

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 24.189.301, 24.189.401,	)	PROPOSED AMENDMENT,
24.189.602, 24.189.610, 24.189.613,	)	ADOPTION, AND REPEAL
and 24.189.614, adoption of NEW	)	
RULES I through X, and repeal of	)	
ARM 24.189.205, 24.189.411,	)	
24.189.415, 24.189.603, 24.189.604,	)	
24.189.607, 24.189.625, 24.189.633,	)	
24.189.901, 24.189.904, 24.189.907,	)	
24.189.910, 24.189.911, 24.189.912,	)	
24.189.913, 24.189.916, 24.189.919,	)	
24.189.922, 24.189.925, 24.189.928,	)	
24.189.931, 24.189.934, 24.189.2101,	)	
24.189.2104, 24.189.2107,	)	
24.189.2301, 24.189.2305,	)	
24.189.2309, 24.189.2314,	)	
24.189.2318, and 24.189.2405,	)	
pertaining to the board of	)	
psychologists	)	

TO: All Concerned Persons

1. On November 7, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to 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/83739786701>  
Meeting ID: 837 3978 6701, Passcode: 071279

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 837 3978 6701, Passcode: 071279

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 department no later than 5:00 p.m., on October 31, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail [laborlegal@mt.gov](mailto:laborlegal@mt.gov).

3. GENERAL REASONABLE NECESSITY: In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional

licensing boards administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff.

The 2021 Montana Legislature enacted Chapter 497, Laws of 2021 (Senate Bill (SB) 357), an act that generally revised laws relating to the provision of telehealth services in Montana. The bill was signed by the Governor on May 12, 2021, and became effective October 1, 2021. The Board of Psychology (board) is proposing several rule changes to implement the bill.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rules, remove citations to repealed statutes, and provide the complete sources of the board's rulemaking authority.

Following consideration of the department's suggested changes, the board determined it is reasonably necessary to amend six rules, repeal 31 rules, and adopt ten new rules to align with the Red Tape Relief Initiative. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following the specific rule.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.189.301 DEFINITIONS (1) "APA" means the American Psychological Association.

~~(2) "Asynchronous store and forward" means the transmission, via store-and-forward technology as defined in 33-22-138, MCA, of a patient's medical information from an originating site to a health care provider at a distant site without the presence of the patient.~~

(3) (2) "BACB" means the Behavior Analyst Certification Board, a nonprofit corporation whose credentialing programs for behavior analysts and assistant behavior analysts are accredited by the National Commission for Certifying Agencies.

(4) (3) "Behavior technician" means a supervisee primarily responsible for the direct implementation of behavior analytic services. The behavior technician does not design intervention or assessment plans.

~~(5) "Defined professional relationship" means a relationship in which a licensee or license applicant provides diagnostic, assessment and/or therapeutic services to a client. A defined professional relationship shall be initially established in a context where services are provided:~~

~~(a) in person and face to face; or~~

~~(b) transmitted via electronic or related methods. If provided under this subsection, the context must also be:~~

~~(i) two-way;~~

~~(ii) interactive;~~

- ~~(iii) real-time;~~
- ~~(iv) simultaneous;~~
- ~~(v) continuous; and~~
- ~~(vi) providing for both audio and visual interaction.~~

~~(6) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.~~

~~(7) (4) "Health care provider" means health care provider as is defined in 33-22-138, MCA.~~

~~(8) "In-person encounter" means that a licensee and the patient are in the physical presence of each other during the licensee-patient encounter.~~

~~(9) (5) "Licensee" means the holder of a current license issued under 37-17-302 or 37-17-403, MCA by the board.~~

~~(10) (6) "Licensee-patient relationship" means that:~~

~~(a) the licensee agrees to undertake diagnosis and/or treatment of a person an individual seeking services from the licensee; and~~

~~(b) the person individual agrees to be diagnosed and/or treated by the licensee whether or not there has been an in-person encounter meeting between the two licensee and the person.~~

~~(11) (7) "NCCA" means the National Commission for Certifying Agencies.~~

~~(12) "One year's academic residency" means continuous, full-time, active engagement by the student in the elements of the training program while the student is physically present during one academic year at the educational institution granting the doctoral degree.~~

~~(a) Critical components of the residency must include:~~

~~(i) adequate opportunity for the resident to:~~

~~(A) concentrate on required coursework;~~

~~(B) obtain professional training and scholarship;~~

~~(C) work closely with professors, supervisors, and other students; and~~

~~(D) acquire the habits, skills, knowledge, and insights necessary for attaining a doctoral degree in psychology; and~~

~~(ii) adequate time for faculty, training staff, supervisors, and administrators to adequately assess all elements of the student's competence including, at a minimum:~~

