

CHIROPRACTIC BOARD LAWS

AS OF THE 2019 LEGISLATIVE SESSION

TITLE 37, CHAPTER 12

CHIROPRACTOR

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CHAPTER 12

CHIROPRACTIC

Chapter Cross-References

Montana Chiropractic Legal Panel Act, Title 27, ch. 12.
Professional service corporations, Title 35, ch. 4.
Reporting required by health care professionals, Title 37, ch. 2, part 3.
Duty of chiropractors to report child abuse, 41-3-201.
Duty of chiropractor to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Chapter Administrative Rules

Title 24, chapter 126, ARM Board of Chiropractors.

Chapter Law Review Articles

The Standard of Care in Chiropractic Malpractice Litigation, Nazerian, 39 For the Def. 31 (1997).
Alternative Healing, Chiropractic and the Law, Glaser, 37 Trauma 63 (1995).
Common Causes of Malpractice Suits Against Chiropractors, Khalil, 20 Va. B.A.J. 7 (1994).

Part 1

General

37-12-101. Definitions — practice of chiropractic. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of chiropractors provided for in 2-15-1737.
- (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

History: (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 121, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18".
Amendment effective July 1, 2001.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1)(b); changed internal references to the department and the board.

Case Notes

Statute Not Unconstitutionally Vague: The definition of practice of chiropractic in this section is not unconstitutionally vague in violation of the Due Process Clause. The term "specific adjustment or manipulation" is a scientific term having a readily ascertainable definition within the chiropractic community and provides a standard with meaningful differentiation between culpable and innocent conduct. Defendant, as a chiropractor licensed in two states, cannot assert lack of notice of the meaning of the terms. *St. v. Blinzler*, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

37-12-102. Exemptions — limitations on construction of chapter. This chapter may not be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of those professions. The practice of chiropractic as defined in this chapter is declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining medicine and surgery and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining osteopathy. Licensed chiropractors are not subject to the provisions of this title pertaining to the practice of osteopathy or liable to any prosecution under those provisions.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517; amd. Sec. 17, Ch. 224, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 224 in middle of third sentence after "provisions of" substituted "this title pertaining to the practice of osteopathy" for "chapter 5 of this title"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Cross-References

Practice of medicine defined, 37-3-102.

Exemptions from physician's licensing requirements, 37-3-103.

37-12-103. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.

37-12-104. Rights and limitations governing practice. (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are medical doctors, osteopaths, or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: (1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509; amd. Sec. 1, Ch. 203, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "medical doctors, osteopaths" for "regular physicians".

Severability: Section 6, Ch. 203, L. 1989, was a severability clause.

Administrative Rules

ARM 24.126.301 Definitions.

Case Notes

Chiropractor Barred From Testifying as to Impairment Rating: Public policy suggests that only qualified physicians, but not chiropractors, should be allowed to render opinions on impairment ratings based on the American Medical Association's Guides to Evaluation of Permanent Impairment. Restricting use of the guides in this way ensures reliable, authoritative opinions on which juries can depend in making their determinations. *Wacker v. Park Rural Elec. Co-op, Inc.*, 239 M 500, 783 P2d 360, 46 St. Rep. 1864 (1989).

Part 2

Board of Chiropractors

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Oath defined, 1-1-201.
Open meetings, Title 2, ch. 3, part 2.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1737.
Affidavits, Title 26, ch. 1, part 10.
Subpoenas, Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Perjury and other falsification in official matters, Title 45, ch. 7, part 2.
Disrupting meeting as disorderly conduct, 45-8-101.

Part Administrative Rules

Title 24, chapter 126, subchapter 1, ARM Organizational rule.
Title 24, chapter 126, subchapter 2, ARM Procedural rules.

37-12-201. Organization of board — powers and duties. The board shall:

- (1) elect annually a president, vice president, and secretary-treasurer from its membership;
- (2) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;
- (3) make a schedule of minimum educational requirements that are without prejudice, partiality, or discrimination as to the different schools of chiropractic;
- (4) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, the display of licenses, and the registration of interns and preceptors.
- (5) make determinations of the qualifications of applicants under this chapter; and
- (6) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503; amd. Sec. 1, Ch. 321, L. 1987; amd. Sec. 1, Ch. 161, L. 1989; amd. Sec. 2, Ch. 203, L. 1989; amd. Sec. 1, Ch. 275, L. 1993; amd. Sec. 52, Ch. 429, L. 1995; amd. Sec. 19, Ch. 492, L. 2001; amd. Sec. 51, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (2) that read: "(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates"; deleted former (3)(b) that read: "(b) adopt a seal that must be affixed to licenses issued"; in (4) in second sentence after "applications" substituted "the display of licenses" for "form and display of license, license examination format, criteria for and grading of examinations, disciplinary standards for licensees"; deleted former (3)(f) through (3)(h) that read: "(f) administer the examination for licensure under this chapter;

