

**PSYCHOLOGISTS BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 37, CHAPTER 17
PSYCHOLOGISTS**

This version of the Montana Code Annotated is provided as a tool for board members and department staff. In case of inconsistencies, the text in the West Publishing hardbound copy or the MCA online version from Legislative Services is the official rule text and will prevail.

CHAPTER 17 PSYCHOLOGISTS

Chapter Compiler's Comments

Severability Clause: Section 15, Ch. 73, L. 1971, was a severability clause.

Chapter Cross-References

Mental health professional-client privilege, 26-1-807.

Liability of mental health professionals, Title 27, ch. 1, part 11.

Duty to warn of violent behavior, 27-1-1102.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Child abuse and neglect — reports and investigations, Title 41, ch. 3, part 2.

Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Chapter Administrative Rules

Title 24, chapter 189, ARM Board of Psychologists.

Chapter Law Review Articles

Patients Can Seek Damages From Psychologists Who Violate Privacy, Ackermann, 156 N.J.L.J. 4 (1999).

Beyond Autonomy: Judicial Restraint and the Legal Limits Necessary to Uphold the Hippocratic Tradition and Preserve the Ethical Integrity of the Medical Profession, Murphy, 9 J. Contemp. Health L. & Pol'y 451 (1993).

Community Care, Competition and Coercion: A Legal Perspective on Privatized Mental Health Care, Wisor, 19 Am. J.L. & Med. 145 (1993).

The Role of Psychologists as Experts in Cases Involving Allegations of Child Sexual Abuse, Hall, 23 Fam. L.Q. 451 (1989).

Part 1 General

37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971; R.C.M. 1947, 66-3201.

37-17-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest commission on colleges and universities.

(2) "Board" means the board of psychologists provided for in 2-15-1741.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes,

and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services described in subsection (4) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee.

History: En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974; R.C.M. 1947, 66-3202; amd. Sec. 13, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 5, Ch. 324, L. 1981; amd. Sec. 1, Ch. 347, L. 1987; amd. Sec. 44, Ch. 18, L. 1995; amd. Sec. 126, Ch. 483, L. 2001; amd. Sec. 54, Ch. 2, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 2 in definition of accredited college or university substituted "northwest commission on colleges and universities" for "northwest association of schools and colleges"; and made minor changes in style. Amendment effective October 1, 2009.

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.

1995 Amendment: Chapter 18 at end of (1) substituted "schools and colleges" for "secondary and higher schools"; and made minor changes in style.

1987 Amendment: Near end of (4) inserted "whether or not he does so" before "for compensation"; and substituted definition of practice of psychology for former definition that included the application of stated psychological principles and the practice of counseling and testing.

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (3); changed internal references to the department and the board.

Chapter 324 inserted "while representing oneself to be a psychologist" after "the application" near the beginning of (5).

Administrative Rules

ARM 24.189.301 Definitions.

37-17-103. Limitation of license authority. Nothing in this chapter shall be construed as permitting psychologists to prescribe drugs, perform surgery, or administer electroconvulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(2).

37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, marriage and family therapists licensed under Title 37, chapter 37, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic";

(b) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities and services are a part of the duties of the office or position within the confines of the agency or institution;

(c) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

(d) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year or 45 consecutive calendar days if the

person is authorized under the laws of the state or country of that person's residence to perform these activities and services. However, these persons shall report to the department the nature and extent of the services in this state prior to providing those services if the services are to exceed 10 days in a calendar year.

(e) a person authorized by the laws of the state or country of the person's former residence to perform activities and services, who has recently become a resident of this state and who has submitted a completed application for a license in this state, from performing the activities and services pending disposition of the person's application; and

(f) the offering of lecture services.

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

(3) The board of behavioral health shall adopt rules that qualify a licensee under Title 37, chapter 22, 23, or 37, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social workers, professional counselors, and licensed marriage and family therapists must be consistent with the guidelines of their respective national associations. A qualified licensee providing services under this exemption shall comply with the rules no later than 1 year from the date of adoption of the rules.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(2); amd. Sec. 14, Ch. 22, L. 1979; amd. Sec. 6, Ch. 324, L. 1981; amd. Sec. 2, Ch. 347, L. 1987; amd. Sec. 38, Ch. 126, L. 2005; amd. Sec. 1, Ch. 453, L. 2009; amd. Sec. 2, Ch. 130, L. 2015; amd. Sec. 2, Ch. 288, L. 2015; amd. Sec. 1, Ch. 158, L. 2017; amd. Sec. 5, Ch. 195, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 195 in (1)(d) near middle of first sentence inserted "or 45 consecutive calendar days". Amendment effective October 1, 2019.

