

BEFORE THE BOARD OF OPTOMETRY  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.168.401 fees, 24.168.402 and ) ON PROPOSED AMENDMENT  
24.168.408 licensure, 24.168.411 general )  
practice requirements, and 24.168.2301 )  
unprofessional conduct )

TO: All Concerned Persons

1. On July 10, 2008, at 1:30 p.m., a public hearing will be held in room 471, 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 Optometry no later than 5:00 p.m., on July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdopt@mt.gov.

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

24.168.401 FEE SCHEDULE

(1) remains the same.

(2) Annual renewal

~~250~~ 125

(3) through (5) remain the same.

AUTH: 37-1-131, 37-1-134, 37-10-202, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-10-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule and reduce the annual licensure renewal fee to \$125 to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with costs. The board last increased fees in fiscal year 2005 due to a reevaluation of the board's budget following a reorganization of the Health Care Licensing Bureau. Since that increase, the allocation of board duties among staff has changed, enabling staff salary and other board expenses to be split among three boards instead of two and resulting in an excess cash accumulation. The board is abating \$50 of the 2008 renewal fees, but this amendment is needed to ensure continual sound fiscal management. The

board estimates the decrease will affect approximately 254 renewal licensees and result in a \$31,750 reduction in annual revenue.

24.168.402 LICENSURE BY EXAMINATION (1) through (2)(d) remain the same.

(e) a copy of a self-query of the National Practitioners Data Bank and the Healthcare Integrity Data Bank;

(e) and (f) remain the same but are renumbered (f) and (g).  
(3) remains the same.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-10-301, 37-10-302, MCA

REASON: The board is amending ARM 24.168.402 and 24.168.408 to require that licensure applicants submit a self-query of the National Practitioners Data Bank and the Healthcare Integrity Data Bank. Upon self-query of the National Practitioners Data Bank, the inquirer also receives information from the Healthcare Integrity Data Bank at no additional charge. This additional requirement will assist the board in obtaining all information regarding an applicant's prior discipline as reported to the data banks prior to licensure.

24.168.408 LICENSURE BY ENDORSEMENT (1) through (2)(d) remain the same.

(e) a copy of a self-query of the National Practitioners Data Bank and the Healthcare Integrity Data Bank;

(e) through (g) remain the same but are renumbered (f) through (h).  
(3) through (5) remain the same.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-304, MCA

24.168.411 GENERAL PRACTICE REQUIREMENTS (1) and (1)(a) remain the same.

(b) all professional signs and advertising, etc., must include the optometrist's name and the title "Optometrist", "Doctor of Optometry", or initials "O.D.";

(2) remains the same.

~~(3) Each licensed optometrist must file and have on record with the board annually, the location of each and every office wherein the practice of optometry is conducted by the licensed optometrist.~~

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

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-10-301, MCA

REASON: The board is amending this rule to no longer require that licensed optometrists report and continually update their practice locations to the board. The board concluded that this requirement is outdated, puts an unnecessary burden on

licensees and board staff, and does not substantially contribute to the protection of the public.

24.168.2301 UNPROFESSIONAL CONDUCT (1) Unprofessional conduct includes, but is not limited to, the following items or combination thereof:

(a) ~~Making~~ making a false or misleading statement regarding ~~his or her~~ the licensee's skill or the efficacy or value of the medicine, device, treatment, or remedy prescribed by ~~him or her~~ or used at ~~his or her~~ the licensee's direction in the treatment of any disease or other condition; ;

(b) ~~Negligence~~ negligence in the practice of optometry as determined by the board; ;

(c) ~~Gross~~ gross incompetence in the practice of optometry as determined by the board; ;

(d) A a pattern of practice or other behavior that demonstrates rendering of substandard care, either individually or as part of a third-party reimbursement agreement or any other agreement; ;

(e) ~~Commission~~ commission of any act of sexual abuse, misconduct, or exploitation related to the licensee's practice of optometry; ;

(f) ~~Prescribing~~ prescribing, selling, administering, distributing, or giving any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes; ;

(g) ~~Prescribing~~ prescribing, selling, administering, distributing, or giving a drug legally classified as a controlled substance or as an addictive or dangerous drug to ~~a family member or to himself or herself.~~ self or a family member;

(h) ~~Violating~~ violating any state or federal law or regulation relating to a drug legally classified as a controlled substance; ;

(i) ~~Obtaining~~ obtaining any fee by fraud, deceit, or misrepresentation; ;

(j) ~~Sanctions~~ sanctions or disciplinary actions taken by a peer review body, a hospital or other health care institution, or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in ~~the act.~~ Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;

(k) ~~Surrender~~ surrender of a license or authorization to practice optometry in another state or jurisdiction, or surrender of membership on any staff or in any professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in ~~this act.~~ Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;

(l) ~~Any~~ any adverse judgment, award, or settlement against the licensee resulting from a professional liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in ~~this act.~~ Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;

(m) ~~Failure~~ failure to furnish the board, its investigators, or representatives, information legally requested by the board; ;

(n) ~~Violation~~ violation of any provision(s) of the ~~Optometry Practice Act~~ Title 37, chapter 10, MCA, or the rules and regulations of the board or of an action, stipulation, or agreement of the board; ;

(o) ~~The~~ the designation of any person licensed under ~~this act~~ Title 37, chapter 10, MCA, other than by the terms "Optometrist", "Doctor of Optometry", or "O.D.";

(p) ~~For~~ for a licensee to knowingly submit or cause to be submitted any misleading, deceptive, or fraudulent representation on a claim form, bill, or statement;

(q) ~~For~~ for any person to sell, or offer to sell, any eyeglasses or lenses for the correction of refractive error except on prescription of a licensed optometrist or licensed physician;

(r) ~~Providing~~ providing ophthalmic lenses and materials that do not meet federally established impact resistance standards; ~~;~~ or

(s) ~~Persistently~~ persistently maintaining, in the practice of optometry, unsanitary offices, practices, or techniques.

AUTH: 37-1-319, 37-10-202, MCA

IMP: 37-1-316, 37-1-319, 37-10-301, MCA

REASON: The board is amending punctuation and grammar in this rule to comply with ARM formatting requirements and to remove gender specific references. It is reasonably necessary to change inaccurate references to "act" and "Optometry Practice Act" to the correct statutes in Title 37, chapter 10, MCA.

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 Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdopt@mt.gov](mailto:dlibsdopt@mt.gov), and must be received no later than 5:00 p.m., July 18, 2008.

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.optometry.mt.gov](http://www.optometry.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 of Optometry 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 of Optometry 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 Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdopt@mt.gov, or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OPTOMETRY  
ROCK SVENNUNGSSEN, O.D., PRESIDENT

/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 2, 2008