

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.150.301 definitions,)	PROPOSED AMENDMENT,
24.150.401 fees, 24.150.402 record)	AMENDMENT AND TRANSFER,
retention, 24.150.501, 24.150.503,)	AND REPEAL
and 24.150.505 regarding licensure,)	
24.150.2101 renewals, 24.150.2201,)	
24.150.2203, and 24.150.2204)	
regarding continuing education,)	
24.150.2301 unprofessional conduct,)	
the amendment and transfer of ARM)	
24.150.502 minimum testing, and)	
25.150.510 transactional document)	
requirements, and the repeal of ARM)	
24.150.403 notification, 24.150.504)	
licensees from other states, and)	
24.150.2202 exceptions)	

TO: All Concerned Persons

1. On March 8, 2010, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, amendment and transfer, and repeal 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 Hearing Aid Dispensers (board) no later than 5:00 p.m., on March 4, 2010, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Hearing Aid Dispensers, 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; e-mail dlibsddhad@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted Chapter 34, Laws of 2009 (Senate Bill 53), an act extending the trial period for hearing aids purchased from traveling vendors. The bill was signed by the Governor on March 20, 2009, became effective on October 1, 2009. Additionally, the 2009 Montana Legislature enacted Chapter 109, Laws of 2009 (House Bill 80), an act revising professional and occupational licensing laws. The bill was signed by the Governor on April 1, 2009, became effective on October 1, 2009. In conjunction with and in response to the 2009 legislation, the board is proposing revisions throughout the board rules.

The board is also proposing general amendments throughout. Some amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. The board is generally amending the rules to align with and implement the legislative changes, and avoid unnecessary repetition of statutes within board rules. Accordingly, the board has determined that reasonable necessity exists to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.150.301 DEFINITIONS ~~(4)~~ (4) "Related devices" means those parts, attachments, or accessories ~~that are typically sold with a hearing aid by a licensed hearing aid dispenser or trainee, and hearing aids.~~ The term includes assistive devices of all types if sold by a licensee, but does not include general merchandise items, such as cleaners, cords, or batteries that are commonly available at most retail stores.

~~(5)~~ (1) "Dispensing fee" means ~~costs associated with fitting, delivery and counseling.~~ a fee chargeable by the hearing aid dispenser, subject to ARM 24.150.602, for the initial hearing evaluation, consultation, fitting, and follow up visit.

~~(2)~~ "Permanent place of business" means ~~the headquarters or home office of the company, corporation or franchise offices which are considered to be permanent by the person or persons in charge of the company, corporation or franchise office, and who also have authority concerning hiring and firing of employees, as well as financial responsibility for the company, and employee liabilities.~~

(2) "Person in charge" means the one licensed hearing aid dispenser at a permanent place of business having the responsibilities imposed by 37-16-301, MCA.

~~(3)~~ "Designated licensee in charge" means ~~the licensed dispenser in charge of the permanent place of business.~~

~~(6)~~ (3) "Prominently display displayed" means ~~that the statement required pursuant to 37-16-303, MCA, be conspicuous and noticeable at once on the purchase agreement. To this end, the statement shall be as set forth in the example in ARM 24.150.510(5). The statement must appear in bold face type uppercase letters, extending the width of the page, two points larger than any other type face appearing on the document, but no smaller than 12-point type face, and quoted verbatim from the statute.~~ boldface type, uppercase letters that extend the width of an 8 1/2 by 11 inch page, excluding margins, and are at least as large as any other type face in the body of the document, but not smaller than 12-point type face.

(4) "Thirty day cancellation period" means a total of 30 days of actual possession of the hearing aid(s) by the purchaser. If the aid is returned during the 30-day time frame for service, repair or remake, the time period the aid is out of the purchaser's possession will not count against his 30-day total.