2017 Amendment: Chapter 158 in (1)(a) in middle inserted "marriage and family therapists licensed under Title 37, chapter 37"; in (3) in first sentence inserted reference to Title 37, chapter 37, and in second sentence inserted "and licensed marriage and family therapists"; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendments — Composite Section: Chapters 130 and 288 in (3) substituted "board of behavioral health" for "board of social work examiners and professional counselors" and deleted former third sentence that read: "Final rules must be adopted by October 1, 2010." Amendments effective October 1, 2015.

2009 Amendment: Chapter 453 in (1) at beginning inserted exception clause; in (1)(a) inserted "professional counselors licensed under Title 37, chapter 23"; inserted (2) relating to performance of psychological testing, evaluation, and assessment; inserted (3) requiring board of social workers and professional counselors to adopt rules relating to certain licensees; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 126 in (1) at end after ""psychologist"" inserted ""psychological", or "psychologic""; in (2) near middle after "educational" deleted "or charitable", after "institution" inserted "business corporation, or research laboratory", and near end after "position" substituted "within the confines of" for "with"; in (3) at end after "study" inserted "of the student, intern, or resident in psychology"; in (4) near end after "state" inserted "prior to providing those services"; in (5) near middle after "who has" substituted "submitted a completed application" for "applied"; deleted former (6) that read: "(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection"; in (6) after "services" deleted "for a fee by a person exempted from licensing requirements by virtue of his employment"; deleted former (8) that read: "(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the

organization within the confines of the organization"; and made minor changes in style. Amendment effective July 1, 2005.

1987 Amendment: Near beginning of (2) inserted "clearly delineating the nature and level of training".

1981 Amendment: Deleted "and the codes of ethics of their respective professions" after "their training" in (1).

Administrative Rules

ARM 24.189.411 Use of title.

ARM 24.189.414 Nonresident psychological services.

Title 24, chapter 219, subchapter 10, ARM Qualifications of social workers and professional counselors to perform psychological testing, evaluation, and assessment.

Part 2 Board of Psychologists

Part Compiler's Comments

Transition — Initial Appointments: Section 7, Ch. 671, L. 1991, provided: "(1) On September 1, 1991, the governor shall appoint one person to a 5-year term on the board of psychologists.

(2) On September 1, 1992, the governor shall appoint one person to a 5-year term on the board and one person to a 1-year term on the board. At the expiration of the 1-year term, the governor shall reappoint the same board member to a 5 year term. At the expiration of the 5-year term, appointments must be made in accordance with 2-15-1851 [renumbered 2-15-1741].

(3) On September 1, 1993, the governor shall appoint one person to a 1-year term on the board and one person to a 2-year term. At the end of those terms, the governor shall reappoint those same board members each to a 5 year term. At the expiration of the 5-year terms, appointments must be made in accordance with 2-15-1851 [renumbered 2-15-1741]."

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of Attorney General, 2-15-501.

Board established, 2-15-1741.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

Disrupting meeting as disorderly conduct, 45-8-101.

Part Administrative Rules

Title 24, chapter 189, subchapter 1, ARM Organizational rule.

Title 24, chapter 189, subchapter 2, ARM Procedural rules.

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a presiding officer and a secretary. Other regular meetings must be held at the times that the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the presiding officer and the majority of its members or on the request of the governor. Reasonable notice of meetings must be given in the manner prescribed by the board. The department shall keep a record of the board's proceedings.

(2) Each board member must receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. The attorney general or a representative of the attorney general may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; R.C.M. 1947, 66-3205(1), (2), (4), (5); amd. Sec. 21, Ch. 474, L. 1981; amd. Sec. 24, Ch. 492, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 492 in (1) deleted former fifth sentence that read: "The quorum of the board consists of the majority of its members"; and made minor changes in style. Amendment effective October 1, 2001.

