

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

In the matter of the amendment of)
ARM 24.150.401 fees and the)
adoption of NEW RULE I military)
training or experience)

NOTICE OF AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On January 16, 2014, the Board of Hearing Aid Dispensers (board) published MAR Notice No. 24-150-38 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 13 of the 2014 Montana Administrative Register, Issue No. 1.

2. On February 10, 2014, a public hearing was held in Helena on the proposed amendment and adoption of the above-stated rules. Several comments were received by the February 14, 2014, comment 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: Three commenters opposed the proposed licensing fee increase, stating that board licensees have already paid two one-time fees and asserted that the higher fee will directly impact small businesses by increasing the licensing fees that businesses pay for employees. Commenters stated that the fee will be more than any other licensed profession in Montana, over three times more than the next highest paying profession. The commenters suggested the board instead seek ways of reducing costs and expressed concern with how the department calculated the fee for the board, given that most hearing aid dispensers in surrounding states pay less than \$200 for license renewal.

RESPONSE 1: The board clarified that it found that the proposed fee increase will have a "minimal impact" on small businesses. While the licensing fee increase will directly impact small businesses, the board found that the impact will be minimal and not significant.

The board understands the concerns that small business owners and licensees have with a \$1,500 licensing fee, having previously discussed the impact it will have on licensees. However, whether a business elects to pay the licensing fees of its employees is in the discretion of the business. When the board discussed a fee increase at its December 20, 2013, meeting, the board decided to propose raising the licensing fee to \$1,500 instead of \$2,000. The board determined a licensing fee of \$1,500 was the minimum amount of funding necessary to maintain any board operations. Given the board's projected expenditures for FY 2015 and beyond, the board must increase licensing fees to continue operating.

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 current salaries of licensees. Since 2011, the board has a smaller number of licensees, as audiologists were removed by statute from the authority of the board. Roughly 47 percent 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.

The department is required biennially to provide detailed information to the Montana 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.

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 are using electronic board books instead of paper ones, having some board meetings by telephone conference instead of in-person attendance, and the recent signing of a Memorandum of Understanding (MOU) between the department and the Department of Justice (DOJ) to jointly litigate consumer-related hearing aid dispenser complaints under the Consumer Protection Act (CPA). The MOU puts a system in place where the board can recover fines up to \$10,000 and attorney fees when the department jointly litigates cases with the DOJ under the CPA.

The board further clarifies that there has been a single \$1,000 assessment charged to licensees in May 2013. Pursuant to 37-1-101(9), MCA, the department was required to suspend the board's duties and assess a one-time charge against all board licensees because the board could not operate in a cost-effective manner. The department advised the board that increasing licensing fees will decrease the likelihood of board insolvency in the future, given the limited number of licensees and a minimum amount of funding required to keeping a board operational, per 2-15-121(2)(a), MCA.

COMMENT 2: One commenter expressed concern with the effectiveness of the board, since it appears that one or two companies garner most of the complaints, and the board has not been able to get the companies in line.

RESPONSE 2: As previously noted, the MOU the department entered into with DOJ on behalf of the board is designed to alleviate some of the costs in prosecuting licensees, as the Office of Consumer Protection allows DOJ to recover attorney fees and larger fines can be imposed. This may serve as a deterrent to future unprofessional conduct by the board's licensees.

Additionally, in 2013, the department was required to suspend board services and duties under 37-1-101(9), MCA, because the board was insolvent. Because of the one-time charge of \$1,000 assessed to licensees in May 2013, the board is now operational and again reviewing complaints filed against licensees.

The board has always been committed to and understanding of its roles of protecting the public's health, welfare, and safety. And in fact, the board reviewed 13 complaints in 2010, 16 complaints in 2011, and 2 complaints in 2012. With an

increased licensing fee and other cost-effective measures, the board will continue to focus on this important aspect of licensure.

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. However, per 37-1-312, MCA, all fines assessed by the board as disciplinary sanctions and paid by licensees must be deposited into the state general fund and do not go toward payment of board costs. The board notes that information on final disciplinary actions taken by the board is available to the public upon request to the board and is available in electronic format on the board's web site.

COMMENT 3: One commenter suggested that the board should dissolve if it cannot fiscally support itself and work to reestablish with another board comprised of similar professionals.

RESPONSE 3: The Legislature established the board and has authority over whether the board continues to regulate hearing aid dispensers in Montana. Interested licensees or members of the public are welcome to attend meetings of the Economic Affairs Interim Committee (EAIC) of the Montana Legislature, in which the solvency and future of the board are discussed.

The board is an executive branch agency created by the Legislature to protect the public by licensing and regulating hearing aid dispensers in the state. The Legislature also enacted the statute that mandates the board fund itself solely through its own licensure fees. Thus, the function or funding of the board can only be changed through actions of the Legislature.

The board has previously discussed joining with another board comprised of similar professionals, but has not actively pursued this option because of a perceived lack of interest from other boards and because the decision is in the discretion of the Legislature.

4. The board has amended ARM 24.150.401 exactly as proposed.
5. The board has adopted NEW RULE I (ARM 24.150.507) exactly as proposed.

BOARD OF HEARING AID DISPENSERS
ALFRED MCLEES, 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 June 16, 2014