

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.129.401 fees, 24.129.402 ) PROPOSED AMENDMENT AND  
supervision, 24.129.603 minimum ) ADOPTION  
standards for licensure, 24.129.605 )  
military training or experience, )  
24.129.612 temporary practice )  
permits, and 24.129.2301 )  
unprofessional conduct and the )  
adoption of NEW RULE I nonroutine )  
applications )

TO: All Concerned Persons

1. On December 2, 2016, at 10:00 a.m., a public hearing will be held in the small conference room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption 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 Clinical Laboratory Science Practitioners (board) no later than 5:00 p.m., on November 25, 2016, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdcsls@mt.gov (board's e-mail).

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

24.129.401 FEES (1) through (2)(b) remain the same.

(c) active renewal fee

~~60~~ 100

(d) inactive renewal fee

~~25~~ 50

(e) through (g) remain the same.

AUTH: 37-1-131, 37-1-134, 37-1-319, 37-34-201, MCA

IMP: 37-1-134, 37-1-141, ~~37-34-201~~, 37-34-305, MCA

REASON: The board determined it is reasonably necessary to increase renewal fees to comply with 37-1-134, MCA, and ensure that board fees provide the amount of money usually needed for the operation of the board in providing similar regulatory services. Over the last several years, the board has experienced a

decrease in the number of licensees and an increase in expenses in excess of revenue generated through license fees. In providing administrative services to the board, the department has advised that it is necessary to increase fees as proposed to ensure the board can cover operating expenses. The board estimates that the proposed fee increases will affect approximately 829 active licensees and 47 inactive licensees and result in \$34,335 in additional annual revenue. In addition to the fee increases, the department and the board will continue to seek and implement ways to reduce costs associated with board functions.

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

24.129.402 SUPERVISION (1) and (1)(a) remain the same.

(b) the training and capability of the technician to whom the laboratory test is delegated; and

(c) the demonstrated competence of the technician in the procedure being performed; and .

~~(d) (2) the~~ The supervisor shall make written documentation after an evaluation has occurred and a copy of the evaluation shall be made available to the technician ~~and the board's representative upon request.~~

(3) The supervisor must keep written documentation of the evaluation in accessible written or electronic format.

~~(2) (4)~~ (4) Depending on the evaluation made pursuant to (1), the supervisor shall make a determination of how critical it is for the supervisor to be immediately available to provide guidance and supervision to the technician. The supervisor shall make a determination based on all relevant factors whether to be accessible via onsite, telephonic, or electronic consultation and shall identify the level of supervision, or different levels of supervision for different tests, on the written evaluation of the technician.

(a) Onsite supervision means that the supervisor is physically present on the premises and immediately available for direction and supervision of the technician at all times.

(5) The supervisor shall promptly provide copies of the evaluations of technicians to the board or board's representative upon request.

AUTH: 37-34-201, MCA

IMP: 37-34-103, 37-34-201, MCA

REASON: The board is amending this rule to clarify that supervisors must maintain records of evaluations of clinical laboratory technicians. The board has received inquiries from clinical laboratory scientists who are laboratory supervisors regarding their responsibility to evaluate clinical laboratory technicians and to maintain evaluation records. The board is also concerned that there appears to be a shortage of qualified clinical laboratory practitioners available to conduct testing and to supervise the testing. Accordingly, the board determined it is reasonably necessary to amend this rule to specify that evaluations must identify the level(s) of supervision as determined by the supervisor, that different levels of supervision for

different tests performed by the technician are possible, and that evaluations must be maintained by the supervisor until superseded by subsequent evaluations.

The board is also amending the rule to clarify that onsite supervision requires that the supervisor be immediately available. The board concluded that a supervisor present somewhere else in a large medical facility is not able to provide onsite supervision of clinical laboratory technicians. The board is relocating the requirement that supervisors provide evaluation copies to the board's representative upon request to (5).

24.129.603 MINIMUM STANDARDS FOR LICENSURE (1) through (2) remain the same.

(3) Applicants holding valid licensure to practice in another state or jurisdiction shall submit verifications from all states where the applicant has held or holds a license.

(4) Foreign-trained applicants shall be required to use an evaluation of educational background performed by the World Education Services (WES) or another evaluating entity approved by the board.

AUTH: 37-1-131, 37-34-201, MCA

IMP: 37-1-131, 37-34-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clearly delineate current license application processes. Department licensing staff utilizes standardized procedures to process applications for all boards, which increase efficiencies and reduce costs. These amendments are not changes in process or new requirements, but will provide clarification and address questions from both department staff and applicants. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.129.605 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a clinical laboratory scientist, clinical laboratory specialist, or clinical laboratory technician. ~~At a minimum, satisfactory~~ Satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Following adoption of this rule, it came to the board's attention that certain military personnel (i.e., reservists and national guardsmen who have never been activated) do not receive a DD 214 form upon their discharge from the military. The board is amending this rule to allow applicants to submit other discharge documentation in lieu of the DD 214 form.

