

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.156.616 registry, 24.156.617)
licenses, 24.156.618 testing)
requirements and the adoption of)
NEW RULES I through IX pertaining)
to registration)

TO: All Concerned Persons

1. On October 20, 2009, at 10:30 a.m., a public hearing will be held in room 439, 301 South Park Avenue, 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 Medical Examiners (board) no later than 5:00 p.m., on October 16, 2009, to advise us of the nature of the accommodation that you need. Please contact Jean Branscum, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted Chapter 385, Laws of 2009 (House Bill 578), an act creating the Montana Health Corps Act which allows retired physicians to provide primary outpatient care to individuals eligible for Medicare or Medicaid. The bill was signed by the Governor on April 28, 2009, and became effective on July 1, 2009. The board is proposing to amend ARM 24.156.616, 24.156.617, and 24.156.618, and adopt New Rules I through IX to coincide with the legislative changes and further implement the Montana Health Corps Act. As well, authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to add references to the newly enacted legislation. 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:

- 24.156.616 REGISTRY (1) remains the same.
- (2) The board will keep a register of all physicians licensed in Montana and who hold a health corps participation registration.

AUTH: 37-3-203, 37-3-802, MCA
IMP: 37-3-205, MCA

REASON: Section 37-3-205, MCA, requires the board to keep a register of board licensees. The board is amending this rule to include in the registry information regarding health corps participants.

24.156.617 ACTIVE AND INACTIVE LICENSE (1) and (2) remain the same.
(3) An active license is required for a physician participating in the Montana health corps.

(3) through 3(a)(ii) remain the same but are renumbered (4) through 4(a)(ii).
(b) remains the same but is renumbered (5).
(4) remains the same but is renumbered (6).

AUTH: 37-1-131, 37-1-141, 37-1-319, 37-3-802, 37-3-804, MCA
IMP: 37-1-141, 37-1-319, 37-3-802, 37-3-804, MCA

24.156.618 TESTING REQUIREMENT (1) remains the same.
(2) A physician seeking to participate in the Montana health corps and holding an active license must pass the special purpose examination given by the Federation of State Medical Boards if the physician has not actively practiced medicine for two or more years preceding the health corps application date.

AUTH: 37-3-203, 37-3-802, MCA
IMP: 37-3-101, 37-3-202, 37-3-802, MCA

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For the purpose of these rules, the following definitions shall apply:

(1) "Board" means the Board of Medical Examiners for the State of Montana, created under 2-15-1731, MCA.

(2) "Montana Health Corps" means the entirety of those retired, but actively licensed Montana physicians authorized to engage in a limited home health care practice with limitations on liability, as created under the Montana Health Corps Act.

(3) "Licensee" means the current holder of an active license.

(4) "Health corps physician" means a physician, as defined in 37-3-102 and 37-6-101, MCA, who holds an active license to practice medicine in Montana, who is retired, and who has applied to participate in the health corps and completed the registration requirements imposed by the board.

(5) "Retired" means no longer maintaining a private, institutional, or governmental practice for the purposes of monetary remuneration within the United States. The board recognizes that occasional work within the United States may be necessary to maintain physician skills. Such occasional locum tenen work for monetary remuneration will not disqualify a physician from "retired" status.

AUTH: 37-1-131, 37-3-203, 37-3-802, MCA
IMP: 37-1-131, 37-3-802, 37-3-804, MCA

NEW RULE II APPLICATION FOR PARTICIPATION IN HEALTH CORPS

(1) An applicant who holds an active license to practice medicine in the State of Montana and who wants to participate in the health corps program shall:

- (a) complete and return a registration form approved by the board, together with accompanying documentation;
- (b) submit a registration fee pursuant to [NEW RULE III]; and
- (c) satisfy all of the requirements set forth in 37-3-804, MCA.

(2) An applicant who does not hold an active license to practice medicine in the State of Montana and wants to participate in the health corps program must submit an application for an active license, in addition to fulfilling the requirements listed above.

AUTH: 37-1-131, 37-3-203, 37-3-802, 37-3-804, MCA
IMP: 37-1-131, 37-3-802, 37-3-804, MCA

NEW RULE III FEES (1) Applicants shall submit the following fees:

- (a) a registration fee of \$25 in the form of a check or money order, payable to the board; and
 - (b) any additional standardized fees as specified in ARM 24.101.403.
- (2) All fees are nonrefundable.

AUTH: 37-1-134, 37-3-203, 37-3-802, 37-3-804, MCA
IMP: 37-1-134, 37-3-804, MCA

REASON: The board is proposing to adopt this rule to set a fee for registering physicians to participate in the Montana Health Corps. The board is required to set licensure fees commensurate with associated costs pursuant to 37-1-134, MCA. The proposed fee will adequately cover the cost of staff verification that health corps physicians meet the requirements of the program. This new fee will affect approximately 10 applicants and result in additional annual revenue of \$250.

