily surrendered an occupational or professional license in this state, another state, or jurisdiction;

(e) the applicant has a pending legal or disciplinary action involving licensure in this state, another state, or jurisdiction;

(f) the applicant has been a respondent in a complaint for unlicensed practice of psychology in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action;

(g) the applicant has addiction issues, including active or previous alcohol and/or drug abuse, and treatment for the same;

(h) the applicant has not been active in the profession of psychology for the preceding three years or more; or

(i) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

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

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

REASON: It is reasonably necessary to adopt NEW RULES I and II to further implement 37-1-101, MCA, which provides that the department shall process routine license applications on behalf of the professional and occupational licensing boards. Although the board had previously considered all applications as nonroutine, these new rules will provide licensing staff the necessary clarification and board guidance on differentiating between routine and nonroutine applications. The board is adopting these rules to further streamline application processing by reducing the number of applications that need board review before issuance.

NEW RULE II NONROUTINE BEHAVIOR ANALYST OR ASSISTANT

BEHAVIOR ANALYST APPLICATIONS (1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

- (a) the applicant has a prior felony conviction. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;
- (b) the applicant has pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;
- (c) any of the applicant's occupational or professional licenses have been disciplined or an application for any occupational or professional license was denied in this state, another state, or jurisdiction;
- (d) the applicant voluntarily or involuntarily surrendered an occupational or professional license in this state, another state, or jurisdiction;
- (e) the applicant has a pending legal or disciplinary action involving licensure in this state, another state, or jurisdiction;
- (f) the applicant has been a respondent in a complaint for unlicensed practice of behavior analysis in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action;
- (g) the applicant has addiction issues, including active or previous alcohol and/or drug abuse, and treatment for the same;
- (h) the applicant has not been active in the profession of behavior analysis for the preceding three years or more; or
- (i) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

AUTH: 37-1-131, 37-17-406, MCA

IMP: 37-1-101, 37-1-131, 37-17-403, MCA

6. 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., January 19, 2018.

7. An electronic copy of this notice of public hearing is available at www.psy.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.

8. 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.

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

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the amendment of ARM 24.101.413 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.601, 24.189.604, 24.189.610, and 24.189.630 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I and II will not significantly and directly impact small businesses.

Documentation of the department and board's above-stated determinations 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.

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

BOARD OF PSYCHOLOGISTS
JAMES MURPHY, Ph.D., CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 11, 2017.