

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.213.403 abatement of) PROPOSED AMENDMENT
renewal fees and 24.213.2101)
continuing education requirements)

TO: All Concerned Persons

1. On March 1, 2019, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 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 Respiratory Care Practitioners (board) no later than 5:00 p.m., on February 22, 2019, to advise us of the nature of the accommodation that you need. Please contact Missy Poortenga, Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; 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 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 (CE) units in the preceding 24 months, by the renewal deadline in even-numbered years. One continuing education CE unit is equivalent to 50 minutes in length.

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

~~(2) It is the sole responsibility of each licensee to meet the continuing education requirement and to provide documentation of this compliance if so requested during a random audit. The random audit will be conducted on a biennial basis.~~

~~(3) A licensee who fails to obtain a sufficient number of continuing education units may satisfy the requirement by taking and passing the NBRC entry level exam~~

~~or the registered respiratory advanced practitioner examination during the preceding 24 months.~~

~~(4) (3) The continuing education CE requirements will do not apply until the a licensee's first full year of licensure.~~

~~(5) (4) Courses acceptable for continuing education CE shall be those whose must have content is relevant to the scope of practice of respiratory care as defined in 37-28-102, MCA.~~

~~(6) (5) Any identical course or program presented under Category I or Category II per ARM 24.213.2104 and 24.213.2107 may be submitted for continuing education CE credit only once every two years.~~

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

~~(6) The board may randomly audit up to 50 percent of renewed licensees' CE hours.~~

~~(7) All CE must be documented to show proof of completion. Licensees must maintain CE records for one year following the renewal cycle reporting period and make the records available upon request. Documentation must include the following:~~

~~(a) licensee name;~~

~~(b) course title and description of content;~~

~~(c) presenter or sponsor;~~

~~(d) course date(s); and~~

~~(e) number of CE hours earned.~~

~~(8) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

AUTH: 37-1-131, 37-1-319, ~~37-28-104~~, 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 clarity, better organization, and ease of use for the reader.

Following a recommendation by department legal staff, the board is amending (1) and (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 adding (6) to allow flexibility in conducting random CE audits. Currently, the board randomly audits 10 percent of all renewed licensees for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is striking (3) and further clarifying in (8) 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.

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 Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrpc@mt.gov, and must be received no later than 5:00 p.m., March 4, 2019.

5. 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.

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 Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdrpc@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. 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.

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) 841-2380; facsimile (406) 841-2305; or to dlibsdrpc@mt.gov.

9. Missy Poortenga, Executive Officer, 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, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 15, 2019.