

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.219.401, 24.219.405, and)
24.219.409 fee schedule)

TO: All Concerned Persons

1. On September 20, 2012, the Board of Social Work Examiners and Professional Counselors (board) published MAR notice no. 24-219-26 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1829 of the 2012 Montana Administrative Register, issue no. 18.

2. On October 15, 2012, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the October 23, 2012, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Several commenters opposed the proposed fee increases as unfair burdens on licensees, since licensee salaries have not increased. The commenters suggested the board cut back expenses and reduce costs instead of increasing the renewal fees.

RESPONSE 1: All licensing boards are statutorily mandated by 37-1-134, MCA, to set board fees commensurate with the costs of licensure and regulation. The board cannot set fees according to inflation, cost of living, or the current salaries of licensees. A fairly constant number of licensees combined with inflationary increases in costs such as rent, supplies, and electricity and a change to direct billing costs to specific boards have resulted in the need to increase fees.

Much of the board's budget is a fixed cost allocation to the board for computer systems, web site support, staff salaries, phone and mail service, etc. The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this include the use of electronic board books instead of paper ones, and having some board meetings by telephone conference instead of in-person attendance.

COMMENT 2: Many commenters opposed the fee increases and asserted that the board's expenses had not been adequately described and justified.

RESPONSE 2: The department is required biennially to provide detailed information to the legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. The board also reviews a

current financial report, including the board's fiscal year income and expenditures to date, at each full board meeting. This fiscal information is publicly available from the board and is open to public inspection and scrutiny.

In addition, the board performs more functions than it has in the past, including licensing a new profession and performing fingerprint and background checks, which has resulted in increased costs. The increase in costs has been seen in all areas, and is not limited to the costs of licensing and renewal. The costs of administration and management, rulemaking, verifying compliance with statutes and rules, maintaining records, providing information to the public through print and electronic means, and legal costs associated with complaints and disciplinary actions have all increased over the decade since the board last raised fees. Detailed information about board costs is available through the board office.

COMMENT 3: Some commenters argued the license fee increase is excessive, given that the examination vendor fees have also increased.

RESPONSE 3: Examination providers set testing fees based on their costs. While the board reviews testing companies to monitor the quality of examinations as well as to ensure that the fees charged to applicants are reasonable, the board does not control the examination fees that applicants pay directly to the providers.

COMMENT 4: Many commenters observed that Montana's license fees are more than those charged by other states.

RESPONSE 4: Fees must be set in a manner commensurate with costs. The board is not permitted to set fees based on external factors, such as fees charged by other states. It is difficult to compare fees from state to state for a variety of reasons. Each jurisdiction provides different services to its members, states have different numbers of licensees, legal issues are different, costs are accounted for in different ways, and licensing authorities are funded in different ways.

COMMENT 5: Numerous commenters asked the board to consider imposing the fee increase gradually.

RESPONSE 5: The board could have increased costs gradually and incrementally over a number of years, but the board found that this approach would also increase rulemaking costs. The board has been considering a fee increase for nearly a year as it has reviewed and monitored its budget. Given the current state of the budget, the board would not be able to continue to operate if it chose to reduce the size of the current increase and incrementally raise fees later. More frequent fee increases also could have increased confusion for applicants and licensees.

By increasing fees substantially at this time, the board hopes to forestall future increases for several years. Should the board require additional revenue to cover its costs in the future, it would consider making smaller increases more frequently in order to avoid the need for a single, large fee increase.

COMMENT 6: Many commenters observed that the fee increase is coming amid difficult economic circumstances.

RESPONSE 6: The board appreciates that there are difficult economic times, but the board must balance its budget in the same way that individuals and businesses do.

COMMENT 7: Several commenters questioned why the fee increase is occurring now. Some commenters alleged the fee increase came without adequate warning to licensees and suggested that the board seek input from licensees prior to proposing a large fee increase.

RESPONSE 7: The board has seen the need to increase fees over the last year and has discussed the idea of a fee increase at previous board meetings. Due to increased costs incurred this fiscal year, it became evident that the increase must be implemented immediately. Increasing the fees as proposed should reduce the chances of additional increases over the next several years, unless new legislation results in added expense for the board.

COMMENT 8: Most commenters objected to the fee increases as too large and suggested the board cut costs rather than increase fees.

RESPONSE 8: The board could have increased costs gradually and incrementally over the years, but the board found that this approach would have increased rulemaking costs. More frequent fee increases also would have added to confusion for applicants and licensees. The board has taken steps to reduce licensee fees, including creating inactive status, which allows licensees practicing in other states to maintain Montana licensure at a lower cost. The board has also seen cost savings by holding meetings by teleconference to reduce travel costs and travelling less often for training and conferences. When possible, the board has attempted to use electronic communication to further reduce telephone and postage charges.