1981 Amendment: In (2), inserted "compensation and" after "receive", and substituted "37-1-133" for "2-18-501 through 2-18-503, as amended, incidental to board meetings".

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.

Administrative Rules

ARM 24.189.101 Board organization.

37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and joinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses for the prosecution; and

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: (1)En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; Sec. 66-3205, R.C.M. 1947; (2)En. Sec. 7, Ch. 73, L. 1971; Sec. 66-3207, R.C.M. 1947; R.C.M. 1947, 66-3205(3), 66-3207; amd. Sec. 3, Ch. 671, L. 1991; amd. Sec. 62, Ch. 429, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 429 deleted (2)(e) that authorized Board to adopt rules for the administration of a continuing education program, including but not limited to accrediting education programs and establishing the number of hours of continuing education required for license renewal; 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.

1991 Amendment: Inserted (2)(e) concerning adopting rules for administering continuing education program, including accrediting education programs and establishing number of hours of continuing education required for license renewal. Amendment effective July 1, 1991, except rules adopted by Board of Psychologists may not be implemented until January 1, 1992.

1991 Statement of Intent: The statement of intent attached to Ch. 671, L. 1991, provided: "A statement of intent is required for this bill because it grants the board of psychologists the authority to make rules for establishing and administering a continuing education program for psychologists. It is intended that rules require the number of hours of continuing education necessary to maintain professional competency."

Administrative Rules

Title 24, chapter 189, subchapter 4, ARM General provisions.

Title 24, chapter 189, subchapter 6, ARM Licensure.

Title 24, chapter 189, subchapter 21, ARM Continuing education.
Title 24, chapter 189, subchapter 23, ARM Unprofessional conduct.

Case Notes

Board of Psychologists — Immunity From Suit: Rahrer sought to hold the Board of Psychologists liable for damages arising out of a contested case hearing involving the Board's investigation of a complaint against Rahrer, a licensed psychologist. Applying *Butz v. Economou*, 438 US 478, 57 L Ed 2d 895, 98 S Ct 2894 (1978), and *Koppen v. Bd. of Medical Examiners*, 233 M 214, 759 P2d 173, 45 St. Rep. 1433 (1988), the Supreme Court held that the Board of Psychologists was entitled to quasi-judicial immunity. Initiating, investigating, and presenting a case pursuant to the Montana Administrative Procedure Act involve precisely the types of decisions for which the state and its agencies are granted quasi-judicial immunity. *Rahrer v. Bd. of Psychologists*, 2000 MT 9, 298 M 28, 993 P2d 680, 57 St. Rep. 53 (2000).

Invalid Rule Under Grandfather Clause: Section 66-3208(4), R.C.M. 1947 (deleted by sec. 317, Ch. 350, L. 1974), a grandfather clause, allowed licensure of an established psychologist without a doctoral degree if he had 5 years of professional experience and a master's degree. A rule adopted by the Board of Psychologists required the professional experience to have been obtained after receiving the master's degree. The rule was held invalid because it imposed the additional requirement of a chronological order in which requirements were to be met not envisioned by the Legislature. *McPhail v. Mont. Bd. of Psychologists*, 196 M 514, 640 P2d 906, 39 St. Rep. 290 (1982).

Part 3 Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
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.
Nondiscrimination in licensing, 49-3-204.

37-17-301. License required. A person may not represent to the public that the person is a psychologist or engage in the practice of psychology unless the person is licensed under this chapter.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(1); amd. Sec. 1380, 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.

Administrative Rules

Title 24, chapter 189, subchapter 6, ARM Licensure.

37-17-302. Qualifications. The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence that the person:

- (1) is 18 years of age or older;
- (2) is of good moral character;
- (3) (a) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

(b) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(c) has received a doctoral degree in psychology from an accredited college or university and has completed a course of studies that meets minimum standards specified in rules by the board; and

(4) has completed at the time of application a minimum of 2 years of supervised experience in the practice of psychology. One year of this experience must be postdoctoral but may not include more than 6 months of supervised research, teaching, or a combination of both.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(1), (2); amd. Sec. 3, Ch. 347, L. 1987; amd. Sec. 4, Ch. 671, L. 1991; amd. Sec. 1, Ch. 362, L. 1995; amd. Sec. 57, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) that read: "(1) Application for examination for licensure as a psychologist must be made on forms prescribed by the board"; and made minor changes in style. Amendment effective July 1, 2005.