~~(7) (5) "Substantially equivalent," for purposes of 37-1-304, MCA, means the applicant has successfully completed a written and practical examination administered by or authorized by a state other than Montana. The examination shall measure basic knowledge of the fitting and dispensing of hearing aids. In addition, the applicant shall have successfully completed a training period of direct supervision for no less than 90 days. To satisfy the substantial equivalency requirement, the board shall accept formal training, in its discretion, in lieu of the traineeship. the following standards which must be met by the applicant to the satisfaction of the board:~~

(a) the written International Hearing Society examination and a practical examination through the International Institute for Hearing Instrument Studies, verifying the minimum competencies to fit and dispense hearing aids and related devices, with a passing score of 75 percent or greater on each examination; and

(b) a training period under the direct supervision of a licensed hearing aid dispenser of not less than 1000 hours, or a board-approved formal hearing aid dispenser education and training program, or working 180 days as a licensed hearing aid dispenser in another state.

AUTH: 37-1-131, 37-16-202, 37-16-303, MCA

IMP: 37-1-131, 37-1-304, 37-16-301, 37-16-303, 37-16-304, 37-16-414,
MCA

REASON: To address confusion and questions among applicants, the board is amending the definition of "related devices" in this rule to clarify that such devices are not solely those items sold by licensees. The board is deleting the definition of "permanent place of business" because following SB 53, the term is now defined in statute. The board is replacing former (3) with new (2) to define "person in charge" and align with specific language used in the statutes.

The board is amending the definition of "prominently displayed" as it is used in renumbered ARM 24.150.602. Following amendment, the definition will more clearly and simply set forth the requirements for the appearance of sales contracts for hearing aids and related devices. The board is deleting (4) to align with and further implement SB 53.

The board is amending the definition of "substantially equivalent" to clearly and adequately set forth examination, passing score, and experience requirements for applicants coming to Montana from other states.

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

24.150.401 FEES (1) remains the same.

(a) Application fee (includes initial written and practical examination) \$500

(b) Application fee for hearing aid trainee (includes initial written and practical examination) 600

(b) and (c) remain the same but are renumbered (c) and (d).

~~(d) (e) Reexamination -- practical (includes renewal of trainee~~

license)	550
(e) remains the same but is renumbered (f).	
(f) <u>(g) Renewal active license:</u>	350
<u>(i) for the 2010 renewal cycle</u>	650
<u>(ii) for 2011 and subsequent years</u>	450
(g) and (h) remain the same but are renumbered (h) and (i).	
(2) and (3) remain the same.	

AUTH: 37-1-131, 37-1-134, ~~37-1-141~~, 37-16-202, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, ~~37-16-202~~, 37-16-402, 37-16-405, 37-16-406, MCA

REASON: As of March 31, 2009, the board had a negative cash balance of approximately \$14,000. The department, in providing administrative services to the board, has determined that a one-time \$300 increase and a \$100 increase thereafter for hearing aid dispenser (HAD) renewals is necessary to achieve a positive cash balance by the end of fiscal year 2010.

Currently, hearing aid trainee (HAT) applicants pay the same application fee as HADs. The board has determined that processing HAT applications requires more time and staff involvement to monitor and update trainee records, to order, schedule, and administer the HAT practical exam, and to track expiration of HAT licenses. The board concluded that it is reasonably necessary to set the HAT application fee at \$600 and amend the renewal fees as proposed to comply with the provisions of 37-1-134, MCA, and maintain the board's fees commensurate with program costs. The board estimates that the proposed fee changes will affect approximately 93 persons and will increase annual board revenue by \$32,200.

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.

24.150.402 RECORD RETENTION (1) through (1)(h) remain the same.

(i) a record of hearing tests or evaluations performed on the patient, in accordance with ARM 24.150.502; and 24.150.601. Reports of audiometric test results on the patient's audiogram for the purpose of fitting and dispensing hearing aids shall include the following information:

(i) name and age of the patient;

(ii) date of the test;

(iii) name and license number of the person performing the test; and

(iv) whether the test was calibrated in SPL or HTL; and

(j) a copy of the physician's statement regarding the patient's candidacy for a hearing aid or the medical waiver in accordance with 21 CFR 801.421 (April, 1995).