NEW RULE IV FAILURE TO COMPLETE APPLICATION AND REGISTRATION (1) Failure of an applicant to submit the required application or registration fee, complete the required form(s), and submit any other additional required materials within one year from the date of receipt of the initial application or registration materials, shall be grounds for the board to discontinue processing the application.

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-309, 37-3-802, 37-3-804, MCA

NEW RULE V HEALTH CORP PARTICIPATION REGISTRATION (1) The active physician license issued by the board to health corps participants will show

the licensee's registration as a health corps physician, in addition to other information the board deems necessary.

(2) The address shown on the license shall be the address of the licensee, where all correspondence and renewal forms from the board shall be sent during the two years for which the registration is valid, and shall be the address deemed sufficient for purposes of service of process.

AUTH: 37-1-131, 37-3-203, 37-3-802, MCA

IMP: 37-1-131, 37-3-802, 37-3-804, MCA

NEW RULE VI RENEWALS (1) Health corps physicians must renew their registration every two years in conjunction with the licensee's renewal of their active license.

(2) Renewal notices will be sent as specified in ARM 24.101.414.

(3) The provisions of ARM 24.101.408 apply.

AUTH: 37-1-131, 37-3-203, 37-3-802, 37-3-804, MCA

IMP: 37-1-131, 37-1-141, 37-3-802, 37-3-804, MCA

NEW RULE VII SCOPE OF PRACTICE OF HEALTH CORPS

PARTICIPANTS (1) A retired physician who holds an active license to practice medicine in Montana and who is registered with the board as a health corps physician may:

(a) practice medicine by providing primary outpatient care through home healthcare visits to eligible patients; and

(b) engage in a limited scope of practice under a limitation of liability imposed by 37-3-806, MCA.

(2) Health corps physicians must report to the board in writing within 90 days, any denial of hospital privileges, restrictions or limitations of practice, or the initiation of any disciplinary action against the certificate or license to practice medicine by any state or territory, in which the licensee is licensed.

(3) Health corps physicians shall follow the participation guidelines as set forth by the board. Failure to follow participation guidelines may be grounds for discipline.

(4) Health corps physicians shall provide a written disclosure on the limitation on legal liability to patients referred to in the health corps program.

(5) Health corps physicians are subject to each of the grounds for disciplinary action as provided in 37-1-316, MCA, and ARM 24.156.625, in accordance with the procedures set forth in Title 37, chapters 1 and 3, MCA, and the Montana Administrative Procedure Act.

(6) Health corps physicians shall comply with all laws, rules, and regulations governing the maintenance of patient medical records, including patient confidentiality requirements.

(7) Health corps physicians shall notify the board of any change in the licensee's address, as contained on the participation registration, within 30 days of such change.

(8) Health corps physicians shall cooperate in the investigation of any possible grounds for discipline, including revocation or limitation of the license or participation registration, by timely compliance with all inquiries and subpoenas issued by the board for evidence or information. The licensee shall provide, within 21 days of receipt of a written request from the board, clear and legible copies of requested documents, including medical records, which may be related to possible grounds for discipline, including revocation or limitation of a license or participation registration. Failure to timely comply with a board inquiry or subpoena or to provide clear and legible copies of requested records shall be grounds for discipline.

AUTH: 37-1-131, 37-3-203, 37-3-802, 37-3-804, MCA
IMP: 37-1-131, 37-3-310, 37-3-802, 37-3-804, MCA

NEW RULE VIII SANCTIONS (1) Any person who is not properly registered by the board who provides health corps services is subject to criminal prosecution for the unlicensed practice of medicine and/or injunctive or other action authorized in this state to prohibit or penalize continued practice without a license.

(2) This rule does not limit or restrict the board's authority to discipline any Montana licensed physician who violates the Medical Practice Act or who engages in the practice of medicine in any other state.

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-325, 37-3-807, MCA

NEW RULE IX REFERRALS TO HEALTH CORPS (1) Physicians or health care facilities may refer Medicare or Medicaid patients to the health corps.

(2) Eligible patients may receive primary outpatient health care in their homes from health corps physicians.

AUTH: 37-1-131, 37-3-203, 37-3-802, 37-3-804, 37-3-805, MCA
IMP: 37-3-802, 37-3-805, MCA

6. 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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., October 28, 2009.

7. 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.medicalboard.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.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 6, 2009, by regular mail.

10. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
DR. JAMES UPCHURCH, PHYSICIAN,
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 September 14, 2009