24.129.612 TEMPORARY PRACTICE PERMITS (1) through (1)(b) remain the same.

(c) pay the appropriate fee; and

(d) be approved to take the first available examination; and

(e) identify the licensed individual(s) who shall be responsible for providing direct, onsite supervision.

~~(2) A temporary practice permit will not be issued for more than 45 days after the applicant has taken the examination. Only one temporary permit will be issued to an individual.~~

~~(3) If the applicant does not register for the first available examination, for any reason, or fails the examination, the temporary practice permit will be void and must be returned to the board office immediately.~~

(2) A temporary practice permit expires after 120 days from the day of issuance.

(3) Only one temporary practice permit will be issued per applicant.

(4) An applicant who fails the exam must notify the board office immediately. Failure of the examination automatically voids the temporary practice permit.

(5) The applicant may retake the examination, but another temporary practice permit will not be issued.

AUTH: ~~37-1-305, 37-1-319~~, MCA

IMP: 37-1-305, 37-1-319, ~~37-34-201~~, MCA

REASON: The board is amending this rule to ensure consistency with 37-1-305, MCA, the statute on temporary practice permits. The board is establishing a 120-day limit after determining that it is a sufficient amount of time for applicants to schedule their examinations. The board is also amending this rule to limit the permits to one per applicant and no longer extend temporary practice permits after concluding that such applicants are not able to meet the minimum qualifications to practice with the skill and safety necessary to protect the public.

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

24.129.2301 UNPROFESSIONAL CONDUCT (1) through (1)(d) remain the same.

(e) inaccurately recording, falsifying, or otherwise altering any laboratory test;

(f) failure to provide proof of current licensure upon inspection of clinical laboratory science licenses by the board or its designated or contracted representative; or

(g) failure to comply with other state or federal statutes or rules regulating the practice of clinical laboratory science; ;

- (h) failure to adequately supervise or evaluate a clinical laboratory technician in accordance with Title 37, chapter 34, MCA, or board administrative rules; or
- (i) performing functions not related to a clinical laboratory specialist's particular specialty.

AUTH: 37-1-131, 37-1-319, ~~37-34-201~~, MCA

IMP: 37-1-307, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions the board considers unprofessional conduct. The board has received inquiries and complaints regarding technician supervision, specifically regarding clinical laboratory specialists performing laboratory tests outside of a specialty, or supervising clinical laboratory technicians who are working outside of their specialty. The board determined it reasonably necessary to amend this rule to enable the board to address the complaints and further protect public health and welfare.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

4. The proposed new rule is as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

- (a) the applicant has a prior felony conviction within the previous ten years. 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) the applicant has pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;
- (c) any of the applicant's occupational or professional licenses have been disciplined or an application for a license was denied in this state, another state, or jurisdiction;
- (d) the applicant has a pending legal or disciplinary action involving licensure in this state, another state, or jurisdiction;
- (e) the applicant has been a respondent in a complaint for unlicensed practice of clinical laboratory science in this state, another state, or jurisdiction that led to communication from the licensing authority to cease and desist or an injunctive action; 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, 37-34-201, 37-34-303, MCA

IMP: 37-1-101, 37-1-131, 37-34-303, 37-34-305, MCA

REASON: The board determined it is reasonably necessary to adopt NEW RULE I to further implement 37-1-101, MCA, which states the department will process routine licensure applications on behalf of the licensing boards. This new rule identifies criteria determined by the board to characterize nonroutine applications, thus requiring board consideration for processing. Currently, the board reviews applications upon request of department licensing staff based on staff's determination that board review is warranted. NEW RULE I will provide notice to applicants and guidance to department staff regarding which applications specifically require board review.

5. 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 Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdcsls@mt.gov](mailto:dlibsdcsls@mt.gov), and must be received no later than 5:00 p.m., December 9, 2016.

6. An electronic copy of this notice of public hearing is available at [www.cls.mt.gov](http://www.cls.mt.gov) (department and board's web site). 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.

7. 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 that 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 Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdcsls@mt.gov](mailto:dlibsdcsls@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.129.401, 24.129.402, 24.129.603, 24.129.605, 24.129.612, and 24.129.2301 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or to [dlibsdcsls@mt.gov](mailto:dlibsdcsls@mt.gov) (board's e-mail).

10. Jennifer Massman, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CLINICAL LABORATORY  
SCIENCE PRACTITIONERS  
VICKI RICE, PRESIDING OFFICER

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 31, 2016