

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.126.301, definitions;) PROPOSED AMENDMENT
24.126.501, applications; 24.126.511,)
display of license; 24.126.901,)
applications; 24.126.910, continuing)
education; and 24.126.2301,)
unprofessional conduct)

TO: All Concerned Persons

1. On July 7, 2009, at 9:00 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 Board of Chiropractors (board) no later than 5:00 p.m., on July 1, 2009, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibschi@mt.gov.

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

24.126.301 DEFINITIONS (1) "Chaperone" as used in ~~37-12-607, MCA,~~
ARM 24.126.2301 means an individual delegated to ensure proper behavior on the part of the provider and the patient during the course of a physical examination or treatment.

(2) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: It is reasonably necessary to amend this rule to delete an erroneous statutory citation that was included in error when the definition was originally added. The amendment specifies that the definition is used in the board's unprofessional conduct rule.

24.126.501 APPLICATIONS (1) through (6) remain the same.

(a) official transcripts sent directly from the appropriate educational institution, including the applicant's ~~CCE-accredited~~ chiropractic college which is accredited by the Council on Chiropractic Education (CCE) or another accrediting body that is in good standing with the Council on Chiropractic Education International (CCEI);

(b) remains the same.

(c) verification of licensure sent directly from any state in which the applicant has held or holds a license; ~~and~~

(d) a copy of a self-query of the National Practitioners' Databank (NPDB) and the Healthcare Integrity Databank (HIPDB); and

(d) remains the same but is renumbered (e).

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-302, 37-12-304, MCA

REASON: The board is amending this rule to address applicants with chiropractic education obtained at non-Council on Chiropractic Education (CCE) colleges. Following review of an out-of-country application, the board compared the accreditation standards of the Council on Chiropractic Education International (CCEI) with CCE and determined the CCEI requirements to be substantially equivalent and therefore acceptable to the board.

The board is also amending this rule to require that applicants provide a copy of the healthcare databank reports. All states are required by federal law to report to the NPDB and HIPDB all adverse action(s) taken against licensees. Requiring these reports from applicants will give the board the information they need to fully evaluate applicants and ensure the licensure of qualified practitioners.

24.126.511 DISPLAY OF LICENSE (1) and (2) remain the same.

(3) Licenses must not be defaced, or altered ~~or duplicated~~ for display requirements.

(4) Licensees shall immediately notify the department of lost, damaged, or destroyed licenses and obtain a duplicate license by submitting a written request and the appropriate fee to the department.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-104, 37-12-201, MCA

REASON: It is reasonably necessary to amend this rule because the online renewal system allows licensees to print as many licenses as they want, so restricting the duplication of licenses is no longer necessary. Also, since all licenses are printed in black and white, it is impossible to identify a copy vs. an original. The board is also amending this rule to clarify that the department charges a fee for duplicate licenses.

24.126.901 APPLICATIONS FOR CERTIFICATION OF IMPAIRMENT

EVALUATORS (1) and (2) remain the same.

(3) Applicants may qualify for ~~the~~ certification ~~examination~~ by:

(a) successfully completing a board-approved program for education and training of certified chiropractic impairment evaluators and passing the associated exam with a minimum of 75%; or

(b) successfully completing an educational and training program relating to chiropractic orthopedics, impairment ratings, or similar course work from a Council on Chiropractic Education (CCE) status chiropractic college or any other college or university approved by the board and passing the associated exam with a minimum of 75%; or

(c) through (4) remain the same.

~~(5) Applicants shall take and pass an impairment evaluator examination prescribed and approved by the board with a minimum score of 75 percent.~~

(6) remains the same but is renumbered (5).

AUTH: 37-12-201, MCA

IMP: 37-12-201, MCA

REASON: The board is amending (3) of this rule because applicants qualify for the certification and not for an examination. The board is also amending this rule to address confusion among chiropractors and clarify that there is no board-prescribed impairment evaluation examination. The board determined that an applicant who successfully completed an approved impairment program will also have passed any associated exam. The board concluded that these applicants are qualified to be certified as an impairment evaluator and is amending the rule accordingly.

24.126.910 IMPAIRMENT EVALUATOR CONTINUING EDUCATION RENEWAL - DENIAL - REVOCATION (1) A minimum of four hours of specialized continuing education relevant to impairment evaluation shall be taken every four years, ~~or within one year of a new edition to the American Medical Association's guides to the evaluation of permanent impairment.~~

(a) through (4) remain the same.

AUTH: 37-1-136, 37-1-319, 37-12-201, MCA

IMP: 37-1-306, 37-12-201, MCA

REASON: The board has determined it is reasonably necessary to amend this rule to address confusion among licensees. It is unclear how often new editions of the permanent impairment evaluation guides are published, making the rule difficult to understand and to enforce. By requiring impairment evaluation continuing education every four years, the board has determined that licensees will be kept adequately current on impairment evaluation requirements.

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

24.126.2301 UNPROFESSIONAL CONDUCT (1) through (1)(c) remain the same.

(d) engaging in, or being involved in, "fee splitting" in which a licensee gives or receives payments or fees in referral of a patient to any professional or company offering payment in exchange for referrals to their products or services;

(e) through (r) remain the same.

(s) entering into a contract which would obligate a patient to pay for care to be rendered in the future, unless the contract provides that the patient is entitled to a complete refund for any care not received within a reasonable amount of time;

(s) and (t) remain the same, but are renumbered (t) and (u).

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, ~~37-12-201~~, 37-12-301, 37-12-322,
MCA

REASON: The board is amending this rule in response to information being distributed to licensed chiropractors in Montana offering payment in return for referrals to specific company's products. A chiropractor who receives payment in return for referrals to a particular product may make referrals for unnecessary treatment or treatment that is not in the best interest of the patient. The board is amending the rule to specify that such action is unprofessional conduct.

The board is adding (1)(s) to ensure that chiropractors who enter into contracts with their patients include a provision that the patient is entitled to a refund for care not received. The board has received complaints from patients who contracted with a chiropractor and then did not receive money back for services not rendered when the patient left the chiropractor's care. The board determined that the public is not protected when chiropractors are allowed to contract in this manner and is amending the rule to establish such behavior as unprofessional conduct.

Implementation cites are being amended to accurately reflect the statutes implemented through the rule.

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 Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibschi@mt.gov, and must be received no later than 5:00 p.m., July 15, 2009.

5. An electronic copy of this Notice of Public Hearing is available through the department and the board's site on the World Wide Web at www.chiropractor.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 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 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 Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdcchi@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Anjeanette Lindle, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS
TOM FULLERTON, DC, 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 June 1, 2009