

BEFORE THE ALTERNATIVE HEALTH CARE BOARD  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.111.401, 24.111.402,	)	PROPOSED AMENDMENT,
24.111.403, and 24.111.2301, the	)	AMENDMENT AND TRANSFER,
amendment and transfer of ARM	)	TRANSFER, ADOPTION, AND
24.156.1408, 24.156.1409, and	)	REPEAL
24.156.1410, the transfer of ARM	)	
24.156.1403 and 24.156.1416, the	)	
adoption of New Rules I and II, and	)	
the repeal of ARM 24.111.412,	)	
24.111.2105, 24.111.2401,	)	
24.111.2402, and 24.156.1406	)	
pertaining to acupuncturist licensing	)	

TO: All Concerned Persons

1. On August 25, 2023, at 9:00 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/89164043149>  
Meeting ID: 891 6404 3149, Passcode: 836300
- OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 891 6404 3149, Passcode: 836300

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 August 18, 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 STATEMENT OF REASONABLE NECESSITY: The 2023 Legislature passed Senate Bill (SB) 453, effectuating a transfer of acupuncturist licensing from the Board of Medical Examiners to the Alternative Health Care Board. These rules propose to transfer the rules applicable to this license type between the boards to accomplish the bill's purpose.

Section 2-4-309, MCA, recognizes that rulemaking may occur prior to the effective date of legislation. In this instance, SB 453 has an effective date of October 1, 2023. To ensure a seamless transition of the acupuncture program from the Board of Medical Examiners to the Alternative Health Care Board, it is necessary

to conduct rulemaking proceedings prior to the effective date of the legislation. This creates the rather unusual circumstance of board-created rulemaking to effectuate a transfer and amendment of rules which are not yet under the jurisdiction of the board amending them. In light of 2-4-309, MCA, this is a permissible use of board authority. The board is considering rules which will fall under its jurisdiction as of the effective date of the legislation. As a result, no rule proposed to be amended and transferred by this notice will have an effective date prior to October 1, 2023.

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

24.111.401 FEES (1) Fees are payable to the Alternative Health Care Board of Alternative Health Care and are nonrefundable.

(2) ~~The fees are as follows~~ Fees for naturopaths are:

- (a) ~~naturopath~~ license application \$300
- (b) ~~naturopath~~ original license 200
- (c) ~~naturopath~~ license renewal 550 240
- (d) ~~naturopath~~ specialty certificate 100
- (e) ~~naturopath~~ specialty certificate renewal 25

(3) Fees for midwives are:

- (f)(a) ~~midwife~~ license application 300
- ~~(g)~~(b) ~~midwife~~ original license 200
- ~~(h)~~(c) ~~midwife~~ license renewal 550 240
- ~~(i)~~(d) ~~midwife~~ apprentice license application 200
- ~~(j)~~(e) ~~midwife~~ apprentice license renewal 200 100

(4) Fees for acupuncturists are:

- (a) license application 125
- (b) license renewal 100

~~(3)~~(5) Inactive status fees are as follows:

- (a) naturopath 275 120
- (b) midwife 275 120
- (c) midwife apprentice 400 50

~~(4) The midwife examination fee is set by the examination administrator and is paid by the applicant directly to the examination administrator.~~

(5) remains the same but is renumbered (6).

AUTH: 37-1-134, 37-13-201, 37-26-201, 37-27-105, MCA

IMP: 37-1-134, 37-1-141, 37-13-302, 37-26-201, 37-26-403, 37-27-203, 37-27-205, 37-27-210, MCA

REASON: Reasonable necessity exists to amend this rule to include fees for acupuncturists. Reasonable necessity exists to strike (4) because it is unnecessary to be stated in rule and is not a fee payable to the board. Other changes to the rule are simply for ease of readability. Authorization and implementation statutes additionally require updating. Finally, the fees across license types are proposed to be amended to balance budgetary requirements of the board as measured against

expected expenditures. The specific licensee impacts are below, and further information is available from the board on request.

License Type	Licensee #	Old Renewal Fee	Proposed Renewal Fee	Difference/Annual Savings	Aggregate Licensee Expense Savings
Active Midwife	39	550	240	-310	-12090
Inactive Midwife	1	275	120	-155	-155
Midwife Apprentice	12	200	100	-100	-1200
Inactive Midwife Apprentice	0	100	50	-50	0
Naturopath	153	550	240	-310	-47430
Inactive Naturopath	4	275	120	-155	-620
Acupuncturist	198	75	100	25	4950
Total	407				-56545

24.111.402 MANAGEMENT OF INFECTIOUS WASTE (1) Each ~~naturopathic physician, direct entry midwife, and direct entry midwife apprentice licensee~~ licensed by the board shall store, transport off the premises, treat, and dispose of infectious waste, as defined in 75-10-1003, MCA, in accordance with the requirements of Title 75, chapter 10, part 10, MCA, and rules adopted by the Department of Environmental Quality pursuant thereto.

