

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

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 24.216.402 fee schedule,)	REPEAL
24.216.503 examination, 24.216.506)	
sanitarian-in-training, 24.216.2102)	
continuing education, 24.216.2104)	
inactive status and conversion from)	
inactive to active status, and)	
24.216.2301 unprofessional conduct,)	
and the repeal of 24.216.401 board)	
meetings, 24.216.403 seal of the)	
board, 24.216.501 applications, and)	
24.216.2101 renewal)	

TO: All Concerned Persons

1. On May 11, 2018, the Board of Sanitarians (board) published MAR Notice No. 24-216-23 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 949 of the 2018 Montana Administrative Register, Issue No. 9.

2. On June 6, 2018, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the June 8, 2018, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

ARM 24.216.506 Sanitarian-in-Training

COMMENT 1: One commenter suggested adding a section defining supervision to include both supervision and training, to allow the term "supervision" to be used instead of supervision and training throughout the rule.

RESPONSE 1: The requested amendment cannot be made in this final notice since the amendment would substantially change the meaning of supervision and require public notice. The requested change can be discussed in future board rulemaking.

COMMENT 2: One commenter suggested the board set a minimum time for supervision/training to allow the board to hold sanitarians accountable for failure to properly supervise sanitarians-in-training. The commenter suggested amending the rule to require a reasonable schedule for minimum supervision or training.

RESPONSE 2: The board is amending the rule exactly as proposed, but may consider the commenter's suggestions in future rulemaking.

ARM 24.216.2102 Continuing Education

COMMENT 3: One commenter suggests modifying the language of (6)(b) to parallel (6)(a).

RESPONSE 3: Since the board has not proposed changes to (6)(b) in this notice, the suggestion is outside the scope of the current project, but the board may consider it in future rulemaking. ARM 24.216.2102(5) already allows for credit for continuing education (CE) courses approved by the board.

COMMENT 4: One commenter suggested deleting ARM 24.216.2102(8) as unnecessary since CE approval requests can be made under ARM 24.216.2101(5).

RESPONSE 4: The only proposed change to (8) was a renumbering to (7), so the suggestion exceeds the scope of the current rulemaking project. The board may consider the suggestion in future rulemaking.

COMMENT 5: Several commenters suggested the board retain "and other organizations" from (7) and include it in (6)(a) to allow sanitarians to obtain CE from organizations other than those specifically listed.

RESPONSE 5: ARM 24.216.2102(5) already allows for credit on any CE courses as approved by the board. The board also believes that the suggested language would not allow the board to review any CE, is inconsistent with (5), and is beyond the scope of the proposed changes in this notice.

COMMENT 6: Several commenters suggested striking "related to the practice of a registered sanitarian" from (6)(a) to allow sanitarians a broader spectrum of CE.

RESPONSE 6: ARM 24.216.2102(1) also requires CE be related to the practice of a registered sanitarian, and the board has not proposed changing that section. Further, (5) allows the board to review submitted courses to determine whether they are related to the practice of a registered sanitarian. After discussion, the board determined that (5) is broad enough to allow sanitarians to select from a larger spectrum of CE, so long as the sanitarian demonstrates to the board that the CE is related to the practice of a registered sanitarian as that term is defined in statute, while still allowing the board to make the final determination.

ARM 24.216.2301 Unprofessional Conduct

COMMENT 7: One commenter suggested adding "of a sanitarian-in-training" to (1)(f) to provide a more complete thought.

RESPONSE 7: The board agrees and is amending the rule accordingly.

COMMENT 8: Several commenters suggested the board expand unprofessional conduct to include carrying weapons while working, using racist language, and discriminating against those sanitarians are supposed to serve.

RESPONSE 8: The board notes that further additions to unprofessional conduct would require public notice and opportunity to comment and may not be done in a final notice. Further, the board has no authority to regulate or restrict the ability of sanitarians to carry weapons. The ability to regulate weaponry belongs to the Montana Legislature, which has not delegated authority to the board to establish rules limiting whether a registered sanitarian may carry a weapon. Similarly, the board may not regulate racist language, which is protected by the First Amendment, or claims of discrimination, which must be handled in compliance with the Montana Human Rights Act, as established at 49-2-512, MCA.

COMMENT 9: Several commenters requested the board consider reducing fees in a future project because current licensing fees are a hardship to registered sanitarians and may inhibit growth and maintenance of the sanitarian workforce.

RESPONSE 9: The board will continue to monitor the fees on a regular basis and review the budget to ensure that fees are commensurate with costs.

4. The board has amended ARM 24.216.402, 24.216.503, 24.216.506, 24.216.2102, and 24.216.2104 exactly as proposed.

5. The board has repealed ARM 24.216.401, 24.216.403, 24.216.501, and 24.216.2101 exactly as proposed.

6. The board has amended ARM 24.216.2301 with the following changes, stricken matter interlined, new matter underlined:

24.216.2301 UNPROFESSIONAL CONDUCT (1) through (1)(e) remain as proposed.

(f) falsification or misrepresentation of the record of supervision of a sanitarian-in-training by the supervising sanitarian.

BOARD OF SANITARIANS
SUSAN FOSTER, R.S.
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 October 9, 2018.