1995 Amendment: Chapter 362 deleted former (2)(a) that read: "(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed"; in (2)(c)(iii), after "university and", substituted "has completed a" for "whose"; in (2)(d), in first sentence after "practice", deleted "research, or teaching" and in second sentence, after "postdoctoral", inserted "but may not include more than 6 months of supervised research, teaching, or a combination of both"; and made minor changes in style.

1991 Amendment: In (2)(e), near middle before "experience", inserted "supervised". Amendment effective January 1, 1992.

1987 Amendment: Near beginning of (2)(d)(i) substituted "in clinical psychology" for "based on a program of studies, primarily psychological in content" and at end inserted "approved by the American psychological association"; inserted (2)(d)(ii) allowing licensure of applicant with degree from unaccredited school who has completed an approved retraining program; and inserted (2)(d)(iii) allowing licensure of applicant with degree from an accredited school and whose course of study satisfies Board standards.

Administrative Rules

ARM 24.189.401 Fee schedule.

ARM 24.189.601 Application procedures.

ARM 24.189.604 Minimum standards.

ARM 24.189.607 Required supervised experience.

Case Notes

No Error by District Court in Affirming Final Agency Decision: The petitioner sought licensure as a clinical psychologist and was denied by the Board of Psychologists because he did not meet the educational requirements. The petitioner challenged the board's decision and requested a hearing. The hearing officer found in the petitioner's favor and recommended licensure. The board rejected the hearing officer's findings and again denied licensure. The petitioner sought judicial review of the board's decision and the District Court held in the board's favor. The Supreme Court affirmed and determined that the hearing officer's finding was based on a misinterpretation of the board's rules and was not supported by substantial competent evidence. *Mayer v. Bd. of Psychologists et. al.*, 2014 MT 85, 374 Mont. 364, 321 P.3d 819.

Invalid Rule Under Grandfather Clause: Section 66-3208(4), R.C.M. 1947 (deleted by sec. 317, Ch. 350, L. 1974), a grandfather clause, allowed licensure of an established psychologist without a doctoral degree if he had 5 years of professional experience and a master's degree. A rule adopted by the Board of Psychologists required the professional experience to have been obtained after receiving the master's degree. The rule was held invalid because it imposed the additional requirement of a chronological order in which requirements were to be met not envisioned by the Legislature. *McPhail v. Mont. Bd. of Psychologists*, 196 M 514, 640 P2d 906, 39 St. Rep. 290 (1982).

37-17-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(1), (2); amd. Sec. 4, Ch. 347, L. 1987.

37-17-304. Admission of licensees from other states or jurisdictions. A license without written examination may be issued to a psychologist licensed or certified in another state or Canadian jurisdiction upon meeting criteria or entering into an agreement established by the board.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(3); amd. Sec. 58, Ch. 10, L. 1993; amd. Sec. 2, Ch. 362, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 362 near middle, after "state", substituted "or Canadian jurisdiction upon meeting criteria or entering into an agreement established by the board" for "where the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology".

Coordination Instruction — Purported Repeal: Section 7, Ch. 362, L. 1995, provided: "If [this act] [House Bill No. 184] and House Bill No. 518 are both passed and approved and if House Bill No. 518 repeals 37-17-304, then the repeal of 37-17-304 in House Bill No. 518 is void." House Bill No. 518 was approved April 13, 1995, as Ch. 429, L. 1995, and included the repeal of 37-17-304; because House Bill No. 184 was passed and approved as Ch. 362, L. 1995, the repeal of 37-17-304 is void and the amendments to 37-17-304 in House Bill No. 184 are effective.

1993 Amendment: Chapter 10 near beginning inserted "written" before "examination".

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Administrative Rules

ARM 24.189.620 Licensees from other states or Canadian jurisdictions.

37-17-305. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(3).