~~(2) Failure to keep patient records shall be retained by dispensers for a minimum of seven years from the last recorded date of service, date constitutes unprofessional conduct subject to discipline pursuant to 37-1-312, MCA. Records for except records relating to deceased patients must may be kept for a minimum of discarded one year after the date of death.~~

(3) remains the same.

(4) Upon the board's request, and in a form or manner as may reasonably be required by the board, a licensee shall timely provide the board a copy of an electronic audiometer calibration made within the 12 months preceding the date of the board's request.

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-16-301, 37-16-303, 37-16-304, 37-16-411, MCA

REASON: The board determined it is reasonably necessary to amend this rule to incorporate requirements for the retention of audiometric test results and calibration records that were previously set forth in ARM 24.150.502. Authority cites are being amended to provide the complete sources of the board's rulemaking authority.

24.150.501 EXAMINATION - PASS/FAIL POINTS (1) All applications for examination must be received in the board office 15 days prior to the examination date. All exam candidates must have current applications for licensure pending with the board and have been approved by the board to take the examination.

(2) Except as provided in 37-16-406, MCA, all applicants for a Montana hearing aid dispenser license must pass:

(a) a written examination consisting of two parts:

(i) the International Hearing Society written examination; and

(ii) the Montana hearing aid dispenser jurisprudence examination; and

(b) the International Institute for Hearing Instrument Studies practical examination administered by the board.

~~(2) (3) The passing score on the written examination shall be 75 percent. The written examination shall include a Montana jurisprudence section. The minimum passing score on each part of the written examination is 75 percent, and the minimum passing score on the practical examination is 75 percent.~~

~~(3) Each section of the oral and practical examination must be passed by a minimum grade of 75 percent. An applicant who fails any section only has to retake section(s) failed.~~

~~(4) All applicants, original or licensed in other states, shall be required to pass a jurisprudence examination on Montana laws and rules, administered by the board.~~

(4) An applicant who fails either part of the written examination or who fails the practical examination need only retake and pass the examination that was failed.

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-1-131, 37-16-405, 37-16-406, MCA

REASON: The board is amending this rule to clarify for applicants the required examination types and names and corresponding passing scores. While the tests and scoring requirements are those currently in place, the board determined it is reasonably necessary to more clearly set forth the requirements. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.150.503 TRAINEESHIP REQUIREMENTS AND STANDARDS (1) For the purposes of 37-16-405, MCA, a "qualified licensed hearing aid dispenser," who will serve as a ~~sponsor~~ the supervisor of a trainee, shall meet the following criteria:

(a) ~~have been~~ be currently licensed and ~~active~~ have been actively engaged in the business of selling, dispensing, and the fitting of hearing aids in the state of Montana for at least one year; and

(b) ~~have not~~ had a no final order of disciplinary action entered against the hearing aid dispenser's license or a related professional or occupational license such as audiologist, in this or any state, in the two years preceding the request to ~~sponsor~~ supervise a trainee.

(2) and (3) remain the same.

(4) Credit toward the ~~180-day~~ 1000 hour training period will be given only during the period of time during which a trainee is on record as having a ~~sponsor~~ supervisor. All breaks in the training period will toll the running of the ~~180-day~~ 1000 hour training period.

(5) A daily log, on a form provided by the department, must be kept by the trainee, showing the date, description of job tasks, and duties. Both the trainee and the supervisor must sign the log. The log must be submitted to the board office ~~at the end of every~~ 90 days and again, upon conclusion of the 1000 training hours. ~~The log at the end of 180 days and~~ must be approved by the board or its designee prior to the trainee being allowed to take the practical examination.

(6) All written materials distributed by the trainee shall include the trainee's ~~name and title, "trainee"~~ and the supervisor's respective name names, license numbers, titles ("trainee" and "supervisor"), and business phone number, numbers, and title "supervisor."

AUTH: 37-1-131, 37-16-202, MCA

IMP: 37-1-101, 37-1-131, 37-16-301, 37-16-405, MCA

REASON: The board is amending this rule to specify the requirement that trainee sponsors have no discipline against even a related professional or occupational license within two years of application to sponsor. In light of the recent statutory changes and the overall amendments to the rules, the board determined this requirement will enhance the board's ability to monitor the supervision of trainees and the accountability of both trainees and sponsors.