~~(A) emotional stability and well-being;~~

~~(B) interpersonal competence;~~

~~(C) professional development; and~~

~~(D) personal fitness to practice psychology.~~

~~(b) The year of residency that uses face-to-face contact for shorter durations throughout the year or that uses video teleconferencing or other electronic means is not acceptable.~~

~~(c) The year of acceptable academic residency experience shall consist of two semesters or three quarters with continuous experience on campus, in no less than three month increments, and be accrued in no more than 18 months.~~

~~(d) Full-time experience shall consist of at least 30 hours on campus per week, but no more than 45 hours per week each contiguous week of the semester or~~

~~quarter. The board will consider situations that are not full-time on a case-by-case basis.~~

~~(e) Active engagement in the elements of the training program shall be fully documented by a log of residency activities on a form prescribed by the board and signed by the student's academic advisor. Such residency activities must:~~

~~(i) include both faculty-to-student and student-to-student face-to-face (personal) interaction;~~

~~(ii) be conducted by the psychology faculty of the institution at least 90 percent of the time;~~

~~(iii) be fully documented by the institution; and~~

~~(iv) relate substantially to the program and course content.~~

~~(f) An internship requirement cannot be used to fulfill the academic year requirements of the residency.~~

~~(g) Video conferencing will not be allowed to satisfy the requirements of the academic residency.~~

~~(h) The institution must clearly document its assessment and evaluation of the applicant's performance.~~

~~(13) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where an asynchronous store-and-forward service originates.~~

~~(14) (8) "Psychological resident" means a supervisee following board approval of a supervised postdoctoral supervision proposal. This title shall be:~~

~~(a) used only in conjunction with activities and services of the postdoctoral supervised training to fulfill the experience requirements;~~

~~(b) used for a maximum of five years; and~~

~~(c) identified for clients, third-party payers, and other entities.~~

~~(15) "Synchronous interaction" means a real-time interaction between a patient located at an originating site and a health care provider located at a distant site.~~

~~(16) (9) "Telehealth" means the mode of delivering health care services via electronic information and communication technologies while a patient is at an originating site and a licensee is at a distant site, with or without an intervening health care provider. Telehealth includes synchronous interactions and asynchronous store-and-forward transfers delivered over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq. The term does not mean an audio-only telephone conversation, an e-mail or instant messaging conversation, or a message sent by facsimile transmission is defined at 37-2-304, MCA.~~

AUTH: 37-1-131, 37-2-304, 37-17-202, 37-17-406, MCA

IMP: 37-1-131, 37-2-304, 37-17-101, 37-17-302, 37-17-402, 37-17-403, 37-17-404, 37-17-406, MCA

**REASON:** The board is amending and striking several definitions in this rule to streamline and simplify the regulations on telehealth practice. In 2021, the Montana legislature passed SB 357 which provides telehealth guidelines for all health care licensees of title 37, at 37-2-305, MCA. Because the statute provides greater and

more specific guidance for practicing via telehealth methods, it is no longer necessary to have such specific requirements in board rules. These changes align with the repeal of ARM 24.189.415 and adoption of NEW RULE I.

The board is striking the definition of defined professional relationship as outdated and unnecessary. This term was adopted in 2004 to address confusion surrounding the provision of services via the internet and other relatively new methods of electronic communication. Nearly 20 years later, electronic communication has developed substantially in quality, widespread availability, and the safeguarding of confidentiality and patient information. Following legislative changes in telehealth, the board is adopting NEW RULE I to replace ARM 24.189.415, the overly specific telehealth rule.

It is reasonably necessary to strike the residency definition at (12) and instead house the definition in its own standalone rule, NEW RULE III, for clarity and ease of use by the reader.

24.189.401 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

- (a) Psychologist application fee \$450 338
- (b) through (g) remain the same.
- (h) Behavior analyst active license renewal fee 450 338
- (i) Assistant behavior analyst active license renewal fee 200 150
- (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 determined it is reasonably necessary to amend this rule to comply with the provisions of 37-1-134, MCA, and ensure that fees related to its program area will provide the amount of money usually needed for the operation of board services. The board is also required to comply with 17-2-302 and 17-2-303, MCA, by not allowing the board's cash balance to exceed twice the annual appropriation amount. Therefore, the board is reducing renewal fees for all license types by 25%. This reduction, as well as a 2023 renewal fee abatement will reduce the board's cash balance to maintain compliance with statutory requirements and ensure adequate revenue to support board activities through the next biennium.

The board estimates the fee reductions and new fees will affect approximately 348 licensees and result in a \$38,728 reduction in annual revenue.