- (g) establish and collect fees, fines, and charges as provided in this chapter;
- (h) issue, suspend, or revoke licenses under the conditions prescribed in this chapter"; deleted former (4) that read: "(4) The department shall keep a record of the proceedings of the board, which must at all times be open to public inspection"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 in (2) deleted last sentence that read: "A majority of the board constitutes a quorum." Amendment effective October 1, 2001.

1995 Amendment: Chapter 429 deleted (3)(e) that required Board to investigate complaints; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 275 in (3)(d), at end, inserted "and the registration of interns and preceptors"; and made minor changes in style. Amendment effective April 7, 1993.

1989 Amendments: Chapter 161 inserted (3)(j) relating to certification of a chiropractor as a qualified evaluator; and made minor changes in punctuation.

Chapter 203 in (3)(h) substituted "establish and collect fees, fines, and charges as provided" for "collect fees and charges prescribed".

1989 Statement of Intent: The statement of intent attached to Ch. 161, L. 1989, provided: "This bill authorizes the board of chiropractors to adopt a rule for the certification of impairment evaluators within their profession. The board should consider the applicant's experience in treating industrial accidents and any academic training he may have in using the impairment rating guides recognized by the division of workers' compensation."

Severability: Section 6, Ch. 203, L. 1989, was a severability clause.

1987 Amendment: In (2) deleted former second sentence that read: "Not more than four meetings may be held in any one year"; made (3)(a) mandatory rather than permissive; in (3)(b), after "issued", deleted "and shall make rules necessary for the performance of its duties"; inserted (3)(d) through (3)(i) directing Board to adopt rules and to otherwise regulate the licensure of chiropractors; and made minor changes in phraseology.

Administrative Rules

Title 24, chapter 126, ARM Board of Chiropractors.

37-12-202. Compensation of members — expenses. The members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3); amd. Sec. 17, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "receive" for "\$25 for each day during which they are actually engaged in the discharge of their duties plus mileage and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3

Licensing

Part Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-603, 1-5-604.

Oath, Title 1, ch. 6.

Licensing to follow contested case procedure, 2-4-631.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Perjury, 45-7-201.
False swearing, 45-7-202.
Nondiscrimination in licensing, 49-3-204.

Part Administrative Rules

Title 24, chapter 126, subchapter 5, ARM Licensing and scope of practice.

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).

Case Notes

Failure of Licensing Board to Overcome Presumption That License Renewal Timely Mailed and Received: Dr. Baldwin's chiropractor license renewal was due September 1, and the renewal packet was mailed to the Board of Chiropractors on August 17, but the Board never received it. After seeing two patients on September 2, the doctor called the Board to inquire whether the license had been reissued. The doctor was instructed to stop seeing patients because the license had not been renewed. The doctor was subsequently found to have engaged in unprofessional conduct for practicing without a license and placed on probation for 1 year, and a private letter of reprimand was placed in the doctor's license file. The doctor appealed the decision, but the District Court denied the request to reverse the decision. On appeal, the Supreme Court reversed. The Board did not dispute that the packet was mailed on August 17, but simply asserted that the packet was not received without offering any additional evidence of nonreceipt. Absent additional evidence, the Board failed to overcome the rebuttable presumption in 26-1-602(24) that a letter duly directed and mailed was received in the regular course of the mail. The District Court erred in affirming the Board's decision that the doctor failed to renew the license on time and practiced without a license. *Baldwin v. Bd. of Chiropractors*, 2003 MT 306, 318 M 188, 79 P3d 810 (2003).