24.150.505 INACTIVE STATUS (1) A ~~licensed dispenser licensee~~ requesting inactive status shall certify ~~his~~ this intention to the board on the ~~annual~~ renewal form.

(2) ~~Inactive~~ Except as provided in (5), inactive licensees shall not be required to meet the continuing education requirements.

(3) Inactive licensees shall regularly renew their license on inactive status and pay the appropriate renewal fee.

(3) remains the same but is renumbered (4).

~~(4)~~ (5) Inactive licensees reactivating their license shall submit for board review and prior approval, proof of completion of a minimum of ten hours of

additional formal training or continuing education ~~to be approved by the board~~, which shall not include on-the-job experience.

AUTH: 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-319, 37-1-306, MCA

REASON: The board is amending this rule to clarify that inactive licensees must continue to renew while on inactive status. The board hopes that this amendment will address confusion and alleviate questions from licensees. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.150.2101 RENEWALS (1) ~~Renewal notices will be sent as specified in ARM 24.101.414 prior to the renewal date set by ARM 24.101.413. For rules regarding renewals, refer to:~~

(a) ARM 24.101.413 for renewal date;

(b) ARM 24.101.414 for renewal notification information;

(c) ARM 24.150.401 for renewal fees; and

(d) ARM 24.101.408 for information regarding late penalties and lapsed, expired, and terminated licenses.

~~(2) Licensees shall present documentation of the appropriate continuing education requirements with the renewal application.~~

~~(3) The provisions of ARM 24.101.408 apply.~~

AUTH: 37-1-131, ~~37-1-141~~, ~~37-1-319~~, 37-16-202, MCA

IMP: 37-1-131, 37-1-141, ~~37-1-306~~, MCA

REASON: The board is amending this rule to better address licensee questions by providing references to the specific rules on licensure renewals. 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.

24.150.2201 CONTINUING EDUCATIONAL EDUCATION REQUIREMENTS

~~(1) The licensee must submit an affidavit, subscribed and sworn, stating that the licensee completed at least Except as provided in (2) and (3), licensees are required to complete ten clock hours of continuing education. Such evidence must be presented by the date set in ARM 24.101.413 each renewal period and must attest to their compliance on renewal applications.~~

~~(2) The board will conduct an audit of licensee's continuing education affidavits on an annual basis. Each year, the board will choose, at random, 30 percent of licensees to audit. Those licensees shall submit evidence of completion of continuing education courses as set forth in the affidavit. Requested evidence shall be received in the board's office within ten days of receipt of the notice to submit. A licensee may request an exception or extension of time to complete the continuing education requirements for good cause shown. The request must be received prior to the renewal date. The board may extend the time for completion of the continuing education to a certain date. The licensee must submit documentary~~

proof of continuing education compliance by that date, if it is after the date the license would have expired, had no extension been granted.

~~(3)~~ (4) Continuing education courses ~~recognized by the board pertaining to on fitting and dispensing hearing aids include those sponsored by the Montana Hearing Aid Society, the National Institute for Hearing Instruments Studies, the American Speech Language Hearing Association, the American Conference of Audioprosthology, the Montana Speech and Hearing Association, the Academy of Dispensing Audiologists, and the American Academy of Audiology, are preapproved.~~ College courses and other such programs continuing education courses offered in related disciplines will be reviewed and approved by the board on a case-by-case basis.

~~(4)~~ (3) A dispenser licensee whose initial Montana license was issued within the six months immediately preceding the annual renewal date ~~will not be required to meet~~ is exempt from the continuing education requirements during that six month period.

(5) through (7) remain the same.

~~(8) Clock hours cannot be accumulated and transferred to another fiscal year.~~ Clock hours of continuing education in excess of the ten required hours per renewal period may not be accumulated and carried forward to another renewal period.