24.189.602 EXEMPTIONS FROM LICENSURE (1) ~~To be exempt from licensure under~~ For purposes of licensure exemption in 37-17-104(1)(b), MCA, "within the confines of the agency or institution" means that the person is providing activities and services limited to the purposes and used only within the confines of the organization. ~~For example, a person may not perform activities and services that, at the time they are performed, include evaluations, assessments, or other activities and services that would produce a report or other record that is intended or anticipated to be admitted into a court proceeding to determine the person's~~

~~competency or fitness in relation to the person's rights or privileges outside the organization.~~

~~(2) For the limited services described in 37-17-104(1)(d), MCA, to be exempt as "consulting" services, including but not limited to services provided via electronic means on behalf of clients located within the state of Montana, the person claiming the exemption must not be a resident of Montana, must be licensed to provide the services in another state or Canadian province, and provide all such activities and services either:~~

~~(a) and (b) remain the same.~~

~~(3) To be exempt under 37-17-104(1)(e), MCA, one must have submitted a completed application to the board within 12 months of becoming a Montana resident. Whether someone is a resident of Montana is a question determined by considering all relevant facts, including but not limited to the location of the person's primary domicile, whether the person has a Montana driver's license, and whether the person is registered to vote or has voted in Montana in each application.~~

~~(4) "Qualified" members of other professions under 37-17-104(1)(a) and (2), MCA, for purposes of administering tests and making evaluations or assessments means only those individuals who are licensed by:~~

~~(a) the Board of Medical Examiners or the Board of Nursing and whose scope of practice specific to their license includes the administering of psychological tests and the making of evaluations or assessments; or~~

~~(b) the Board of Behavioral Health and who meet the qualifications set by that board in compliance with 37-17-104, MCA.~~

AUTH: 37-17-202, MCA

IMP: 37-17-104, MCA

REASON: The board is updating this rule and its catchphrase for clarity and ease of use by the reader. The board is amending (1) and (3) by removing the examples of facts the considered when assessing an individual's Montana residency. Because the board will consider all relevant facts in each specific case, it is unnecessary and not helpful to list only a few of the many potential facts.

It is reasonably necessary to strike (4) as contrary to the provisions of 37-17-104, MCA, which provides that qualified members of other professions may perform work of a psychological nature in certain circumstances. Section 37-17-104(1)(a), MCA, allows the practice as long as it is consistent with the professional's training and provides a non-exclusive list of examples of these qualified professionals. Section 37-17-104(2), MCA, allows "those qualified members" in (1)(a) to specifically hold themselves out as able to perform psychological testing, evaluation, and assessment. Limiting the professionals who can do such testing to just a few qualified professionals is overly restrictive and inconsistent with the provisions of 37-17-104(1)(a), MCA.

24.189.610 EXAMINATION (1) Examinations for licensure are a computerized national examination and a computerized Montana jurisdictional training course with evaluative aspects. ~~These will be~~ conducted by the board or its ~~duly constituted~~ representative(s). The Acceptable performance on the

computerized examination developed by the national licensing program, with the support of the Association of State and Provincial Psychology Boards, ~~may be given.~~ The acceptable level of performance on the national examination is a scaled score of 500.

(2) remains the same.

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

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

REASON: The board is amending this rule to simplify and streamline language for ease of use by the reader.

24.189.613 NONROUTINE PSYCHOLOGIST APPLICATIONS (1) and (2) remain the same.

AUTH: 37-1-131, MCA

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

REASON: The board is amending the catchphrases for this rule and ARM 24.189.614 so the provisions will apply to all board licensees. The board is also repealing the duplicate rules for behavior analysts and assistant behavior analysts, ARM 24.189.911 and 24.189.912, as they will be covered under these amended rules.

24.189.614 PSYCHOLOGIST APPLICANTS WITH CRIMINAL CONVICTIONS (1) remains the same.

AUTH: 37-1-131, MCA

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

5. The proposed new rules are as follows:

NEW RULE I TELEHEALTH SERVICES (1) Licensees may provide services through telehealth as provided in 37-2-305, MCA.

(2) A licensee-patient relationship must be established prior to providing services via telehealth through:

(a) in-person interview and examination when the standard of care requires such;

(b) consultation with another health care provider with a documented relationship with the patient who agrees to participate in, or supervise, the patient's care; or

(c) telehealth if the standard of care does not require an in-person meeting.

AUTH: 37-2-305, MCA

IMP: 37-2-305, MCA

REASON: The board is adopting this new rule and repealing ARM 24.189.415 to streamline and simplify the regulations on telehealth practice. In 2021 the Montana legislature passed SB 357 which provides telehealth guidelines for all health care licensees of title 37, at 37-2-305, MCA. Because the statute provides greater and more specific guidance for practicing via telehealth methods, it is no longer necessary to have such specific requirements in board rules.

NEW RULE II COURSE OF STUDY MINIMUM STANDARDS (1) Applicants seeking licensure via 37-17-302(3)(c), MCA, must have their courses of study assessed by a board-approved evaluator to ensure compliance with minimum standards in this rule.