State of Mind Required for Conviction: Although no particular mental state is identified in this section, 45-2-103 clearly requires the practice of chiropractic be done knowingly or purposely to constitute an offense. *St. v. Blinzler*, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

Statute Not Unconstitutionally Vague: The definition of practice of chiropractic in 37-12-101 is not unconstitutionally vague in violation of the Due Process Clause. The term "specific adjustment or manipulation" is a scientific term having a readily ascertainable definition within the chiropractic community and provides a standard with meaningful differentiation between culpable and innocent conduct. Defendant, as a chiropractor licensed in two states, cannot assert lack of notice of the meaning of the terms. *St. v. Blinzler*, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

Sufficiency of Evidence to Prove Practice of Chiropractic: Evidence that defendant had placed his knee on a patient's rib and then pulled her arms back and had placed another patient lying on his stomach and then pushed down on his back, combined with the testimony of two licensed chiropractors who identified those procedures as specific adjustments, provided substantial evidence from which the jury could find the defendant guilty of practicing chiropractic without a license. *St. v. Blinzler*, 183 M 300, 599 P2d 349, 36 St. Rep. 1580 (1979).

37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall apply to the department on a department form. Each applicant must be a graduate of a college of chiropractic approved by the board. The applicant shall present evidence showing proof of a bachelor's degree from an accredited college or university. The application must be accompanied with copies of diplomas and certificates and satisfactory evidence of good character and reputation.

(2) The applicant shall pay to the department a license fee prescribed by the board.

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505; amd. Sec. 28, Ch. 345, L. 1981; amd. Sec. 3, Ch. 203, L. 1989; amd. Sec. 1, Ch. 168, L. 1995; amd. Sec. 18, Ch. 224, L. 2003; amd. Sec. 52, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) in first sentence after "department on" substituted "a department form" for "the form and in the manner prescribed by the board", in second sentence after "graduate of" deleted "or expect to graduate within 90 days prior to the next licensing examination administered by the board from" and after "board" deleted "in which the applicant has attended a course of study of 4 school years of not less than 9 months each", and deleted former fourth sentence that read: "Application must be made in writing, must be sworn to by an officer authorized to administer oaths, and must recite the history of applicant's educational qualifications, how long the applicant has studied chiropractic, of what school or college the applicant is a graduate, and the length of time the applicant has been engaged in practice"; in (2) deleted former second sentence that read: "A fee must also be paid for a subsequent examination and application"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 at end of first sentence after "board" deleted "at least 21 days prior to a meeting of the board"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1995 Amendment: Chapter 168 in (1), in third sentence in middle, increased education requirement from 2 years of college or university work at an institution acceptable to the Board of Regents to a bachelor's degree from an accredited college or university; inserted (3) exempting persons licensed before October 1, 1995, from the bachelor's degree requirement; and made minor changes in style.

1989 Amendment: In second sentence of (1) inserted "or expect to graduate within 90 days prior to the next licensing examination administered by the board from".

Severability: Section 6, Ch. 203, L. 1989, was a severability clause.

1981 Amendment: Substituted "a license fee prescribed by the board" for "a license fee of \$50" at the end of the first sentence of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.126.501 Applications.

ARM 24.126.701 Inactive status and conversion to active status.

ARM 24.126.2103 Continuing education requirements.

Case Notes

Admission to Examination: The Board of Chiropractors (formerly Board of Chiropractic Examiners) was compelled to allow graduates of certain chiropractic school to take examination for license where graduates of the school had previously been admitted to practice and where Board refused to inspect school. *State ex rel. Westercamp v. St. Bd. of Chiropractic Examiners*, 137 M 451, 352 P2d 995 (1960).

Attorney General's Opinions

Applicants for Licensure — Training Requirements: Applicants for licensure by examination to the practice of chiropractic in this state must have the academic and professional training as established by this section. 29 A.G. Op. 12 (1961).

Licensure by Reciprocity — Educational Standards: Applicants for licensure by reciprocity need not have the educational requirements established by this section if they have practiced in and have been licensed by a state that has educational admission standards equal to this state's standards. 29 A.G. Op. 12 (1961). (Opinion issued prior to repeal of reciprocity statute.)

37-12-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

37-12-304. Examinations — subjects. (1) Applicants for a license to practice chiropractic must have passed an examination prescribed by the board.

(2) The board may accept the grades an applicant has received in the examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though the applicant holds a valid certificate from the national board of chiropractic examiners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506; amd. Sec. 1, Ch. 347, L. 1983; amd. Sec. 2, Ch. 275, L. 1993; amd. Sec. 19, Ch. 224, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 224 substituted language in (1) requiring license applicants to have passed board-prescribed examination for former (1) that read: "(1) Examinations for a license to practice chiropractic must be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application must be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded"; deleted former (2) that read: "(2) Examinations must be administered on subjects taught in chiropractic colleges, on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic. A license must be granted to applicants who correctly answer 75% of all questions asked, including x-ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, the applicant is not entitled to a license"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1993 Amendment: Chapter 275 in (2), near beginning, substituted "administered" for "made in writing" and after "colleges" substituted "on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic" for "including the use of x-ray equipment and radiographs. Additional subjects may be prescribed by the board to meet new conditions"; and made minor changes in style. Amendment effective April 7, 1993.