AUTH: 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-306, MCA

REASON: The board is amending this rule to more clearly set forth the continuing education (CE) requirements. The board is changing the method by which licensees document their completion of CE requirements. Changing from a sworn affidavit to an attestation on renewal applications will help facilitate the online renewal system and still requires an affirmative statement by the licensees.

The board is deleting from (2) the specific board procedure to audit 30% of renewed licensees for CE compliance. Following amendment, the board will conduct random audits of up to 50% of renewed licenses as allowed by 37-1-131, MCA. The board is adding to (2) the provisions for licensees to obtain CE exceptions or extensions. These provisions are currently set out in ARM 24.150.2202 which is proposed for repeal in this notice.

24.150.2203 PROOF OF ATTENDANCE (1) ~~Licensee~~ Each licensee who is audited pursuant to 37-1-131, MCA must timely provide satisfactory written proof of attendance and completion of approved course for renewal of license continuing education. Proof must include, among any other requirements demanded by the board, a statement giving the sponsoring organization; location and dates; course name; instructor; name of licensee; and number of clock hours completed.

(2) Forms must be properly signed by the course instructor, ~~monitor~~ and licensee, verifying attendance at the particular course.

~~(3) Forms are available from the board office.~~ for the following purposes are provided by the department and shall be used by licensees, when complying with the board's continuing education requirements:

- (a) application for course approval;
- (b) verification of continuing education attendance; and
- (c) remains the same.

AUTH: 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-306, ~~37-16-407~~, MCA

REASON: Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.150.2204 STANDARDS FOR APPROVAL (1) through (3) remain the same.

(4) Each course or program shall clearly state the educational objective ~~that can be realistically accomplished within the course~~ and the number of clock hours which may be obtained by completion of a specified course.

(5) Instructors shall be qualified to teach the specified course content by virtue of their prior education, training, and experience. A resume of each instructor's qualifications shall be ~~forwarded with~~ submitted to the application board.

(6) and (7) remain the same.

AUTH: 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-306, ~~37-16-407~~, MCA

REASON: Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.150.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of Title 37, ~~chapter~~ chapters 1 and 16, MCA, and in addition to the unprofessional conduct provisions set forth ~~at 37-1-316 MCA, in~~ statute, the board defines unprofessional conduct as follows:

~~(1) the use in advertising or otherwise, of the words "prescribe" or "prescription" or any abbreviation, variation or derivative thereof or symbol therefore in referring to or in describing any industry product unless such product was made pursuant to a prescription given by a physician; provided, however, that the word "prescription" or words of similar meaning may be used to refer to or describe an industry product which was specifically made to compensate for the hearing loss of a particular purchaser patient, in accordance with the directions furnished by a qualified person other than a physician when such words are accompanied by a clear and conspicuous disclosure that the "prescription" was not based on a medical examination and that the person issuing it was not a physician;~~

(a) the use in advertising or otherwise of the words "prescribe" or "prescription" or any abbreviation, variation or derivative thereof or symbol therefore, in referring to or in describing any industry product, unless the industry product was made pursuant to a prescription given by a physician, or unless:

(i) the industry product was specifically made to compensate for the hearing loss of a particular patient, in accordance with the directions furnished by a qualified person other than a physician; and

(ii) the prohibited words, abbreviations, variations, derivatives or symbols are accompanied by a clear and conspicuous disclosure that:

(A) the "prescription" was not based on a medical examination, and

(B) the person issuing it was not a physician;

~~(2)~~ (b) initiating contact by telephone, without ~~the dispenser~~ first identifying himself the dispenser by name and company ~~he represents~~ represented, or making more than one such contact, unless further contact is specifically requested by the patient;

(3) and (4) remain the same, but are renumbered (c) and (d).

~~(5) engaging in a home solicitation sale without complying with the statutory requirements of the Door to Door Sales Act as set out in 30-14-501, et seq., MCA;~~

~~(6)~~ (e) failing to comply with ~~the provisions~~ any provision of Title 37, ~~chapter~~ chapters 1 or 16, MCA, or any rule promulgated thereunder;

(7) remains the same, but is renumbered (f).

