

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.189.401 fee schedule,)	PROPOSED AMENDMENT AND
24.189.607 required supervised)	REPEAL
experience, 24.189.913 and)	
24.189.2101 continuing education)	
requirements, 24.189.916 and)	
24.189.2107 continuing education)	
implementation, and 24.189.2301)	
representation of self and services, and)	
the repeal of 24.189.601 psychologist)	
application procedures and 24.189.630)	
licensure as a psychologist by)	
experience (senior))	

TO: All Concerned Persons

1. On July 20, 2021, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/85249650076>
Meeting ID: 852 4965 0076, Passcode: 471649
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 852 4965 0076, Passcode: 471649

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 July 13, 2021, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; 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:

24.189.401 FEE SCHEDULE (1) through (1)(e) remain the same.

(f) Behavior analyst initial supervision fee, per behavior technician, student intern, or assistant behavior analyst supervised 50 25

(g) and (h) remain the same.

~~(i) Behavior analyst renewal supervision fee, per behavior technician, student intern, or assistant behavior analyst supervised 25~~

(j) remains the same but is renumbered (i).

(2) remains the same.

AUTH: 37-1-134, 37-17-202, 37-17-406, MCA

IMP: 37-1-134, 37-1-141, 37-17-302, 37-17-403, 37-17-406, MCA

REASON: The board is amending the fee in (1)(f) to standardize the board's supervision fees. Since the 2017 regulation of behavior analysts (BA) and assistant behavior analysts, supervisors noticed and questioned the difference between BA and psychologist supervision fees. The board determined there is no reason for the supervision fees to be different and is amending the rule accordingly.

The board is striking the \$25 BA renewal supervision fee as unnecessary after concluding that the renewal process is standardized, routine, and does not require review or approval by staff. The board estimates 22 supervisors and 71 supervisees will be affected by these fee changes, and the fee changes will result in an approximate \$2,325 reduction in annual revenue.

24.189.607 REQUIRED SUPERVISED EXPERIENCE (1) An applicant applying for licensure under [SB 90 Section 2] must submit a psychologist application in the form of a completed supervision proposal and pay the supervision proposal approval fee. This license expires at the conclusion of the approved postdoctoral supervision program unless the licensee provides:

(a) a completed psychologist application;

(b) the applicable fee;

(c) proof of completion of the postdoctoral supervision program;

(d) proof of passage of the board-approved computerized national examination; and

(e) proof of passage of the computerized Montana jurisdiction training course.

(1) through (5) remain the same but are renumbered (2) through (6).

~~(6)~~ (7) Individual solo private practice does not qualify as acceptable professional experience. The supervisee must be an employee of the postdoctoral training setting and shall not bill directly independently for services provided.

(7) through (13) remain the same but are renumbered (8) through (14).

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

IMP: 37-1-131, 37-17-302, (SB 90 Section 2), MCA

REASON: The 2021 Montana Legislature enacted Chapter 43, Laws of 2021 (Senate Bill 90), an act revising licensure for psychologists. The bill was signed by the Governor on March 1, 2021, and will become effective July 1, 2021.

Senate Bill 90 allows licensure of postdoctoral supervisees to encourage insurance reimbursement for services provided by postdoctoral supervisees. The board determined it is reasonably necessary to add (1) to implement the bill by clearly setting forth the qualifications and application process for postdoctoral supervisees.

Senate Bill 90 provides for a full psychologist license for postdoctoral supervisees. To accommodate the billing system utilized by insurance companies, the board determined it is reasonably necessary to change "directly" to "independently" in (7). This change will clarify that postdoctoral supervisees may bill for services, but only as part of the supervised training program.

24.189.913 CONTINUING EDUCATION REQUIREMENTS (1) through (3) remain the same.

~~(4) All approved formal continuing education courses must issue a program or certificate of completion containing the following information:~~

- ~~(a) full name and qualifications of the presenter;~~
- ~~(b) title of the presentation attended;~~
- ~~(c) number of hours and date of each presentation attended;~~
- ~~(d) description of the presentation format; and~~
- ~~(e) name of licensee.~~

(4) All CE must be documented to show proof of completion. Documentation must include the following information:

- (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.