(a) The board shall consider, but is not bound by, the evaluator's recommendation.

(b) Applicants must pay any fee required by the evaluator.

(2) Per 37-17-302(3)(c), MCA, a psychology program meets minimum standards if the program:

(a) is administratively housed and clearly identified as a psychology program with emphasis in applied areas such as clinical, counseling, school, or industrial-organizational psychology;

(b) stands as a recognizable, coherent organizational entity within the institution;

(c) has clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

(d) follows an organized sequence of study to provide an integrated psychology education experience;

(e) has an identifiable psychology faculty and a psychologist responsible for the program;

(f) has an identifiable body of students who are matriculated in that program for a degree;

(g) includes appropriate supervised clinical experience of at least three terms/two semesters;

(h) contains a curriculum of a minimum of three academic years of full-time graduate study with a pre-doctoral internship per [NEW RULE III] at the educational institution granting the doctoral degree. The curriculum must instruct in scientific and professional ethics and standards, research design and methodology, statistics, and psychometrics, and require students demonstrate competence (a minimum of three or more graduate semester hours/five or more graduate quarter hours) in each of these substantive content areas:

(i) Biological bases of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology;

(ii) Cognitive-affective bases of behavior: learning, thinking, motivation, emotion;

(iii) Social bases of behavior: social psychology, group processes, organizational and systems theory; and

(iv) Individual differences: personality theory, human development, abnormal psychology;



(i) includes adequate training in psychodiagnosis and several types of psychological assessment and intervention procedures and their theoretical bases.

(j) includes at least 60 quarter hours/40 semester hours of formal psychology graduate study. No more than 15 quarter hours/ten semester hours of university extension credits may be credited toward the doctoral degree requirement.

(i) Of the 60 quarter hours, a minimum of 45 quarter hours/30 semester hours must occur when the applicant is matriculated in the doctoral program and be clearly designated on the transcript as graduate level psychology course work, exclusive of practicum, dissertation, and transfer credits.

(3) The board and its evaluator have reviewed several applications containing doctoral degrees from American Psychological Association-approved doctoral programs in school psychology and counseling psychology. The board deems these programs qualified under the required minimum standards.

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

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

REASON: Per 37-17-302, MCA, there are three acceptable doctoral degrees for psychologist applicants, including an American Psychological Association (APA) approved doctorate in clinical psychology or a non-APA approved psychology doctorate with an APA approved graduate retraining program. The third educational avenue per (3)(c) is a doctoral degree in psychology from a program meeting minimum standards as set by the board in rule.

The board is repealing ARM 24.189.604 and replacing it with this new rule. The new rule simplifies and updates language and reorganizes the provisions for simplicity and ease of use for the reader. The board has updated minimum requirements for the outdated "residency" requirement to the current standards for a "pre-doctoral internship."

NEW RULE III REQUIRED PRE-DOCTORAL INTERNSHIP (1) As used in [NEW RULE II], "pre-doctoral internship" means active engagement by a student in a training program of the educational institution granting the doctoral degree.

(a) Critical components of the internship must include:

(i) adequate opportunity for the student to:

(A) obtain professional training and scholarship;

(B) work closely with professors, supervisors, and other students; and

(C) acquire the habits, skills, knowledge, and insights needed to attain a doctoral degree in psychology; and

(ii) adequate time to assess the student's competence including:

(A) emotional stability and well-being;

(B) interpersonal competence;

(C) professional development; and

(D) personal fitness to practice psychology.

(b) The pre-doctoral internship must be at least 1500 hours in length and be completed in no less than nine months and no longer than 24 months. Twenty-five percent of internship hours must be in face-to-face contact with patients or clients.

(c) Internship experience must have at least 30 hours per week at the internship site, but no more than 45 hours per week.

(d) Active engagement must be documented by a log of internship activities signed by the student's academic advisor. Such activities must:

(i) include both faculty-to-student and student-to-student face-to-face interaction;

(ii) be conducted by the psychology faculty of the institution at least 90 percent of the time; and

(iii) relate substantially to program and course content.

(e) The institution must clearly document its assessment and evaluation of the student's performance.

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

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

REASON: The board is striking the residency definition from ARM 24.189.301 and placing it in this standalone rule for clarity and to reduce confusion. This change aligns with the repeal of ARM 24.189.604 and adoption of NEW RULE II. The board has updated minimum requirements for the outdated "residency" requirement to the current standard for a "pre-doctoral internship."

NEW RULE IV POSTDOCTORAL SUPERVISION (1) Postdoctoral supervisee licenses expire upon conclusion of the approved postdoctoral supervision unless the licensee completes the application process and obtains a full psychologist license.