~~(8)~~ (g) failing to follow FDA recommendation as set forth in the warning statement in 21 CFR 801.420~~(e)~~(2);

(9) remains the same, but is renumbered (h).

~~(10)~~ (i) violating any state, federal, provincial or tribal statute, or administrative rule governing or affecting the professional conduct of any licensee;

(11) remains the same, but is renumbered (j).

~~(12)~~ (k) acting in such a manner as to present a danger to public health or safety, or to any patient including, but not limited to, incompetence, negligence, or malpractice;

~~(13)~~ (l) performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure, including but not limited to:

~~(a)~~ (i) the purposeful removal of cerumen from a patient's ear is unprofessional conduct;

~~(14)~~ (m) failing to obtain an appropriate consultation or make an appropriate referral when the problem of the patient is beyond the licensee's training, experience, or competence;

~~(15)~~ (n) promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;

(16) remains the same, but is renumbered (o).

~~(17)~~ (p) discontinuing professional services, unless services have been completed, the patient requests the discontinuation, alternative, or replacement services are arranged or the patient is given reasonable opportunity to arrange alternative or replacement services;

~~(18)~~ (q) delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license, or certification to perform the delegated task;

(19) and (20) remain the same, but are renumbered (r) and (s).

~~(21)~~ (t) physical or verbal abuse of a ~~client~~ patient, or sexual contact with a patient;

(22) remains the same, but is renumbered (u).

~~(23)~~ (v) failing to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.150.2201 or supplying misleading, incomplete, or false information relative to continuing education taken by the licensee;

(w) practicing the profession of hearing aid dispensing on an expired or inactive license;

(x) failing to comply with records retention requirements; or

(y) failing to comply with the Personal Solicitations Act set forth in 30-14-501 et seq., MCA.

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, 37-16-202, 37-16-411, MCA

REASON: It is reasonably necessary to reorganize and renumber this rule for clarity and ease of use. The board is adding to unprofessional conduct the practice of hearing aid dispensing on an expired or inactive license since this is unlawful pursuant to 37-1-141, MCA. The board is adding failure to comply with record retention requirements to enable the board to adequately address violations of ARM 24.150.402. The provisions of (5) are being relocated to (1)(y) to correct an inaccurate statutory reference.

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.

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

24.150.502 (24.150.601) MINIMUM TESTING AND RECORDING PROCEDURES

(1) through (1)(c) remain the same.

~~(d)~~ (2) ~~at~~ At the time of fitting or during the course of the trial period, the dispenser will verify and/or validate the hearing aid fitting and document the results.

~~(i) verification~~ Verification refers to generally accepted and appropriate established standards of practice to objectively analyze aided performance, while

~~(ii)~~ validation establishes the patient's perceived improvement.

~~(2) Reports of audiometric test results on the patient's audiogram for the purpose of fitting and dispensing hearing aids shall include the following information:~~

~~(a) name and age of the patient;~~

~~(b) date of the test;~~

~~(c) name and license number of the person performing the test; and~~

~~(d) whether the test was calibrated in SPL or HTL.~~

~~(3) All audiometers shall be calibrated to ANSI standards once a year. A copy of an electronic audiometer calibration made within the past 12 months shall be made available by the licensee upon the board's request.~~

AUTH: 37-16-202, MCA

IMP: 37-16-202, 37-16-411, MCA

REASON: ARM 24.150.502 and 24.150.510 address transactional and client documents, whereas the rest of subchapter 5 deals with licensure issues. The board is transferring these two rules to subchapter 6 to improve the organization of the rules. The board is deleting from this rule reporting requirements that are being shifted to ARM 24.150.402 in this notice.

24.150.510 (24.150.602) TRANSACTIONAL DOCUMENT

REQUIREMENTS - FORM AND CONTENT (1) In addition to the requirements of 37-16-303, MCA, all written memorialization of the sale, including but not limited to bills of sale, including a three-day cancellation notice, where applicable notices, contracts and purchase agreements, or other written memorialization of the sale, shall be ~~on a form~~ no smaller than 12-point type face and appear on forms no smaller than 8 1/2 x 11 inches and conform to the terms set forth in this rule.