37-17-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(4), (5); amd. Sec. 5, Ch. 671, L. 1991; amd. Sec. 63, Ch. 429, L. 1995; amd. Sec. 25, Ch. 492, L. 2001; amd. Sec. 24, Ch. 271, L. 2003.

37-17-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 73, L. 1971; amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, Ch. 350, L. 1974; R.C.M. 1947, 66-3211; amd. Sec. 43, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 671, L. 1991; amd. Sec. 64, Ch. 429, L. 1995; amd. Sec. 25, Ch. 271, L. 2003.

37-17-308. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(6); amd. Sec. 3, Ch. 362, L. 1995.

37-17-309. Foreign-trained applicants. The transcripts of a foreign-trained applicant for licensure as a psychologist must be evaluated by a board-approved agency that reviews credentials. Upon receipt of this evaluation, the board shall determine whether the number of academic credits awarded and academic areas studied meets equivalent educational standards for a doctoral degree in clinical psychology established by a graduate program approved by the American psychological association.

History: En. Sec. 4, Ch. 362, L. 1995.

37-17-310. Licensure of senior psychologists. The board may issue a senior psychologist's license to an applicant who:

(1) has been licensed to practice psychology in a United States or Canadian jurisdiction for at least 20 years if the license required a doctoral degree;

(2) provides documentation demonstrating at least 10 years of clinical experience in the last 15 years prior to filing the application;

(3) has not been subject to any disciplinary action during the entire period of licensure;
(4) has passed Montana's oral examination; and
(5) has submitted an application and paid the fees required in this chapter and in the rules of the board.

History: En. Sec. 5, Ch. 362, L. 1995.

Administrative Rules

ARM 24.189.630 Licensure as psychologist by experience.

37-17-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 73, L. 1971; amd. Sec. 318, Ch. 350, L. 1974; R.C.M. 1947, 66-3209; amd. Sec. 7, Ch. 324, L. 1981; amd. Sec. 5, Ch. 347, L. 1987.

37-17-312. Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding \$500, or by both.

History: En. Sec. 13, Ch. 73, L. 1971; R.C.M. 1947, 66-3213.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In the proceeding, it is not necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have practiced improperly, the court shall enjoin the respondent from practicing unless and until the respondent has been licensed. Procedure in these cases is the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(1); amd. Sec. 1381, 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.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

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

Injunctions, Title 27, ch. 19.

Disciplinary authority of boards — injunctions, 37-1-136.

37-17-314. Immunity from liability. There is no liability on the part of and no cause of action may arise against a psychologist for a statement made in good faith in reporting another psychologist's apparent violation of the provisions of this chapter or rules adopted by the board.

History: En. Sec. 7, Ch. 347, L. 1987.

Cross-References

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

Physical therapists — nonliability for reporting violations to licensing Board, 37-11-320.

37-17-315 through 37-17-317 reserved.

37-17-318. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 1, Ch. 671, L. 1991.

Part 4 Behavior Analysis

Part Compiler's Comments

Effective Date: This part is effective October 1, 2017.

37-17-401. Purpose. The legislature finds and declares that the practice of applied behavior analysis in Montana affects public health, safety, and welfare, particularly of some of the state's most vulnerable citizens, including individuals with disabilities. Therefore, licensure and regulation of applied behavior analysts is in the public interest to protect the public from unauthorized, unethical, unprofessional, or harmful conduct by individuals, other than those otherwise licensed or those exempt under 37-17-404.

History: En. Sec. 2, Ch. 425, L. 2017.

37-17-402. Definitions. For the purposes of this part, the following definitions apply:

(1) "Assistant behavior analyst" means an individual licensed under 37-17-403 who has a qualifying bachelor's degree and has passed the board-certified assistant behavior analyst examination of the behavior analyst certification board.

(2) "Behavior analyst" means an applied behavior analyst who is licensed under 37-17-403 and has passed the board-certified behavior analyst examination of the behavior analyst certification board.

(3) "Behavior analyst certification board" means the nonprofit corporation whose credentialing programs for behavior analysts are accredited by the national commission for certifying agencies.

(4) "Board" means the board of psychologists provided for in 2-15-1741.

(5) (a) "Practice of applied behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis links the scientific study of behavior with the direct observation and measurement of behavior and the environment plus the application of skills to help people develop new behaviors, increase or decrease existing behaviors, or adjust behaviors under specific environmental conditions.

