

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.111.407 nonroutine applications,) ON PROPOSED AMENDMENT
24.111.502 licensing by examination,)
24.111.503 licensing by endorsement,)
24.111.511 natural substance formulary,)
24.111.602 apprenticeship requirements,)
and 24.111.604 licensing by examination)

TO: All Concerned Persons

1. On March 26, 2008, at 9:30 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

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 Alternative Health Care Board (board) no later than 5:00 p.m., on March 24, 2008, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Alternative Health Care Board, 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; e-mail dlibsdahc@mt.gov.

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

24.111.407 NONROUTINE APPLICATIONS (1) All applications for direct-entry midwife and direct-entry midwife apprentice licensure ~~will~~ must be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

(2) An application for naturopathic physician licensure must be considered nonroutine in nature requiring board review and approval prior to issuance of the license if it discloses:

(a) that the applicant has a prior felony conviction of any nature or a prior misdemeanor conviction relating to sex, drugs, or violence. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) that the applicant has had two or more alcohol related convictions over any period of time or has had one alcohol related conviction within the past five years;

(c) that the applicant's health care professional license was disciplined or was voluntarily surrendered in another state or jurisdiction;

(d) that the applicant's education program does not have board approval and accreditation or preaccreditation status from the Council on Naturopathic Medicine Education (CNME);

(e) that the applicant passed a licensing examination other than NPLEX; or

(f) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

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

IMP: 37-1-101, 37-26-401, 37-26-402, 37-26-403, 37-26-405, 37-27-201, 37-27-203, 37-27-205, MCA

REASON: Per 37-1-101, MCA, the department receives and processes only routine license applications for all department boards, while the boards must process all nonroutine applications. Because the board meets only quarterly, requiring board review of all naturopathic physician license applications has caused licensing delays and hardship. The board is amending this rule to enable department staff to process most naturopathic physician applications and issue licenses without board review while still ensuring adequate protection of the public. Subsection (2)(f) is intended to give discretion to staff to defer to the board's judgment whenever staff deems board review is necessary or advisable for the public protection. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.111.502 LICENSING BY EXAMINATION (1) Applicants for naturopathic physician licensure by examination shall ~~submit a completed application with the proper fees and supporting documents to the board office. Supporting documents shall include:~~

(a) submit a completed application on a form furnished by the department together with the required fees;

~~(a)(b) written documentation of good moral character consisting of submit three letters of reference, at least one of which must be from a licensed naturopathic physician, attesting to the applicant's good moral character;~~

(b)(c) cause the naturopathic medicine college which conferred an N.D. or N.M.D. degree on the applicant to submit an official transcript of the applicant's naturopathic medicine education directly to the board office; a copy of a certified transcript sent directly from an approved naturopathic medical college, which prepares candidates for licensure as a naturopathic physician, showing evidence the applicant has graduated and received a degree from the college;

~~(e)(d) cause the interstate reporting service of the North American Board of Naturopathic Examiners (NABNE) to submit directly to the board office, evidence of the applicant's passing score on the Naturopathic Physician Licensing Examination (NPLEX) as provided in (2). any other documents, affidavits and certificates required by 37-26-402 and 37-26-403, MCA, and this chapter.~~

~~(2) All applicants must take the Naturopathic Physicians Licensing Examination (NPLEX) as endorsed by the board, or any other examination to be prescribed or endorsed by the board, and have their scores reported to the board~~

office by the proper North American Board of Naturopathic Examiners (NABNE) interstate reporting service, or its equivalent. Except as provided in (5), applicants for naturopathic physician licensure in Montana must either:

(a) have passed:

(i) all five individual basic science NPLEX examinations (Part I);

(ii) all eight individual clinical science NPLEX examinations (Part II) or passed the said Part II under the compensatory scoring model described in (3), prior to August 1, 2007;

(iii) the homeopathy NPLEX examination prior to February 1, 2008; and

(iv) the minor surgery NPLEX clinical examination; or

(b) have passed:

(i) all five individual basic science NPLEX examinations (Part I);

(ii) the single integrated NPLEX Part II - Core Clinical Science Examination;

and

(iii) the minor surgery NPLEX clinical examination; or

(c) have passed:

(i) the single integrated NPLEX Part I - Biomedical Science Examination;

(ii) the single integrated NPLEX Part II - Core Clinical Science Examination;

and

(iii) the minor surgery NPLEX clinical examination.

(3) A minimum converted score of 75 is required to pass the Part I - Biomedical Science Examination. A minimum converted score of 75 is required to pass the Part II - Core Clinical Science Examination. A minimum converted score of 75 is required to pass the minor surgery examination. A minimum converted score of 75 is required to pass the homeopathy examination. The converted score is a scaled score and not a percentage. The board will accept the compensatory scoring model for the eight individual clinical science NPLEX examinations under (2)(a)(ii) provided all eight examinations were taken prior to August 1, 2007.