~~(5) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance for a period of three years following submission of a continuing education report. The licensee is responsible for maintaining CE records for three years following the renewal cycle reporting period and for making those records available upon request.~~

AUTH: 37-1-319, ~~37-17-202~~, 37-17-406, MCA
IMP: 37-1-306, 37-1-319, 37-17-406, MCA

REASON: It is reasonably necessary to amend (4) and (5) and ARM 24.189.2101 to align with and facilitate the department's standardized renewal, administrative suspension, and audit procedures, and for better organization and ease of use. The board does not "approve" courses, etc. and has no authority over whether courses issue programs, certificates of completion, etc. Boards may clarify what information is required if audited and require licensees to submit documents upon request.

24.189.916 CONTINUING EDUCATION IMPLEMENTATION REPORTING AND AUDIT (1) remains the same.

(2) A licensed behavior analyst or assistant behavior analyst must earn at least ~~ten~~ 20 continuing education credits, of which ~~one hour~~ two hours must be in

~~ethics and one hour must be in suicide prevention, during each consecutive calendar year every two years. The two-year cycle will end on the renewal date set by ARM 24.101.413 in odd-numbered years. Continuing education credits may not be carried over from one two-year cycle to another. Continuing education credit shall be reported as follows:~~

~~(a) remains the same.~~

~~(b) All licensed behavior analysts and licensed assistant behavior analysts must submit affirmation of compliance to the board on each year's license renewal that they understand their duty to comply with the continuing education requirements established by this subchapter for maintaining their license shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.~~

~~(c) The board department may randomly audit up to 50 percent of the renewed 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.~~

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

~~(c) (f) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, the licensee may request an exemption. All requests for exemptions will be considered by the board and evaluated on an individual basis. A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.~~

AUTH: 37-1-131, 37-1-319, ~~37-17-202~~, 37-17-406, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-17-406, MCA

REASON: The board is amending this rule and ARM 24.189.2107 to align with and facilitate the department's standardized renewal, administrative suspension, and audit procedures, and for better organization and ease of use for staff and the reader. The board is amending both rules' titles to better reflect the changed text.

The board is amending (2) to require that licensees complete a minimum of two hours in ethics and one hour in suicide prevention topics every two years. When eliminating the oral examination for psychologist licensure in 2020, the board discussed the need for continued training in suicide prevention and ethics for all licensees. The board concluded this specialized CE is necessary to ensure board licensees have ongoing training to address Montana's high suicide rate. The board is changing the reporting cycle from yearly to every two years to standardize all reporting cycles for the board and make regulation and audits more efficient.

It is reasonably necessary to amend (2)(b) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA, and standard department

procedures. The board is amending (2)(d) and adding (e) to clarify that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and standard department audit procedures.

The board is amending (2)(f) to align with standard department audit procedures that give adequate time (minimum of 85 days) to cure deficiencies and therefore such an exemption is no longer necessary. The board will consider requests for hardship exemptions.

24.189.2101 CONTINUING EDUCATION REQUIREMENTS (1) In accordance with 37-17-202, MCA, the Montana Board of Psychologists hereby establishes requirements for the continuing education of licensed psychologists ~~as a condition of license renewal.~~

(2) through (3)(b) remain the same.

~~(c) All approved formal continuing education courses must issue a program or certificate of completion containing the following information:~~

- ~~(i) full name and qualifications of the presenter;~~
- ~~(ii) title of the presentation attended;~~
- ~~(iii) number of hours and date of each presentation attended;~~
- ~~(iv) description of the presentation format; and~~
- ~~(v) name of licensee.~~

(c) All CE must be documented to show proof of completion. Documentation must include the following information:

- (i) licensee name;
- (ii) course title and description of content;
- (iii) presenter or sponsor;
- (iv) course date(s); and
- (v) number of CE hours earned.