(2) Supervised experience must occur over two calendar years (3200 hours minimum) as follows:

(a) One year may be predoctoral, occurring after the master's degree and during an American Psychology Association (APA) approved or substantially equivalent internship for a psychology doctoral degree; and

(b) One year (1600 hours minimum) must be postdoctoral occurring after completion of doctoral degree requirements. The board must approve the extension of supervised experience beyond 12 consecutive months.

(3) Postdoctoral supervision requirements are:

(a) at least one hour in-person or approved telehealth supervision each week;

(b) the supervisee providing direct clinical services at least 25 percent of the time;

(c) at least one other licensed mental health professional, in addition to the supervisor, participating in the supervisee's training and on-site when the supervisor is not; and

(d) supervision by a psychologist with:

(i) a minimum of three years licensure prior to supervising; and

(ii) previous supervisor training and/or experience;

(A) at least equivalent to Montana's; and

(B) in the skills and knowledge in which the applicant is engaged.

(4) Satisfactory postdoctoral experience applies the skills, concepts, and principles gained during the formal professional education and includes:

(a) administering and interpreting psychological tests and helping solve professional or personal problems for no less than 25 percent of one year (400 hours minimum);

(b) supervising graduate-level practicum for no more than 25 percent of one year (400 hours maximum); and

(c) designing original research projects, analyzing and reporting research data, and teaching one or more psychology courses for no more than 50 percent of one year (800 hours maximum).

(5) Unacceptable supervised experience occurring without the board's preapproval and outside the exempted activities of 37-17-104, MCA, is unlicensed practice. Unacceptable experience also includes:

(a) repetitious and routine tasks, e.g., administering and scoring structured tests, computing statistics, assisting psychology course instructors, or personal therapy; and

(b) experience gained prior to the completing all requirements for a psychology master's degree or equivalent.

(6) 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 independently for services provided.

(7) Credit for part-time supervisee employment will be prorated.

(8) Supervisors are not required to work at or be employed by the entity employing the supervisee but must;

(a) be available for emergency supervision;

(b) provide emergency consultation and intervention to the supervisee's clients;

(c) interrupt or terminate the supervisee's activities to ensure adequate skill development and the public's protection;

(d) report supervisee breaches in ethical, legal, or professional responsibilities to the board; and

(e) develop with the supervisee a written individualized training plan that:

(i) specifies all roles, goals, and objectives;

(ii) is consistent with the purpose of the setting;

(iii) meets the supervisee's needs; and

(iv) serves as the foundation for quarterly evaluations that:

(A) address professional and ethical conduct, psychotherapy and evaluation skills, and other conduct, knowledge, and skills applicable to tasks performed and training received;

(B) are reviewed with the supervisee and signed by both supervisor and supervisee; and

(C) are maintained for a minimum of five years.

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

IMP: 37-1-131, 37-17-302, 37-17-320, MCA

REASON: The board is repealing ARM 24.189.607 and replacing it with this new rule which simplifies and updates language and reorganizes the provisions for simplicity and ease of use for the reader. The minimum qualifications have not been changed.

NEW RULE V CONTINUING EDUCATION (1) Board/staff will not preapprove continuing education (CE) programs or sponsors. Licensees must select activities from qualified providers that contribute to the licensee's professional knowledge and competence.

(2) Licensees must maintain adequate CE records for three years following a reporting period and make those records available upon request.

(3) Each reporting period, psychologists must obtain 40 CE hours, of which two are in ethics and one in suicide prevention. The two-year reporting period ends on the renewal date set by ARM 24.101.413 in odd-numbered years.

(a) Psychologists licensed less than two full calendar years on the first reporting date shall obtain 20 CE hours, including one in ethics and one in suicide prevention.

(b) Psychologists obtaining postdoctoral supervised experience are not required to obtain CE during the time of supervision.

(4) Psychologists can obtain a maximum of:

(a) 30 hours from:

(i) completion of an advanced credential;

(ii) study groups;

(iii) formally organized classes at regionally accredited higher education institutions;

(iv) initial presentation of a meeting paper;

(v) publication of a review paper;

(vi) research project reported in publishable form; and

(vii) formal case presentation in a group setting;

(b) 15 hours of personal growth activities in individual psychotherapy, group therapy, and specific supervision; and

(c) ten hours in practice management.

(5) Each reporting period, behavior analysts and assistant behavior analysts must obtain 20 CE hours, of which two are in ethics and one in suicide prevention. The two-year cycle ends on the renewal date set by ARM 24.101.413 in odd-numbered years.

(6) Behavior analysts and assistant behavior analysts can obtain a maximum of:

(a) five hours from:

(i) initial presentation of a meeting paper or workshop;

(ii) publication of a review paper;

(iii) conducting a research project reported in publishable form; and

(iv) teaching a formally organized class; and

(b) four hours in practice management.

