

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

In the matter of the amendment of)
ARM 24.150.301 definitions,)
24.150.401 fees, 24.150.402 record)
retention, 24.150.501 examination,)
and 24.150.602 transactional)
document requirements)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 1, 2012, at 10:00 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 Hearing Aid Dispensers (board) no later than 5:00 p.m., on February 24, 2012, 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. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.150.301 DEFINITIONS (1) "Dispensing fee" means a fee chargeable by the hearing aid dispenser, subject to ARM 24.150.602, for the initial hearing evaluation, consultation, fitting, and ~~follow-up~~ follow-up visit.

(2) through (5) remain the same.

(a) ~~the written International Hearing Society examination and a practical examination through the International Hearing Society, 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 as required in ARM 24.150.501;~~ and

(b) remains the same.

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

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

REASON: The board determined it is reasonably necessary to amend the definition of "substantially equivalent," because ARM 24.150.501 sets forth the exam requirements and it is unnecessary to restate the requirements in this rule.

24.150.401 FEES (1) through (1)(f) remain the same.

(g) Renewal active license:	<u>1000</u>
(i) for the 2010 renewal cycle	650
(ii) for 2011 and subsequent years	450
(h) through (3) remain the same.	

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

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

MCA

REASON: The 2011 Montana Legislature enacted Chapter 342, Laws of 2011 (Senate Bill 132), an act allowing audiologists to sell hearing aids without a hearing aid dispenser license. The bill was signed by the Governor on May 5, 2011, and became effective October 1, 2011. Revenue will be lost because approximately 30 licensed audiologists will no longer be required to renew and hold their hearing aid dispenser licenses and the financial burden will fall upon the remaining 60 hearing aid dispensers. The board determined it is reasonably necessary to increase renewal fees to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with program costs.

The board currently has a negative cash balance and the department has determined that unless renewal fees are increased as proposed, the board will continue to have a shortage of operating funds through fiscal year 2012. The board estimates that the proposed fee increases will affect approximately 60 active licensees and result in \$33,000 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.

24.150.402 RECORD RETENTION (1) and (1)(a) remain the same.

(b) method of contact, whether in home, office, or by telephone, and the identity of the individual initiating the contact;

(c) and (1)(d) remain the same.

(e) a copy of the sale contract, purchase agreement, or bill of sale, including a three-day cancellation notice, where applicable, signed and dated by the parties, the original delivered to the patient;

(f) remains the same.

(g) a copy of the delivery verification form, in accordance with ARM ~~24.150.510~~ 24.150.602, the original delivered to the patient;

(h) through (4) remain the same.

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 is amending this rule to provide the correct location of the delivery verification form requirements at ARM 24.150.602, which was relocated from ARM 24.150.510 on April 30, 2010.

24.150.501 EXAMINATION - PASS/FAIL POINT (1) remains the same.

(2) The written and practical examination will be provided by the International Hearing Society. The board may, in its discretion, approve and adopt another equivalent examination for hearing aid dispensers.

~~(2) (3)~~ The passing score on the written examination shall be is the national passing score or 75 percent, whichever is greater. The written examination shall include a Montana jurisprudence section.

~~(3) (4)~~ Each section of the oral and practical examination must be passed by a minimum grade of 75 percent An applicant must achieve a passing score on each section of the practical examination. An applicant who fails any section only has to retake section(s) failed and pay the full reexamination fee.

~~(4) (5)~~ 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. The passing score on the jurisprudence examination is 75 percent.

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

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

REASON: The board is adding (2) to clearly delineate the approved written and practical exam provider for potential applicants. The amendment will also allow the board flexibility to approve other equivalent exams, should they become available.

The board is amending (3) and (4) since national exam passing rates are subject to change and the board concluded that applicants must be held to a minimum standard of 75 percent to ensure the licensure of qualified practitioners. The board is amending (5) to clarify that the jurisprudence exam also requires a 75 percent passing rate.

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, cancellation notices, contracts, and purchase agreements, shall be no smaller than 12-point type face and appear on forms no smaller than 8 1/2 x 11 inches.

(2) If a hearing aid or related device may be programmed or adjusted only by an authorized dealer or dispenser, the licensee must provide a plain and simple notice of that fact either in a separate writing signed by the licensee and by the customer, or in the written purchase agreement.

(2) and (3) remain the same but are renumbered (3) and (4).

~~(4) (5)~~ Any trainee, who provides service to a patient, must legibly print or type the trainee's name, the designation "trainee," and license number on the document, along with the name and license number of the trainee's supervisor.

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

AUTH: 37-16-202, MCA

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

REASON: Proprietary hearing aids are those that can only be programmed without additional cost to the customer by offices within a particular franchise or provider

network. To ensure public and consumer protection, the board is adding (2) to require that licensees inform their customers when hearing aids are proprietary.

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 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 9, 2012.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's web 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.

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 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.

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 HEARING AID DISPENSERS
GENE BUKOWSKI, 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 January 30, 2012