COMMENT 9: Some commenters asked the board to be more specific about increases in legal fees and complaints cited in the reasonable necessity statement.

RESPONSE 9: The board sets licensure fees to be commensurate with associated board costs of licensing and regulation, including the processing of complaints against licensees and unlicensed individuals. Per 37-1-312, MCA, all fines assessed as disciplinary sanctions and paid by licensees must be deposited into the state general fund and do not go toward payment of specific board costs. The board notes that information on final disciplinary actions taken by the board is available to the public via the board's web site or upon request to board staff.

In response to the increased time involved in processing complaints, the board has adopted rules to reduce the number of complaints. Among other things, the board has clarified that some common practices do not meet the standard of care and provided guidelines for practitioners who are involved with child custody determinations.

COMMENT 10: Some commenters suggested the license and renewal fee increases will be a barrier to licensure and reduce the number of licensees practicing in Montana.

RESPONSE 10: Due to increased costs, other boards administratively attached to the department have also been forced to raise fees. These boards have not experienced a serious decline in the number of licenses they issue. Notably, following previous fee increases, the board did not see a decline in license numbers.

COMMENT 11: Other commenters noted that Montana licensees are paid less than individuals who hold the same licenses in other states. Therefore, they contended Montana's licensing fees should be less than those in other states.

RESPONSE 11: The board is required to set fees commensurate with costs and the board does not have the ability to implement fee changes based on the fees charged in other jurisdictions. The board cannot consider the rates charged by its licensees to determine an appropriate level for licensing and renewal fees.

COMMENT 12: Some commenters were concerned that if the fees are increased as proposed, licensees would not be able to afford it.

RESPONSE 12: The board understands the concern, but license fees are a cost of doing business as a professional. The board must meet its financial obligations in order to continue to regulate the professions as mandated in statute.

COMMENT 13: Some commenters stated the license/renewal fee increases were not justified on the basis of inflation since the time of the last fee increase.

RESPONSE 13: Fees are not set according to inflation, licensees' salaries, or cost of living measures, but must be set according to associated board costs. Although the board has seen costs rise over several years, fees have not increased in nine years.

COMMENT 14: Most commenters were generally opposed to the license and renewal fee increases.

RESPONSE 14: The board recognizes that raising fees creates difficulty for licensees, but notes that the practice of any profession is a privilege and paying the associated licensure fee is an obligation inherent in maintaining that privilege.

COMMENT 15: Some commenters asked the board to advocate for licensees for better reimbursement rates from insurance companies.

RESPONSE 15: Lobbying insurance companies to change reimbursement rates is not the role of a regulatory body such as the board. The board would be acting

beyond its statutory authority to assume such a role. Trade and professional associations may be in a position to take on such an advocacy role.

COMMENT 16: One commenter asked about the number of full-time employees needed to handle regulation and licensing.

RESPONSE 16: The number of positions allocated to the board does not determine costs, because boards are not billed based on the number of people who are assigned to work with a board. Department employees are often assigned to work for a number of boards. The board is charged on an hourly basis by department staff when they do work directly for the board.

COMMENT 17: One commenter argued the proposed inactive fee is too high.

RESPONSE 17: The board set the inactive fee based on the cost of renewing an inactive license. Inactive licensees not only save on fees, but do not have to complete continuing education until their licenses are reactivated.

COMMENT 18: One commenter asked why the board needs to raise licensing fees when there is a general fund surplus.

RESPONSE 18: The board is funded solely from the fees it collects. It receives no general fund appropriations.

COMMENT 19: One commenter alleged the application process is too cumbersome and unclear.

RESPONSE 19: The board staff works continually to streamline the process and make improvements as needed. The new database and Internet portal used by licensing staff may make the application and renewal processes simpler and faster. The board has modified its rules to be clearer regarding application processes and will continue to consider improvements to this process at future board meetings.

COMMENT 20: One commenter stated that the fee increases seemed reasonable.

RESPONSE 20: The board regrets that it must increase fees and appreciates the comment.

COMMENT 21: Some commenters suggested that the board reduce the renewal fee for a second license renewal for an individual who is dually licensed.

RESPONSE 21: The board discussed and would consider reducing the renewal fees for dually licensed persons, but cannot make this change now as it exceeds the scope of this rulemaking. Therefore, the board must consider this option at a future board meeting and would have to include it in a future rule proposal. The board is willing to discuss this suggestion at its next meeting.

CONTINUING EDUCATION COURSE APPROVAL FEE

COMMENT 22: One commenter noted that the August 22, 2012, board minutes did not include a motion to charge a fee for continuing education course approval.