~~(a)(4) Applicants shall contact NABNE for NPLEX test dates and locations. NABNE may be contacted at 9220 SW Barbur Blvd., Suite 119, #321, Portland, OR 97219-5434, (503) 778-7990, or via the Internet at www.nabne.org.~~

~~(b) An applicant must achieve a passing score of 75 or better on the examination in order to obtain a license to practice naturopathic medicine in this state. The board will accept the compensatory scoring model for the core clinical examinations as endorsed by NABNE.~~

(5) An applicant seeking licensure under this rule based upon a licensure examination other than the NPLEX shall submit proof satisfactory to the board of the applicant's score on the examination, the score deemed passing by the examination's developer, and the examination's acceptance by a licensing authority in any other state or territory of the United States, the District of Columbia, or a foreign country. Upon receipt, the board will determine whether to prescribe or endorse the proffered examination pursuant to its authority under 37-26-201 and 37-26-402, MCA, based upon the examination's substantial equivalency to the NPLEX examination.

AUTH: 37-1-131, 37-26-201, MCA

IMP: 37-1-131, 37-26-402, 37-26-403, MCA

REASON: The board determined it is reasonably necessary to amend this rule in response to changes made to the Naturopathic Physician Licensing Examination (NPLEX) by the North American Board of Naturopathic Examiners (NABNE). The five individual basic science NPLEX examinations presently in use are being converted to a single integrated examination called the Part I - Biomedical Science Examination. The eight individual clinical science NPLEX examinations formerly in use have been converted to a single integrated examination called the Part II - Core Clinical Science Examination. The rule amendment clarifies that the compensatory scoring model for the eight individual clinical science examinations will still be accepted so long as all examinations were taken prior to the availability of the single integrated Part II - Core Clinical Science Examination. Formerly, the homeopathy examination was a separate add-on examination required for licensure in Montana but homeopathy is now incorporated into the integrated Part II - Core Clinical Science Examination. The minor surgery examination has been and for the foreseeable future will continue to be a separate add-on examination that is required for licensure in Montana. The changes being made to the NPLEX by NABNE are occurring over time. The rule amendment specifies the examination requirements throughout the transition period. Section (5) specifies how the board will determine whether an applicant who passed a naturopathic licensing examination other than NPLEX is eligible for licensure in Montana by endorsement or reciprocity under ARM 24.111.503.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.111.503 LICENSING OF OUT-OF-STATE APPLICANTS BY ENDORSEMENT (1) A license to practice as a naturopathic physician in the state of Montana may be issued without examination to an applicant at the discretion of the board, provided the applicant meets all of the following requirements:

(a) who has submitted a completed application and correct fee;

(a)(b) verification, in the form of a certified transcript sent directly from the college, that the candidate has who graduated and holds a degree/diploma from an approved naturopathic medical college that prepares candidates for licensure as a naturopathic physician, provided that such program, at the time of the candidate's graduation, is equivalent to or exceeds the minimum naturopathic medical educational standards required by the board's laws and rules;

(b)(c) the candidate who holds a valid current unencumbered license to practice as a naturopathic physician in another state or jurisdiction.—Official written verification of such licensure status must be received by the board from the other state or jurisdiction;

(c)(d) the candidate has completed and filed with the board a notarized application for licensure and the required application fee who is of good moral character as evidenced by three letters of reference at least one of which must be from a licensed naturopathic physician; and

(d)(e) the candidate who has successfully passed a naturopathic physician licensure examination in another state or jurisdiction meeting or exceeding the

~~requirements of ARM 24.111.502(2) and (3) or (5). Written official verification of successful completion of the licensure examination and of licensure in good standing must be requested of the state or jurisdiction by the candidate, and must be received by the board directly from the state or jurisdiction; except:~~

~~(i) NPLEX exam scores must be verified by proper NPLEX score reporting agencies and procedures;~~

~~(ii) Candidates who have taken the NPLEX examination must have successfully passed, at minimum, sections on basic sciences, clinical science with minor surgery and homeopathic add-ons.~~

~~(e) The candidate must be of good moral character as evidenced by written documentation to be provided by the candidate, consisting of three letters of reference, at least one of which must be from a licensed naturopathic physician.~~

~~(2) It is the applicant's responsibility to cause the licensing authority of the state or jurisdiction from which the applicant is endorsing to send official verification of licensure directly to the board.~~

~~(3) It is the applicant's responsibility to cause the naturopathic medical college that conferred the applicant's N.D. or N.M.D. degree to send an official transcript of the applicant's naturopathic medical education directly to the board.~~

~~(4) It is the applicant's responsibility to cause verification of passing scores on the NPLEX or other licensing examination used to qualify for initial licensure in another state or jurisdiction, to be reported directly to the board by the official score reporting service utilized by the examination owner.~~

AUTH: 37-1-131, 37-26-201, MCA

IMP: 37-1-131, 37-1-304, MCA

REASON: It is reasonable and necessary to amend this rule to clarify the requirements by which an applicant holding a current, unencumbered naturopathic physician license in another state or jurisdiction may be licensed in Montana by endorsement without retaking the licensure examination. As part of an ongoing rule review, the board is amending this rule for better organization and to lessen confusion among applicants.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.111.511 NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE

FORMULARY LIST (1) through (3)(g)(i) remain the same.