(2) The terms of the right to cancel found at 37-16-304, MCA, must be set off from surrounding text in a bold-lined box and include the statement required by 37-16-303, MCA. The text within the box must include the heading "Right to Cancel Provided by Montana Law" and ~~appear in bold-face type, in no less than 10-point size font. The box shall be positioned immediately above the signature line of the purchaser and seller~~ be prominently displayed.

(3) ~~A delivery verification form stating the date of delivery and signed by the purchaser shall be obtained at the time of delivery by the dispenser. The delivery verification form shall also restate the terms of the 30-day refund or cancellation period. Dispensers have the option to use contracts with the required information, signed at delivery, in lieu of the separate delivery verification requirement. On the date and at the time of delivery, the dispenser shall obtain the dated signature of the patient verifying delivery. The written notice of the 30-day right to cancel and refund, meeting the standards specified in (2), shall be positioned immediately above the signature line of the patient and seller verifying delivery.~~

(4) remains the same.

(5) ~~Notice of cancellation must be given to the seller in writing within 30 days of the date of delivery of the hearing aid or related device. The notice of cancellation may be delivered by mail or in person, and must indicate the purchaser's intent not to be bound by the sale. The purchaser shall return the hearing aid or related device in substantially the same condition as it was received. Under this provision, the hearing aid dispenser shall refund to the purchaser the amount paid, minus a dispensing fee, within ten days of receipt of the written notice of cancellation. The dispensing fee per hearing aid or related device may not exceed 15 percent of the purchase price or \$250, whichever is less. All fees to be retained by the dispenser, in the event the hearing aid(s) is returned, shall be prominently displayed in a dollar amount on all transactional documents. A patient who has given written notice of the patient's election to cancel the purchase agreement in accordance with 37-16-304, MCA, shall return the hearing aid or related device in substantially the same condition as it was received. The hearing aid dispenser may deduct from the purchase price a dispensing fee not to exceed 15 percent of the purchase price or \$250, whichever is less, per hearing aid or related device and shall refund the balance within ten days of receipt of the patient's written notice of cancellation. The~~

dispensing fee that may be deducted from the refund in the event of cancellation must be prominently displayed in a dollar amount on all transactional documents.

AUTH: 37-16-202, MCA

IMP: 37-16-202, 37-16-303, 37-16-304, MCA

REASON: Because this current rule is poorly organized and confusing, the board determined it is reasonably necessary to rework the rule and clearly delineate the requirements for transactional documents. The board is also amending this rule to require that all sales related documents are printed in the larger 12-point type face to enhance readability and lessen buyer misunderstanding. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

6. The rules proposed to be repealed are as follows:

24.150.403 NOTIFICATION found at ARM page 24-14026.

AUTH: 37-16-202, MCA

IMP: 37-16-202, MCA

REASON: The board is repealing this rule as unnecessary because the department has standardized processes that provide public notice of board and department rulemaking projects.

24.150.504 LICENSEES FROM OTHER STATES found at ARM page 24-14050.

AUTH: 37-1-304, 37-16-202, MCA

IMP: 37-16-406, MCA

REASON: Because the procedure for licensing applicants from other states is adequately addressed in statute at 37-16-406, MCA, the board is repealing this rule as unnecessary and redundant.

24.150.2202 EXCEPTIONS found at ARM page 24-14348.

AUTH: 37-1-131, 37-1-319, 37-16-202, MCA

IMP: 37-1-141, 37-1-306, MCA

REASON: The board is repealing this rule because the provisions for CE exceptions are being incorporated into ARM 24.150.2201 in this notice.

7. 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 Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-

mail to dlibsddhad@mt.gov, and must be received no later than 5:00 p.m., March 16, 2010.

8. 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.hearingaid.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.

9. 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 Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsddhad@mt.gov, or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on July 23, 2009, by telephone.

11. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS
LEE OINES, CHAIRMAN

/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 1, 2010