1983 Amendment: In (2), in first sentence changed the examination subjects from "anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedics, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation" to "subjects taught in chiropractic colleges, including the use of x-ray equipment and radiographs" and at end of second sentence inserted "including x-ray questions"; and in (3) changed the examination requirement, which formerly provided that applicant "satisfactorily passes a clinical proficiency examination before the department, subject to 37-1-101".

Administrative Rules

ARM 24.126.501 Applications.

ARM 24.126.504 Examination requirements.

ARM 24.126.704 Interns and preceptors.

37-12-305. Repealed. Sec. 1, Ch. 265, L. 1999.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515; amd. Sec. 29, Ch. 345, L. 1981.

37-12-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.

37-12-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(1); amd. Sec. 4, Ch. 155, L. 1981; amd. Sec. 30, Ch. 345, L. 1981; amd. Sec. 1, Ch. 344, L. 1983; amd. Sec. 2, Ch. 321, L. 1987; amd. Sec. 53, Ch. 429, L. 1995; amd. Sec. 19, Ch. 492, L. 1997; amd. Sec. 19, Ch. 271, L. 2003.

37-12-308. Deposit of fees — accounting. (1) Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2); amd. Sec. 1, Ch. 277, L. 1983.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-12-309. Municipal license fee prohibited. No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2); amd. Sec. 3, Ch. 321, L. 1987.

Compiler's Comments

1987 Amendment: At end of section inserted "including a local government with self-governing powers".

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-12-310 through 37-12-320 reserved.

37-12-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1; amd. Sec. 14, Ch. 619, L. 1993.

37-12-322. Investigation of complaints. (1) The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

- (a) has a mental or physical condition that renders the person unable to safely engage in the practice of chiropractic;
- (b) has been declared incompetent or has been committed pursuant to 53-21-127 by a court of competent jurisdiction and has not later been declared competent or released from supervision;
- (c) has procured the license through mistake;
- (d) has been guilty of unprofessional conduct;
- (e) has practiced chiropractic while the license was suspended or revoked;
- (f) has while under probation violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these must be released to the board on written request.

History: En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2; amd. Sec. 4, Ch. 203, L. 1989; amd. Sec. 54, Ch. 429, L. 1995; amd. Sec. 10, Ch. 490, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 490 in (1)(b), after "incompetent or", substituted "has been committed pursuant to 53-21-127" for "seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 429 at beginning of (1) substituted "department" for "board"; in (2), in first sentence after "may", inserted "upon order of the board" and deleted third and fourth sentences that read: "If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice"; deleted (3) through (7) that read: "(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

- (a) revoke the license;
- (b) suspend the licensee's right to practice for a period not to exceed 1 year;
- (c) suspend its judgment of revocation on terms and conditions determined by the board;
- (d) place the licensee on probation;
- (e) fine the licensee in an amount not to exceed \$500 for each incident; or
- (f) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

(7) Following a final determination resulting in any disciplinary action taken by the board under subsection (4), the board may recover from the disciplined party all reasonable costs of any proceeding, not to exceed \$1,000, incurred for the purpose of the disciplinary action. Fines and costs recovered must

be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6)"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1989 Amendment: Inserted (4)(e) authorizing a fine; and inserted (7) relating to recovery of costs and deposit of costs and fines.

Severability: Section 6, Ch. 203, L. 1989, was a severability clause.

37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee prescribed by the board for the restoration.

History: En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3; amd. Sec. 31, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "shall pay a fee prescribed by the board" for "shall pay a fee of \$50" in (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

37-12-324. Penalty for violation. A person who practices or attempts to practice chiropractic or a person who buys, sells, or fraudulently obtains any diploma or license to practice chiropractic, whether recorded or not, or who uses the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that the person is engaged in the practice of chiropractic without first complying with the provisions of this chapter or a person who violates any of the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 or more than \$700 or by imprisonment in a county jail for not less than 30 days or more than 7 months, or both. Prosecutions for the violation of this chapter must be instituted in the district courts.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516; amd. Sec. 1374, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.