

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.213.403 abatement of)
renewal fees, 24.213.2101 continuing)
education requirements, and the)
adoption of NEW RULE I nonroutine)
applications)

TO: All Concerned Persons

1. On November 3, 2017, at 11:00 a.m., a public hearing will be held in the Basement Conference Room #B-07, 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 Respiratory Care Practitioners (board) no later than 5:00 p.m., on October 27, 2017, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Respiratory Care Practitioners, 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 dlibsdrpc@mt.gov (board's e-mail).

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

24.213.403 ABATEMENT OF RENEWAL FEES (1) ~~This rule is intended to provide a process whereby the board may reduce its cash balance when the board's cash balance is excessive. This rule provides for an abatement of certain fees when that cash balance is excessive.~~ The Board of Respiratory Care Practitioners adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

~~(2) Except as provided by (3), when the board has an excessive cash balance, the department may abate the renewal fees for its licensees or registrants for one or more renewal cycles until the board's cash balance does not exceed allowable maximums.~~

~~(a) The abatement of renewal fees may be the total amount of the renewal fee or a specified portion of that fee.~~

~~(b) If the board has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The department may, for good cause, completely abate the renewal fee for certain~~

~~classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal for all classes is disproportionately high. In such case, the department must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.~~

~~(c) The fact that a renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling renewal requirements, including submission of a renewal application and any continuing education documentation. The department, to the extent it provides by rule, may impose a late penalty fee on untimely submissions of renewal applications or other required documentation.~~

~~(3) This rule will not apply when an exception to 17-2-302, MCA, exists and is applicable to the board's cash balance. (As an example, if the board adopts a three-year renewal cycle, the board will have an apparent excess cash balance during the first year of the renewal cycle, based upon a collection of three years worth of fees for operational expense.)~~

~~(4) This rule does not relieve the board from the duty of establishing fees at a level commensurate with costs.~~

AUTH: ~~37-1-101, 37-1-131, 37-1-134, MCA~~

IMP: ~~17-2-302, 17-2-303, 37-1-101, 37-1-131, 37-1-134, 37-1-141, MCA~~

REASON: The board has determined it is reasonably necessary to amend this rule and incorporate by reference ARM 24.101.301 to authorize the department to perform renewal licensure fee abatements as appropriate and necessary, without waiting to obtain a board vote. The department adopted ARM 24.101.301 in 2004 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs administratively attached to the department. Most of the licensing boards have since adopted and incorporated this rule to similarly facilitate the prompt abatement of fees and comply with statutory budget parameters.

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.

24.213.2101 CONTINUING EDUCATION REQUIREMENTS (1) ~~Upon renewal of licensure, each~~ Each respiratory care practitioner must affirm on the renewal form in each even-numbered year beginning in 2008 that the licensee completed complete 24 continuing education units in the preceding 24 months, by the renewal deadline in even-numbered years. One continuing education unit is equivalent to 50 minutes in length.

(2) through (6) remain the same.

(7) Misrepresentation of compliance ~~shall~~ may constitute grounds for disciplinary action.

AUTH: ~~37-1-131, 37-1-319, 37-28-104, MCA~~

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

REASON: The board is amending this rule to align with 37-1-306, MCA, providing that renewal cannot be preconditioned on completion of continuing education (CE), and clarify more specifically the CE requirements. Following a recommendation by department legal staff, the board is amending this rule to align the affirmation of CE requirements at renewal with the statutory provisions. The amendments fall within standardized department procedure that licensees with mandatory CE affirm an understanding of their CE requirements, as part of a complete renewal application, instead of affirming CE completion.

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

4. The proposed new rule is as follows:

NEW RULE I NONROUTINE 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 respiratory care 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 respiratory care 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, 37-28-104, MCA

IMP: 37-1-101, 37-1-131, 37-28-202, MCA

REASON: It is reasonably necessary to adopt this new rule to clearly delineate the criteria to categorize license applications as nonroutine and 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 has previously relied on its nonroutine policy, this new rule will replace that policy and provide licensing staff clarification and guidance to differentiate between routine and nonroutine applications.

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 Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 431-2305, or e-mail to dlibsdrpc@mt.gov, and must be received no later than 5:00 p.m., November 13, 2017.

6. An electronic copy of this notice of public hearing is available at www.respcare.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 Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 431-2305; e-mailed to dlibsdrpc@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 24.213.403 and 24.213.2101 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 RULE I will not significantly and directly impact small businesses.

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

10. L'Joy Griebenow, Bureau Supervisor, has been designated to preside over and conduct this hearing.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
LEONARD BATES, RCP
PRESIDING OFFICER

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

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

Certified to the Secretary of State October 2, 2017.