(ii) trimethoprim/sulfamethoxazole;

(h) quinolones:

(i) ciprofloxacin; and

(ii) levaquin.

(4) through (13)(d) remain the same.

(e) heparin;

(e) through (i) remain the same but are renumbered (f) through (j).

(14) through (17) remain the same.

AUTH: 37-1-131, 37-26-201, MCA

IMP: 37-26-301, MCA

REASON: The formulary committee established by 37-26-301, MCA, recommended to the full board that this rule be amended to include the three drugs listed in this proposal and the board proposes to amend the rule accordingly. Some naturopaths' clinical practices include IV therapy and heparin is an anticoagulant appropriate for such use. Ciprofloxacin and levaquin are commonly used in the treatment of urinary tract infections. Some of the older antimicrobials currently listed in the formulary have become less effective as resistance to them has increased and the board concluded that updating the formulary with the newer drugs is necessary to enable naturopaths to provide effective primary care to their patients. The three proposed additions to the formulary are routinely covered in both the naturopaths' medical education and continuing education programs as agents for use in clinical practice.

24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP

REQUIREMENTS (1) through (6)(a) remain the same.

(i) documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must show include at least five prenatal visits exams, one of which must have been performed before the beginning of ~~on or before~~ of the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postnatal visit postpartum exam. Ten of the 15 continuous care births must have ~~occurred~~ been performed under the personal supervision of a qualified supervisor.

(b) through (8) remain the same.

(a) Documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must show include at least five prenatal visits exams, one of which must have been performed before the beginning of ~~occurring on or before~~ the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postnatal visit postpartum exam. Ten of the 15 continuous care births must have ~~occurred~~ been performed under the direct supervision of a qualified supervisor.

(9) and (10) remain the same.

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-27-105, 37-27-201, 37-27-205, 37-27-321, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that an apprentice must provide documentation of five prenatal exams per continuous care birth and not a minimum of five prenatal exams among all 15 continuous care births. The meaning of the current rule relating to the five prenatal exams was debated in a recent licensure situation and the board determined that the rule should be clarified. To ensure that apprentices obtain experience relating to all stages of a woman's pregnancy rather than just near the end of it, the board is amending this rule to require that one of the five prenatal exams per continuous care birth be performed early in the pregnancy in order for the birth to qualify as a continuous care birth. The term "visit" is replaced with the more precise term "exam" and the term "postnatal" is replaced by "postpartum" to be consistent with the terminology used in the enabling legislation for direct-entry midwives.

24.111.604 LICENSING BY EXAMINATION (1) through (1)(d) remain the same.

(i) documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must ~~show~~ include at least five prenatal ~~visits~~ exams, one of which must have been performed before the beginning of ~~occurring on or before~~ the 28th week of gestation, as determined by last menstrual period or sonogram, and include one ~~postnatal visit~~ postpartum exam. Ten of the 15 continuous care births must have ~~occurred~~ been performed under the direct supervision of a qualified supervisor.

(2) and (3) remain the same.

AUTH: 37-27-105, MCA

IMP: 37-27-201, 37-27-202, 37-27-203, MCA

REASON: It is reasonably necessary to amend this rule to clarify that an applicant for licensure by examination must provide documentation of five prenatal exams per continuous care birth and not a minimum of five prenatal exams among all 15 continuous care births. The meaning of the current rule relating to the five prenatal exams was debated in a recent licensure situation and the board determined that the rule should be clarified. To ensure that applicants obtain experience relating to all stages of a woman's pregnancy rather than just near the end of it, the board is amending this rule to require that one of the five prenatal exams per continuous care birth be performed early in the pregnancy in order for the birth to qualify as a continuous care birth. The term "visit" is replaced with the more precise term "exam" and the term "postnatal" is replaced by "postpartum" to be consistent with the terminology used in the enabling legislation for direct-entry midwives.

4. 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 the Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdahc@mt.gov, and must be received no later than 5:00 p.m., April 3, 2008.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.althealth.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Alternative Health Care Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons

who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Alternative Health Care 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 the Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdahc@mt.gov, or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

ALTERNATIVE HEALTH CARE BOARD
MICHAEL BERGKAMP, N.D., CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 19, 2008