RESPONSE 22: The motion to charge a fee for continuing education approval was made at the June 6, 2012, board meeting. The proposed rule changes were combined into a single notice to save rulemaking and filing costs.

COMMENT 23: Several commenters warned that the continuing education approval fee may reduce the number of continuing education course offerings available, especially in rural and remote areas of Montana. Some commenters were concerned that the continuing education fee would reduce the number of small courses offered in-house to employees of nonprofits and health centers.

RESPONSE 23: Many continuing education providers are vendors who are in the business of providing continuing education for professionals. For these entities, the cost of approval is a cost of doing business. In the past, the cost of approving continuing education courses was paid for by all licensees, whether they attended a commercial continuing education course or not. Many courses are available online to licensees in remote areas.

The fee for course approval is relatively small and is charged per course rather than per participant. However, if a course is offered to a small audience in a rural area or by a nonprofit or health center, the provider could recoup the course approval fee by passing the charge on to the participants. Even if this were to occur, because the fee is only \$20, the cost to each participant who attends a small course should be slight. Therefore, licensees who typically attend courses offered by nonprofits, health centers, and in rural areas should not see a significant reduction in available approved courses.

COMMENT 24: Many commenters stated the continuing education approval fee will make obtaining continuing education too costly for licensees.

RESPONSE 24: The continuing education approval fee for each course will generally be paid by the provider, not by licensees. While providers can pass the fee on to participants, even a small course attended by ten licensees would likely result in a per participant cost of only two dollars. Because many courses are offered to larger audiences or are developed by continuing education vendors that offer the course in a number of states, the fee charged to participants may not increase at all.

COMMENT 25: Some commenters argued that the revenue from the proposed licensing/renewal fee increases should be used to pay for continuing education course approval.

RESPONSE 25: The board considered covering continuing education course approval costs with licensing and renewal fees, but determined that it was more

appropriate to have those who take advantage of a particular course pay for it. This fee for services approach allocates fees to the individual or group who generated the cost. Licensees who are not able to take advantage of a course should not be burdened with the expense of the board's review.

COMMENT 26: Some commenters asked whether there will be a continuing education approval fee for each course.

RESPONSE 26: Each individual continuing education course will have to be approved, and each course approval will require the payment of a fee. Licensees will not have to pay for approval unless the course provider did not submit the course for approval in Montana.

COMMENT 27: A few commenters questioned how the continuing education charge will be administered.

RESPONSE 27: In most cases, the fee for approving a continuing education course will be paid for by the course provider. In some cases, specialty training is provided by vendors who do not believe that a significant number of Montana licensees will attend. In these cases, the vendor may choose not to seek approval of the course, and the licensee who takes the course would have to request approval individually. Aside from the collection of a fee, the process for course approval will remain unchanged.

COMMENT 28: Some commenters asked whether there will be a separate continuing education fee for each online course offered by a particular course provider or sponsor.

RESPONSE 28: The fee charged will not vary based on the format of the course. Providers must seek course approval each licensing year. After the subject, length, and format of a course have been approved for the year, the provider would not have to pay an additional fee during the year, unless the subject, length, or format of the course changed.

COMMENT 29: Many commenters were generally opposed to the continuing education course approval fee.

RESPONSE 29: The board already reviews and approves courses and the cost is currently paid for by all licensees from licensing fees. The board has determined that a fee for services model is more equitable, because those who sponsor and benefit from a continuing education course should be expected to pay for it. If the board did not charge a continuing education course approval fee, licensing fees would need to be increased more than what is currently proposed.

COMMENT 30: Numerous commenters stated that individual licensees should not be required to pay a continuing education course approval fee.

RESPONSE 30: Generally, only the course provider will pay to have the course approved. An individual licensee would only be required to pay for a course to be approved if the course had not already been approved for continuing education credit.

COMMENT 31: Some commenters asked if there will be a separate course approval fee for each license type.

RESPONSE 31: Because the regulations concerning social workers, professional counselors, and marriage and family therapists are similar, courses will either be approved for all license types or none of them. Thus, it will not be necessary to charge a course approval fee for each license type.

COMMENT 32: One commenter suggested that the board consider eliminating the fee for small, short, in-house continuing education offerings.

RESPONSE 32: The cost of evaluating a course for approval is not affected by whether the course is short or offered in-house for employees. The cost is a function of the requirement that the course be evaluated to determine whether the content will enhance and supplement the knowledge and abilities of the licensees who take the course. Thus, the board has determined that having only one course approval fee is appropriate in all circumstances.

4. The board has amended ARM 24.219.401, 24.219.405, and 24.219.409 exactly as proposed.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
LINDA CRUMMETT, LCSW, PRESIDENT

/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 November 26, 2012