(7) One hour will be granted for each hour of participation.

(8) No CE is required for licensees licensed less than one full calendar year on their first reporting date.

(9) CE hours cannot be carried over.

(10) Licensees found noncompliant with CE requirements may be subject to administrative suspension.

(11) Board members may receive up to eight hours of CE per calendar year for board meetings attendance.

(12) The department determines audit percentage based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

AUTH: 37-1-319, MCA

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

REASON: The board is repealing six lengthy rules and adopting this new rule to incorporate all continuing education (CE) provisions for all license types in a single location for simplicity and ease of use. As it is the licensees' responsibility to select appropriate CE programs that qualify per this rule, it is unnecessary to list "approved" providers or specific acceptable activities. The board is rewriting the CE standards to simplify and provide broader guidance as to acceptable CE content.

The board is further amending this rule for simplicity and standardization of department CE audit procedures. It is reasonably necessary to remove the general 50% maximum on random audits as it duplicates the language of 37-1-306, MCA. Since it is the department's audit unit that performs the random CE audits, the board is including (12) to clarify the numbers-based audit methodology.

#### NEW RULE VI BEHAVIORAL ANALYST ETHICAL CODE OF CONDUCT

(1) The board adopts and incorporates by reference the Behavior Analyst Certification Board's (BACB) Ethics Code for Behavior Analysts (as effective January 1, 2022) and considers it to be the code of ethics governing the professional conduct of behavioral analysts and assistant behavioral analysts licensed by the board. Copies of the document are found at [bacb.com](http://bacb.com).

(2) Behavioral analysts and assistant behavioral analysts shall follow the BACB Ethics Code in (1) unless it directly conflicts with Montana statutes or rules.

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

IMP: 37-1-316, 37-17-101, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule to replace five lengthy rules on professional conduct for behavioral analysts and assistant behavioral analysts. The BACB ethical standards provide current, extensive guidance on behavioral analysts' and assistant behavioral analysts' conduct. It is confusing and unnecessary to duplicate individual provisions in administrative rule. The board will update the version of this code as necessary, utilizing proper rulemaking procedure.

NEW RULE VII PSYCHOLOGIST ETHICAL CODE OF CONDUCT (1) The board adopts and incorporates by reference the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct (as effective

June 1, 2003, and includes the June 1, 2010, and January 1, 2017, amendments) and considers it to be the code of ethics governing the professional conduct of psychologists licensed by the board. Copies of the document are found at [apa.org/ethics/code](http://apa.org/ethics/code).

(2) Psychologists shall follow the APA ethics code in (1) unless it directly conflicts with Montana statutes or rules.

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

IMP: 37-1-316, 37-17-101, MCA

**REASON:** The board determined it is reasonably necessary to adopt this new rule to replace five lengthy rules on professional conduct for psychologists. The APA ethical standards provide extensive guidance on psychologists' conduct and is utilized as the code of ethics by a number of other states. It is confusing and unnecessary to duplicate the code verbatim in administrative rule. The board will update the version of this code as necessary, utilizing proper rulemaking procedure.

**NEW RULE VIII SUPERVISION -- ASSISTANT BEHAVIORAL ANALYSTS AND BEHAVIOR TECHNICIANS** (1) Supervisors shall:

(a) report to the board all supervisees within five business days of supervision commencement;

(b) assume professional and legal responsibility for all supervisees regardless of the type(s) of supervision;

(c) meet face-to-face with supervisees at least once a month for discussion, education, training, practice issues, and client care; and

(d) enter into written supervision agreements with supervisees that must provide for appropriate:

(i) supervision methods;

(ii) scope of delegation of practice authority;

(iii) limitations on the supervisee's practice authority; and

(iv) frequency and duration of face-to-face meetings; and

(e) keep supervision agreements for seven years after termination of the supervision and provide a copy upon board or staff request.

(2) A behavior analyst may supervise:

(a) up to three student interns if also supervising behavior technicians or assistant behavior analysts; or

(b) up to seven student interns if not supervising behavior technicians or assistant behavior analysts.

AUTH: 37-17-406, MCA

IMP: 37-17-403, 37-17-405, 37-17-406, MCA

**REASON:** The board is repealing ARM 24.189.910 and replacing it with this new rule for simplicity, better organization, and ease of use. The board is eliminating the types of allowable supervision as there is no longer a prohibited method and the licensed supervisor is expected to supervise according to accepted standards of practice.

Licensed supervisors are required to practice within the scope of their license and according to generally accepted standards of practice. As it is the supervisors' responsibility to instruct, train, and guide supervisees according to factors that are specific to each supervisory environment, it is unnecessary and not helpful to attempt to list all desired factors for the supervision or the written supervisory agreement.