(b) The term does not include psychological evaluation, diagnosis of a mental or physical disorder, neuropsychology, long-term counseling as a treatment modality, or psychotherapy, including cognitive therapy, sex therapy, psychoanalysis, or hypnotherapy.

History: En. Sec. 3, Ch. 425, L. 2017.

37-17-403. License required — qualifications. (1) An individual may not represent to the public that the individual is an assistant behavior analyst or a behavior analyst without a license issued under this section.

(2) The board shall license as a behavior analyst or an assistant behavior analyst an individual who:

(a) submits an application as determined by the board by rule;

(b) pays required applicant fees and subsequent renewal fees;

(c) submits a full set of the applicant's fingerprints to the board to facilitate a fingerprint-based criminal record background check by the Montana department of justice and the federal bureau of investigation. The board may not disseminate criminal history record information resulting from the background check across state lines.

(d) provides evidence of current certification at the appropriate level from the behavior analyst certification board;

(e) is of good moral character; and

(f) attests to abiding by professional and ethical requirements indicated in the Professional and Ethical Compliance Code for Behavior Analysts recognized by the behavior analyst certification board.

(3) To obtain a license as a behavior analyst, an individual must meet the requirements in subsection (2) and:

(a) have passed the board-certified behavior analyst examination by the behavior analyst certification board;

(b) be currently certified as a behavior analyst by the behavior analyst certification board; and

(c) have met the educational course work and requirements set by the board by rule.

(4) To obtain a license as an assistant behavior analyst, an individual must meet the requirements in subsection (2) and:

(a) have passed the board-certified assistant behavior analyst examination by the behavior analyst certification board;

(b) be currently certified as an assistant behavior analyst by the behavior analyst certification board; and

(c) have met the educational course work and requirements set by the board by rule.

History: En. Sec. 4, Ch. 425, L. 2017; amd. Sec. 3, Ch. 287, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 287 in (2)(a) at beginning substituted "submits" for "has submitted"; in (2)(b) at beginning substituted "pays" for "has paid"; in (2)(c) substituted current text for former text that read: "has passed a state-approved criminal background check"; in (2)(d) at beginning substituted "provides" for "has provided"; and made minor changes in style. Amendment effective May 3, 2019.

37-17-404. Exemptions. (1) A license under this part is not required for school district personnel, including those who provide special education as defined in 20-7-401, family support specialists with autism endorsement, licensed psychologists and those acting under the psychologists' authority, licensed clinical professional counselors, licensed social workers, family members, or persons in direct contact with individuals otherwise served by behavior analysts or assistant behavior analysts licensed under this part.

(2) Organizational behavior management consultants and behavior analysts who work with animals do not require a license under this part for the practice of applied behavior analysis for working with organizations or animals.

(3) A student in an approved postsecondary program for behavior analysis may be exempted from having a license if the student, including a student intern, is working under the supervision of appropriate university faculty in the conduct of behavior analytic activities.

(4) A behavior technician who is supervised by a behavior analyst licensed under this part is exempted from having a license under this part.

(5) An individual described in subsection (1), (2), (3), or (4) may choose to apply for licensure by meeting the requirements in 37-17-403.

History: En. Sec. 5, Ch. 425, L. 2017.

37-17-405. Autonomy — supervision authority. (1) A behavior analyst licensed under this part has treatment authority for the practice of applied behavior analysis.

(2) An assistant behavior analyst or a behavior technician when engaged in the practice of applied behavior analysis must be supervised by:

(a) a behavior analyst licensed under this part; or

(b) a licensed psychologist certified by the American board of professional psychology in behavioral and cognitive psychology.

History: En. Sec. 6, Ch. 425, L. 2017.

37-17-406. Rulemaking. (1) The board may adopt rules to implement this part plus the requirements in Title 37, chapters 1 through 3, as they apply to disciplinary action, unprofessional conduct, continuing education, implementation and costs of criminal background checks, or recognizing commensurate military experience as a qualification in licensure.

(2) The board shall adopt license fees for behavior analysts and assistant behavior analysts that adequately fund the costs of implementing this part.

History: En. Sec. 7, Ch. 425, L. 2017.