AUTH: 37-13-201, 37-26-201, 37-27-105, 75-10-1006, MCA  
 IMP: 75-10-1006, MCA

REASON: See general statement of reasonable necessity.

24.111.403 FEE ABATEMENT (1) The ~~Alternative Health Care~~ Board of ~~Alternative Health Care~~ adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-101, 37-13-201, 37-26-201, 37-27-105, MCA  
 IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: See general statement of reasonable necessity.

24.111.2301 UNPROFESSIONAL CONDUCT (1) ~~The board defines unprofessional conduct for naturopathy and midwifery as follows~~ It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care

governing their scope of practice. In addition, the following is unprofessional conduct:

~~(a) Violation of any state or federal statute or administrative rule regulating the practice of naturopathy or midwifery;~~

~~(b) Incompetence, negligence, or use of any procedure in the practice of naturopathy or midwifery which creates an unreasonable risk of physical harm or serious financial loss to the patient;~~

~~(c)(a) failing to cooperate with an investigation of the board by failing to respond in full or in part; authorized by the Board of Alternative Health Care by:~~

~~(i) not furnishing any papers or documents in the possession of and under the control of the license holder;~~

~~(ii) not furnishing in writing a full and complete explanation covering the matter contained in the complaint; or~~

~~(iii) not responding to subpoenas issued by the board or the department, whether or not the recipient of the subpoena is the accused in the proceedings.~~

~~(d) Practice beyond the scope of practice encompassed by the license;~~

~~(e) Failing to maintain appropriate records as specified in statute or in the rules of the board;~~

~~(f)(b) failing to adequately supervise auxiliary staff to the extent that the patient's physical health or safety is at risk;~~

~~(g)(c) practicing naturopathy or midwifery while the license is suspended, revoked, or expired;~~

~~(h) and (i) remain the same but are renumbered (d) and (e).~~

~~(j)(f) intentionally or negligently causing physical or emotional injury or abuse to a client or patient, or sexual contact with a client or patient in a clinical setting, or sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice;~~

~~(k)(g) operating under unsanitary conditions after a warning from the board or consistently maintaining an unsanitary office;~~

~~(l) Failure to file reports required in the board's statutes or rules;~~

~~(m)(h) failure by a midwife to maintain current and valid certifications in adult and infant cardiopulmonary resuscitation and neonatal resuscitation as provided by 37-27-201, MCA.~~

AUTH: 37-1-131, 37-1-319, 37-13-201, 37-26-201, 37-27-105, MCA

IMP: 37-1-141, 37-1-316, 37-1-319, 37-13-201, 37-26-201, 37-27-105,

MCA

REASON: Reasonable necessity exists to strike (1)(a) because its substance has been moved to the introductory clause. Subsection (1)(b) is proposed to be stricken because it is duplicative of 37-1-316(18), MCA. Portions of (1)(c) are proposed to be stricken in favor of brevity. Subsections (1)(d) and (e) are proposed to be stricken because they are included in the introductory clause of the rule. Subsection (1)(g) is proposed to be amended to make it applicable to all license types of the board. Subsection (1)(j) is proposed to be amended to specify and clarify that sexual misconduct, whether or not within the scope of practice, may be grounds for disciplinary action. Subsection (1)(l) is proposed to be stricken because it is

included in the introductory clause of the rule. Reasonable necessity exists to amend the authorizing and implementing citations to include acupuncture.

5. The following rules are proposed to be amended and transferred, new matter underlined, deleted matter interlined, with proposed rule numbers in parentheses. As set forth in the general statement of reasonable necessity, these rules will fall under the jurisdiction of the board as of October 1, 2023. These amendments, if adopted as proposed, may not be effective until that date.

24.156.1408 (24.111.815) CONTINUING EDUCATION FOR ACUPUNCTURISTS (1) Each acupuncture licensee ~~of the Board of Medical Examiners~~ shall earn 30 clock hours of accredited continuing acupuncture education during each two-year licensing period. Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA

IMP: 37-1-131, 37-1-306, 37-13-201, MCA

REASON: Reasonable necessity exists to amend this rule to remove reference to the Board of Medical Examiners.

24.156.1409 (24.111.817) ACCREDITATION, APPROVAL, AND STANDARDS (1) ~~The board shall appoint a continuing education review committee which shall assist the board in approving courses, papers, workshops, and other activities designed to meet the continuing education requirements of licensed acupuncturists.~~

~~(2) The continuing education review committee shall approve continuing acupuncture education courses, papers, workshops, and other activities that meet the following standards:~~

(1) Continuing education programs must:

~~(a) They shall have significant intellectual or practical content, and the primary objective shall be to increase the participant's professional competence as an acupuncturist; and~~

~~(b) They shall constitute an organized program of learning dealing with matters directly related to the practice of acupuncture, professional responsibility, or ethical obligations of acupuncturists.~~