NEW RULE IX TEMPORARY PERMITS (1) Applicants may be issued a temporary permit if the applicant:

- (a) lacks only the examination for licensure; and
  - (b) works under the supervision of a Montana licensee of the same license type.
- (2) Supervisors must:
- (b) have at least three years licensure prior to the beginning of supervision;
- and
- (c) remain free of disciplinary actions during the supervisory period.

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

IMP: 37-1-131, 37-1-305, 37-1-319, MCA

REASON: The board is repealing ARM 24.189.633 and replacing it with this new rule for simplicity, better organization, and ease of use for the reader. The board is also eliminating any unnecessary duplication of statutory provisions in rule.

Licensed supervisors are required to practice within the scope of their license and according to generally accepted standards of practice. As it is the supervisors' responsibility to instruct, train, and guide supervisees according to factors that are specific to each supervisory environment, it is unnecessary and not helpful to attempt to list all desired parameters for each supervision. Further, temporary permit holders are also expected to practice according to generally accepted standards of practice and within the specific supervision environment.

NEW RULE X ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37 and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA

IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

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

24.189.205 BOARD MEETINGS

AUTH: 37-17-202, MCA

IMP: 37-17-201, 37-17-202, MCA

REASON: The board is repealing this rule as it unnecessarily duplicates standard department and board procedure for all board meetings. Additionally, provisions conflict with 37-17-201, MCA, which requires selection of a presiding officer and secretary as board officers.

24.189.411 USE OF TITLE

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

IMP: 37-17-104, 37-17-301, MCA

REASON: The board is repealing this rule as unnecessary and overbroad. Per 37-17-301 and 37-17-102(5), MCA, a license is needed to use certain titles while offering psychological services in Montana. Further, certain individuals, such as psychology students, are exempt from the licensure requirement in certain circumstances per 37-17-104, MCA. Because these two statutes provide adequate guidance on use of title and exemption from licensure, it is not necessary to specify useable titles for non-licensees. Additionally, the board has the ability to discipline any licensee for use of an inappropriate title as conduct beyond generally accepted standards of practice.

24.189.415 REQUIREMENTS FOR LICENSEES PROVIDING TELEHEALTH SERVICES

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

IMP: 37-1-131, 37-17-102, 37-17-402, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE I to streamline and simplify the regulations on telehealth practice. In 2021, the Montana legislature passed SB 357 which provides telehealth guidelines for all health care licensees of title 37, at 37-2-305, MCA. Because the statute provides greater and



more specific guidance for practicing via telehealth methods, it is no longer necessary to have such specific requirements in board rules.

24.189.603 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (House Bill 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill was signed by the Governor on May 3, 2023, and will be effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.189.604 MINIMUM STANDARDS

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

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

REASON: The board is repealing this rule and replacing it with NEW RULE II. See REASON for NEW RULE II.

24.189.607 REQUIRED SUPERVISED EXPERIENCE

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

IMP: 37-1-131, 37-17-302, 37-17-320, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE IV. See REASON for NEW RULE IV.

24.189.625 LICENSURE OF FOREIGN-TRAINED PSYCHOLOGISTS

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

IMP: 37-1-131, 37-17-302, 37-17-309, MCA

REASON: The board is repealing this rule as unnecessary and outdated. All psychologist applicants must satisfy minimum licensure qualifications of 37-17-302, MCA. Additionally, per 37-17-309, MCA, foreign-trained applicants must have their educational transcripts reviewed by a board-approved evaluator to determine equivalency of credits and study areas. Applicants with equivalent education who complete the supervised experience and pass the required examination will have demonstrated adequately proficient communication skills and "proving" them via an English proficiency examination is unnecessary.

24.189.633 TEMPORARY PERMITS

AUTH: 37-1-131, 37-1-319, MCA  
IMP: 37-1-131, 37-1-305, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE IX. See REASON for NEW RULE IX.

24.189.901 BEHAVIOR ANALYST APPLICATION PROCEDURES

AUTH: 37-1-131, 37-17-406, MCA  
IMP: 37-1-131, 37-17-403, 37-17-406, MCA;

REASON: It is reasonably necessary to repeal this rule as it unnecessarily duplicates standardized application procedures utilized for all licensing boards.

24.189.904 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, 37-17-406, MCA  
IMP: 37-1-145, 37-17-406, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (House Bill 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill was signed by the Governor on May 3, 2023, and will be effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.189.907 ASSISTANT BEHAVIOR ANALYST APPLICATION PROCEDURES

AUTH: 37-1-131, 37-17-406, MCA  
IMP: 37-1-131, 37-17-403, 37-17-405, 37-17-406, MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily duplicates standardized application procedures utilized for all licensing boards.

