

BEFORE THE BOARD OF BEHAVIORAL HEALTH, BOARD OF MEDICAL
EXAMINERS, BOARD OF NURSING, AND BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New)
Rules I and II and the amendment of)
ARM 24.219.2301 pertaining to)
requirements for sexual offender)
evaluation endorsement)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On December 2, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed adoption and amendment 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/83267920526>
Meeting ID: 832 6792 0526, Passcode: 252197
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 832 6792 0526, Passcode: 252197

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 department no later than 5:00 p.m., on November 24, 2021, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdbbh@mt.gov.

3. GENERAL REASON: The 2021 Montana Legislature enacted Chapter 481, Laws of 2021 (Senate Bill 39), an act generally revising sexual offender evaluation and treatment laws. The bill was signed by the Governor on May 12, 2021, and takes effect January 1, 2022. Licensed clinical social workers (LCSWs), licensed clinical professional counselors (LCPCs), licensed marriage and family therapists (LMFTs), psychiatrists, psychologists, or advanced practice registered nurses with a psychiatric mental health nurse practitioner certification are currently allowed to perform sexual offender evaluations under their existing scopes of practice.

Senate Bill 39 creates a sexual offender treatment evaluator endorsement in

order to maintain standards, consistent with appropriate national standards for evaluation and treatment of sexual offenders, and guidelines for evidence-based assessment, evaluation, treatment, and behavioral monitoring of sexual offenders.

The bill created a subcommittee to draft requirements for sexual offender evaluators. Using the subcommittee's recommendations, the Board of Behavioral Health, Board of Medical Examiners, Board of Nursing, and Board of Psychologists are proposing to adopt NEW RULES I and II to implement Senate Bill 39 by establishing requirements for the endorsement and supervised professional experience necessary for practitioners to qualify for the endorsement. Where additional specific bases for a proposed action exist, the board(s) will identify those reasons immediately following that rule.

4. The proposed new rules are as follows:

NEW RULE I DEFINITIONS (1) "Face-to-face" means supervision which is either:

- (a) in-person; or
- (b) electronically. The transmission must:
 - (i) be two-way;
 - (ii) be interactive;
 - (iii) be real-time;
 - (iv) be simultaneous; and
 - (v) provide for both audio and visual interaction.

(2) "Sexual offender evaluator supervisor" means the licensed clinical social worker (LCSW), licensed clinical professional counselor (LCPC), licensed marriage and family therapist (LMFT), psychiatrist, psychologist, or advanced practice registered nurse with a psychiatric mental health nurse practitioner certification who is qualified to conduct sexual offender evaluations. The supervisor must have:

- (a) a license in good standing; and
- (b) at least three years current ongoing experience in practice as a sexual offender evaluator and treatment provider.

AUTH: 37-1-131, 37-1-139, MCA

IMP: 37-1-131, 37-1-139, MCA

NEW RULE II SEXUAL OFFENDER EVALUATOR LICENSE ENDORSEMENT (1) Applicants for a sexual offender evaluator endorsement who are licensed as an LCSW, LCPC, LMFT, psychiatrist, psychologist, or advanced practice registered nurse with a psychiatric mental health nurse practitioner certification under ARM Title 24, chapters 156, 159, 189, and 219, shall:

- (a) meet the requirements described in 37-1-139(3)(a) through (c), MCA; and
- (b) be a full or clinical member of the Association for the Treatment of Sexual Abusers (ATSA) or other board-approved national professional organization that meets the requirements in 37-1-139(3)(d), MCA.

(2) The 2000 hours supervised experience required in 37-1-139, MCA, must include:

- (a) supervision by a sexual offender evaluator supervisor;

(b) face-to-face supervision at a ratio of two hours of supervision for each sequential 40 hours of evaluation and treatment of sexual offenders; and

(c) 25 hours of the 400 hours in face-to-face evaluations of sexual offenders or therapy sessions with sexual offenders must be supervised in-person by the supervisor.

AUTH: 37-1-131, 37-1-139, MCA

IMP: 37-1-131, 37-1-139, MCA

5. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.219.2301 UNPROFESSIONAL CONDUCT AND CODE OF ETHICS – LCSW, LMSW, LBSW, LCPC, LMFT, LAC, CBHPSS, AND LCSW, LMSW, LBSW, LCPC, LMFT, AND LAC CANDIDATES (1) through (2)(m) remain the same.

(n) fail to appropriately supervise a licensure candidate, ~~or a CBHPSS,~~ or individual requiring supervision to perform a sexual offender evaluation under 37-1-139, MCA;

(o) through (4) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-139, 37-1-319, 37-22-201, 37-35-103, MCA

IMP: 37-1-131, 37-1-136, 37-1-139, 37-1-316, 37-1-319, 37-22-201, 37-35-103, 37-38-106, MCA

REASON: The Board of Behavioral Health is amending this rule to clarify that its licensees are also responsible for supervision of individuals who require supervision to perform sexual offender evaluations under 37-1-139, MCA. See also GENERAL REASON. The board is amending the authority and implementation citations to reflect the codified provisions of Senate Bill 39.

6. 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 Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdbbh@mt.gov, and must be received no later than 5:00 p.m., December 3, 2021.

7. An electronic copy of this notice of public hearing is available at <https://bsd.dli.mt.gov/>. 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.

8. The boards each maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by these boards. Persons who wish to have their name added to a list shall make a written request that includes the name, e-

mail, and mailing address of the person to receive notices and specifies whether 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 Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdbbh@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on August 6, 2021, by email.

10. Regarding the requirements of 2-4-111, MCA, the boards have determined that the adoption of NEW RULES I and II will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the Board of Behavioral Health has determined that the amendment of ARM 24.219.2301 will not significantly and directly impact small businesses.

Documentation of the boards' above-stated determinations is available upon request to Lucy Richards, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to dlibsdbbh@mt.gov.

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

BOARD OF BEHAVIORAL HEALTH
ELAINE MARONICK, LCPC/LMFT
CHAIRPERSON

BOARD OF MEDICAL EXAMINERS
CHRISTINE EMERSON, R.D.
PRESIDENT

BOARD OF NURSING
SARAH SPANGLER, RN
PRESIDENT

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 October 26, 2021.