~~(d) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance for a period of three years following submission of a continuing education report. The licensee is responsible for maintaining CE records for three years following the renewal cycle reporting period and for making those records available upon request.~~

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

IMP: 37-1-306, 37-1-319, MCA

REASON: See REASON for ARM 24.189.913. The board is also amending (1) to align the affirmation of CE required at renewal with the provisions of ARM 24.189.207(2)(b) and 37-1-306, MCA, through standard department procedures.

24.189.2107 CONTINUING EDUCATION IMPLEMENTATION REPORTING AND AUDIT (1) remains the same.

(2) ~~Starting November 1, 2019, a licensed psychologist~~ Licensed psychologists must earn, within a two-year renewal cycle, a minimum of 40 continuing education credits, of which two hours must be in ethics and one hour must be in suicide prevention, every two years on or before the renewal date set by ARM 24.101.413. ~~The two-year cycle will end on the renewal date set by ARM~~

24.101.413 in odd-numbered years. Continuing education credits may not be carried over from one two-year cycle to another.

(a) No continuing education is required for licensees licensed less than one full calendar year on their first reporting date. Licensees licensed less than two full calendar years on the first reporting date shall submit 20 hours of continuing education, including one hour in ethics and one hour in suicide prevention.

(b) ~~All licensed psychologists must submit affirmation of understanding to the board on the appropriate year's license renewal that they understand their duty to comply with the continuing education requirements established by this subchapter for maintaining their license~~ shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.

(c) ~~The board department may randomly audit up to 50 percent of the renewed 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.~~

(d) 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) Licensees found to be in noncompliance with continuing education requirements may be subject to administrative suspension.

~~(c) (f) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request an exemption. All requests for exemptions will be considered by the Board of Psychologists and evaluated on an individual basis. A licensee may request an exemption from continuing education requirements due to hardship. Requests will be considered by the board.~~

(g) Psychologists obtaining postdoctoral supervised experience are not required to earn continuing education credits during the period of time they are supervised.

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

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

REASON: See REASON for ARM 24.189.916.

Following a staff request for clarification, the board noted that postdoctoral supervisees are still under supervision and have not yet completed all requirements for full psychologist licensure. It is reasonably necessary for the board to add (2)(g) to clarify that psychological residents are exempt from continuing education requirements while working under psychological resident licenses.

24.189.2301 REPRESENTATION OF SELF AND SERVICES (1) In representation of self or services, a licensee:

(a) remains the same.

(b) shall not represent him/herself as a psychologist or psychological resident while the practitioner's license is currently suspended, revoked or not renewed;

(c) through (3) remain the same.

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

IMP: 37-1-131, 37-1-316, 37-17-101, (SB 90 Section 2), MCA

REASON: The board is amending this rule to implement Senate Bill 90 as enacted by the 2021 Montana Legislature. When effective July 1, 2021, the bill will extend licensure to postdoctoral supervisees, who are authorized to use the title psychological resident. It is reasonably necessary to amend this rule to add psychological residents once licensed.

4. The rules proposed to be repealed are as follows:

24.189.601 PSYCHOLOGIST APPLICATION PROCEDURES

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 repeal this rule because licensure processes are addressed for all boards in standardized department procedures.

24.189.630 LICENSURE AS A PSYCHOLOGIST BY EXPERIENCE
(SENIOR)

AUTH: 37-17-202, MCA

IMP: 37-17-310, MCA

REASON: Senate Bill 90 will repeal 37-17-310, MCA, the statute authorizing licensure of senior psychologists. The board is repealing this rule as the senior psychologist license is being replaced by the psychologist by experience license.

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 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., July 23, 2021.

6. 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.

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 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 13, 2021 by electronic mail, on May 18, 2021 by telephone, and on May 19, 2021 by USPS mail.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.401, 24.189.607, 24.189.913, 24.189.916, 24.189.2101, 24.189.2107, and 24.189.2301 will not significantly and directly impact small businesses.

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

Documentation of the 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) 841-2375; facsimile (406) 841-2305; or to dlibspsy@mt.gov.

10. Sharon Peterson, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
LORETTA BOLYARD, Ph.D.
CHAIRPERSON

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

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 15, 2021.