24.189.910 BEHAVIOR ANALYST EXPERIENCE AND SUPERVISION

AUTH: 37-17-406, MCA  
IMP: 37-17-403, 37-17-405, 37-17-406, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE VIII. See REASON for NEW RULE VIII.

24.189.911 NONROUTINE BEHAVIOR ANALYST OR ASSISTANT BEHAVIOR ANALYST APPLICATIONS

AUTH: 37-1-131, MCA  
IMP: 37-1-101, 37-1-131, MCA

REASON: See REASON for ARM 24.189.613.

24.189.912 BEHAVIOR ANALYST OR ASSISTANT BEHAVIOR ANALYST APPLICANTS WITH CRIMINAL CONVICTIONS

AUTH: 37-1-131, MCA  
IMP: 37-1-101, 37-1-131, MCA

REASON: See REASON for ARM 24.189.614.

24.189.913 CONTINUING EDUCATION REQUIREMENTS

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

REASON: The board is repealing this rule and ARM 24.189.916 and 24.189.919 and combining relevant provisions into NEW RULE V. The new rule will contain all continuing education provisions for all license types.

24.189.916 CONTINUING EDUCATION REPORTING AND AUDIT (1) One

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

24.189.919 CONTINUING EDUCATION PROGRAM OPTIONS

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

24.189.922 REPRESENTATION OF SELF AND SERVICES

AUTH: 37-1-131, 37-1-319, 37-17-406, MCA  
IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-405, 37-17-406, MCA

REASON: The board is repealing this rule and ARM 24.189.925, 24.189.928, 24.189.931, and 24.189.934 and replacing them with NEW RULE VI regarding behavioral analysts' and assistant behavioral analysts' professional conduct.

24.189.925 PRACTICE OF BEHAVIOR ANALYSIS

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

IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-403, 37-17-405, 37-17-406,  
MCA

24.189.928 PROFESSIONAL RESPONSIBILITY

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

IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-405, 37-17-406, MCA

24.189.931 RELATIONSHIPS

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

IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-406, MCA

24.189.934 PRIVILEGED INFORMATION AND RECORDS

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

IMP: 37-1-131, 37-1-316, 37-17-402, 37-17-406, MCA

24.189.2101 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-319, MCA

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

REASON: The board is repealing this rule and ARM 24.189.2104 and 24.189.2107 and incorporating the relevant provisions into a single CE rule, NEW RULE V, to apply to all board licensees.

24.189.2104 CONTINUING EDUCATION PROGRAM OPTIONS

History: 37-1-319, 37-17-202, MCA

IMP: 37-1-306, 37-17-202, MCA

24.189.2107 CONTINUING EDUCATION REPORTING AND AUDIT

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

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

24.189.2301 REPRESENTATION OF SELF AND SERVICES

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

IMP: 37-1-131, 37-1-316, 37-17-101, 37-17-320, MCA

REASON: The board is repealing this rule and ARM 24.189.2305, 24.189.2309, 24.189.2314, and 24.189.2318 and replacing them with NEW RULE VII regarding psychologists' professional conduct.

24.189.2305 PRACTICE OF PSYCHOLOGY

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA  
IMP: 37-1-131, 37-1-316, 37-1-319, 37-17-101, MCA

24.189.2309 PROFESSIONAL RESPONSIBILITY

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA  
IMP: 37-1-131, 37-1-316, 37-17-101, MCA

24.189.2314 RELATIONSHIPS

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA  
IMP: 37-1-131, 37-1-316, 37-17-101, MCA

24.189.2318 PRIVILEGED INFORMATION AND RECORDS

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA  
IMP: 37-1-131, 37-1-316, 37-17-101, MCA

24.189.2405 SCREENING PANEL

AUTH: 37-17-202, MCA  
IMP: 37-1-307, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as the provisions are procedural and it is the board chair's responsibility to establish and alter the screening and adjudication panels to facilitate the disciplinary process most efficiently.

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at [dli.mt.gov/rules](http://dli.mt.gov/rules) or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., November 17, 2023.

8. An electronic copy of this notice of public hearing is available at [dli.mt.gov/rules](http://dli.mt.gov/rules) and [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at [dli.mt.gov/rules](http://dli.mt.gov/rules) or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 4, 2023, by electronic mail.

11. Pursuant to 2-4-111, MCA, the board has determined that the fee reductions proposed to ARM 24.189.401 will significantly and directly impact small businesses. The group of small businesses affected are employers that pay licensure fees for their employed psychologists, behavior analysts, and assistant behavior analysts. The fee changes will reduce the financial burden on these employers for employing board licensees. The board has no alternative methods for reducing licensure fees.

The board has determined that the remaining rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

MONTANA BOARD OF PSYCHOLOGISTS  
SARA BOILEN, PSY.D, CHAIR

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

/s/ SARAH SWANSON  
Sarah Swanson, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 10, 2023.