

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I qualification criteria for) PROPOSED ADOPTION
evaluation and treatment providers)

TO: All Concerned Persons

1. On July 20, 2010, at 11:00 a.m., a public hearing will be held in room 439 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

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 July 16, 2010, 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. The proposed new rule provides as follows:

NEW RULE I QUALIFICATION CRITERIA FOR EVALUATION AND TREATMENT PROVIDERS (1) The physician assistance program will make appropriate referrals to qualified programs for evaluation and treatment based on the participant's needs.

(2) To be qualified, an evaluation program must meet the following criteria:

(a) possess the knowledge, experience, staff, and referral resources necessary to fully evaluate the forensic and clinical condition(s) of impairment in question;

(b) adhere to all applicable federal and state confidentiality statutes and regulations;

(c) have no actual or perceived conflicts of interest between the evaluator and the referent or patient which includes:

(i) no secondary gain may accrue to the evaluator dependent on evaluation findings/outcome;

(ii) there can be no current treatment relationship with the professional being evaluated; and

(iii) the evaluator cannot be affiliated with the entity requiring the evaluation;

(d) keep the physician assistance program fully advised throughout the evaluation process;

(e) have resources available to conduct a secondary intervention as indicated/needed at the time diagnoses and recommendations are discussed;

- (f) have immediate access to medical and psychiatric hospitalization if needed;
 - (g) be able to arrange for timely intake and admission;
 - (h) fully disclose costs prior to admission;
 - (i) evaluate all causes of impairment, including:
 - (i) mental illness;
 - (ii) chemical dependency and other addictions;
 - (iii) dual diagnosis;
 - (iv) behavioral problems including: sexual harassment, disruptive behaviors, abusive behaviors, criminal conduct; and
 - (v) physical illness including: neurological disorders and geriatric decline;
 - (j) employ standardized psychological tests and questionnaires during the evaluation process;
 - (k) conduct comprehensive and discrete collateral interviews of colleagues and significant others to develop an unbiased picture of all circumstances, behavior, and functioning;
 - (l) make rehabilitation/treatment recommendations; and
 - (m) have resources and qualified staff to complete a multidisciplinary assessment if recommended.
- (3) To be qualified, a treatment program must meet the following criteria:
- (a) meet criteria as listed in (2);
 - (b) allow physician assistance program staff to visit the treatment site and the referred patients;
 - (c) maintain a business office capable of and willing to work with insurance providers and assist indigent physicians with payment plans;
 - (d) have a peer professional patient population and a staff accustomed to treating this population;
 - (e) make appropriate referrals when faced with a patient who has an illness/issue that is outside of the program's area of expertise;
 - (f) maintain a staff-to-patient ratio conducive to each patient receiving individualized attention;
 - (g) inform the physician assistance program throughout the treatment process through calls from the therapists involved, as well as written reports. Type and frequency of contact may be arranged with the physician assistance program, but in all cases should occur no less than monthly;
 - (h) include a strong family program;
 - (i) report immediately to the physician assistance program, a patient's threat to leave against medical advice, any discharges against medical advice, therapeutic discharges, any other irregular discharge or transfer, hospitalization, positive urine drug screen, noncompliance, significant change in treatment protocol, significant family or workplace issues, or other unusual occurrences;
 - (j) specifically, the staff must be vigilant in screening for, identifying, and diagnosing covert co-occurring addictions and comorbid psychiatric illnesses and address these concurrently with the presenting illness. This includes appropriately assessing and managing concurrent chronic pain diagnoses (in house, consultative, and/or referral capacity);

- (k) use a multidisciplinary team approach and include psychological, psychiatric, and medical stabilization;
- (l) provide disclosure of full fees upfront;
- (m) offer a flexible payment plan for the varied income levels of participants, but the patient should make some financial investment into the treatment process;
- (n) determine clinically justified length of residential stay;
- (o) maintain complete and appropriate records to fully defend diagnoses, treatment, and recommendations; and
- (p) provide discharge planning and coordination, including documentation of final diagnoses, recommendations for return to work, and aftercare recommendations.

(4) A treatment program that offers substance use disorder treatment must also meet the following:

- (a) use an abstinence-based model with provision for appropriate psychoactive medication as prescribed. In rare cases that are refractory to abstinence-based treatment, alternative evidence-based approaches should be considered;
- (b) make available, when a 12-step model is utilized for substance use disorders, appropriate therapeutic alternatives (acceptable to the physician assistance program) to participants with religious or philosophical objections;
- (c) provide a strong family program. The family program component should focus on disease education, family dynamics, and supportive communities for family members. Family/significant other needs must be accessed early in the process and participation with family/significant other programs and family and individual therapy and treatment encouraged;
- (d) offer treatment services that include:
 - (i) intervention and denial reduction;
 - (ii) detoxification; and
 - (iii) ongoing assessment and treatment of patient needs throughout treatment, with referral for additional specialty evaluation and treatment as appropriate;
- (e) offer family treatment;
- (f) offer group and individual therapy;
- (g) offer educational programs;
- (h) offer mutual support experience (e.g. AA/NA/etc.) and appropriate alternatives when indicated;
- (i) develop a continuing care plan and sobriety support system for each participant;
- (j) offer relapse prevention training;
- (k) assess return to work/fitness to practice prior to discharge; and
- (l) extend treatment options when indicated.

(5) The physician assistance program will maintain a current list of qualified programs available to accept referrals for evaluation and treatment.

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

IMP: 37-3-203, MCA

REASON: The 2009 Montana Legislature enacted Chapter 326, Laws of 2009 (Senate Bill 401), an act requiring the board to ensure that licensees who are required to participate in rehabilitation programs are allowed to enroll in qualified programs in Montana if available. The bill was signed by the Governor and became effective on April 18, 2009. The board is adopting this new rule to implement the bill's amendments to 37-3-203, MCA. To further implement the legislation, the board is proposing New Rule I to set forth the requirements for qualified evaluation and treatment programs according to the standards and criteria adopted nationally by the Federation of State Physician Health Programs. This new rule also sets forth the models for treatment modalities that are acceptable for qualified programs.

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 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., July 28, 2010.

5. 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.

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 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.

7. 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.

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

BOARD OF MEDICAL EXAMINERS
DWIGHT THOMPSON, PA, 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 June 14, 2010