~~(c) Providers of continuing acupuncture education and authors of published papers shall apply to the board for course or publication approval by submitting an application on a form prescribed by the department. The application must be complete and accompanied by the appropriate documents.~~

~~(d) Applicants shall demonstrate that the offered course complies with the standards.~~

~~(e) The board, in its discretion, may determine the number of hours acceptable for any continuing education credit.~~

(2) Approved continuing education includes:

~~(f)(a) courses accredited by the National Commission for the Certification of Acupuncture and Oriental Medicine shall be preapproved by the board;~~

~~(g)(b) courses sponsored by a state acupuncture association or an acupuncture school shall be preapproved by the board; and~~

~~(h)(c) teaching acupuncture in an accredited academic or continuing education program shall be accepted as continuing education.~~

(3) Licensees may claim five hours of self-study toward meeting the requirements of ARM ~~24.156.1408~~ 24.111.815.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA

IMP: 37-1-131, 37-1-306, 37-13-201, MCA

REASON: Reasonable necessity exists to amend this rule to specify the types of continuing education which are approved. The continuing education committee has not convened in at least four years and has proved no longer necessary.

24.156.1410 (24.111.819) AUDIT AND CE REPORTING REQUIREMENTS

~~(1) Each licensee shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.~~

~~(2) The department may randomly audit up to 50 percent of renewed licensees.~~

(1) The department is authorized to audit CE requirements and shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

(3) remains the same but is renumbered (2).

~~(4) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next reporting period.~~

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-13-201, MCA

REASON: Section (1) is proposed to be stricken because it is unnecessary to specify in rule the specifics of the license application or renewal. Section (2) is proposed to be replaced because the current language is duplicative of statute, which caps audits at 50% of licensees. This authorization will permit the department to determine appropriate audit numbers, to be reported to the board, for compliance purposes. Section (4) is proposed to be stricken because its substance is included for all licensees of the board in New Rule I.

6. The following rules are proposed to be transferred, without amendment, proposed numbers in parentheses. As set forth in the general statement of reasonable necessity, these rules will fall within the jurisdiction of the board on October 1, 2023. Transfer is not proposed to be effective until that date:

24.156.1403 (24.111.801) REQUIREMENTS FOR LICENSURE

AUTH: 37-13-201, MCA  
IMP: 37-13-201, MCA

REASON: See general statement of reasonable necessity.

24.156.1416 (24.111.807) POINT INJECTION EDUCATION AND TRAINING

AUTH: 37-13-201, MCA  
IMP: 37-13-103, 37-13-302, MCA

REASON: See general statement of reasonable necessity.

7. The proposed new rules are as follows:

NEW RULE I 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, MCA, 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.

NEW RULE II APPLICATION FOR LICENSURE (1) Each application for licensure from the board must include:

(a) a completed application form;

(b) the initial license fee; and

(c) verification of applicable educational requirements.

(2) An applicant licensed in any other jurisdiction at any time shall cause the other jurisdictions to submit a current verification of licensure directly to the board.

(3) An applicant may voluntarily withdraw their application by written request if the application has not appeared on a board agenda. Application fees are not refundable.

AUTH: 37-13-201, MCA  
IMP: 37-13-302, MCA

REASON: Reasonable necessity exists to adopt this new rule to specify the general requirements for license application.

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

24.111.412 MILITARY TRAINING OR EXPERIENCE

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

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.111.2105 LICENSE RENEWAL FOR ACTIVATED MILITARY RESERVISTS

AUTH: 37-26-201, 37-27-105, MCA  
IMP: 37-1-138, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of statutory requirements set forth in 37-1-138, MCA.

24.111.2401 COMPLAINT PROCEDURE

AUTH: 37-26-201, 37-27-105, MCA  
IMP: 37-1-308, 37-1-309, MCA

REASON: Reasonable necessity exists to repeal this rule because it sets forth a departmental procedure which is defined by statute and need not be set forth in rule.

24.111.2402 SCREENING PANEL

AUTH: 37-26-201, 37-27-105, MCA  
IMP: 37-1-307, MCA

REASON: Reasonable necessity exists to repeal this rule because it sets forth board practice which need not be in rule.



24.156.1406 CURRICULUM

AUTH: 37-13-201, MCA

IMP: 37-13-301, 37-13-302, 37-13-304, MCA

REASON: Reasonable necessity exists to repeal this rule because it provides no substantive information beyond what is set forth in statute at 37-13-302, MCA.

9. 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., September 1, 2023.

10. 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).

11. 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.

12. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 25 by electronic mail and July 24 by telephone.

13. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes to ARM 24.111.401 proposed in this notice will have a significant and direct positive impact upon small businesses by reducing licensing fees. The agency further determined that the remaining rules will not significantly or directly impact small businesses.

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

ALTERNATIVE HEALTH CARE BOARD  
ALISUN BONVILLE, ND,  
PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ JOHN ELIZANDRO  
John Elizandro, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 25, 2023.