

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

In the matter of the amendment of)
ARM 24.168.401 fee schedule,)
24.168.402 licensure requirements,)
24.168.2101 continuing education,)
and the repeal of ARM 24.168.408)
licensure by endorsement)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On March 4, 2010, at 1:00 p.m., a public hearing will be held in room 430, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and repeal 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 (board) no later than 5:00 p.m., on February 26, 2010, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 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 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) Application by examination <u>fee</u> | \$175 |
| (2) remains the same. | |
| (3) Endorsement application <u>fee</u> | 300 <u>125</u> |
| (4) and (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 to align with other changes elsewhere in this notice. The board is combining all examination and endorsement requirements into a single rule at ARM 24.168.402. Although endorsement applicants currently pay a \$300 application fee, the board is amending this rule to clarify that all applicants pay a \$175 application fee and endorsement applicants pay an additional \$125 endorsement fee to still total \$300. The proposed amendments result in no fee changes.

24.168.402 LICENSURE REQUIREMENTS BY EXAMINATION (1) All applicants for licensure ~~by examination~~ shall submit a completed application.

(2) through (2)(e) remain the same.

(f) three affidavits from individuals not related to the applicant attesting to the good moral character of the applicant; and

(g) the appropriate fee; and

(h) any other information the board may require.

~~(3) Applicants shall read and understand the statutes and rules of the board for compliance with their profession.~~

~~(a) Proof of an applicant's familiarity with the board statutes and rules is evidenced by attestation on the application.~~

(3) Applicants actively licensed in another state, but not meeting the qualifications of (2)(a), (b), or (c), must pay an endorsement fee and shall be reviewed by the board on a case-by-case basis.

(4) If an applicant was licensed prior to the inclusion of TMOD in the NBEO examination (1993), the applicant shall:

(a) provide proof of successful completion of a qualifying examination, or examinations, as defined in 37-10-304, MCA, administered by the licensing authority of the state or jurisdiction granting the license; and

(b) meet all qualifications to be TPA and DPA certified.

(5) Applicants shall read and understand the statutes and rules of the board for compliance with their profession.

(6) Proof of an applicant's familiarity with the board statutes and rules is evidenced by attestation on the application.

(7) Applications not completed within one year will expire and the applicant will be required to reapply.

AUTH: 37-1-131, 37-10-202, 37-10-302, MCA

IMP: 37-1-131, 37-1-304, 37-10-301, 37-10-302, 37-10-304, MCA

REASON: The board is amending this rule by incorporating the requirements for endorsement licensure from ARM 24.168.408, which is proposed for repeal in this notice. Because many of the requirements are the same for both types of application, many out of state applicants qualify for licensure by examination. The board concluded that it is not necessary to have two separate licensure rules and is amending the rules accordingly. Authority and implementation cites are being amended to provide the complete sources of the board's rulemaking authority and accurately reflect all statutes implemented through the rule.

24.168.2101 CONTINUING EDUCATION REQUIREMENTS (1) through (4)(a) remain the same.

(b) A three month extension will be provided for all licensees who fail to meet the continuing education requirements as a result of an audit. Failure to meet this extension may result in disciplinary action.

AUTH: ~~37-1-141~~, 37-1-319, 37-10-202, MCA

IMP: ~~37-1-141~~, 37-1-306, MCA

REASON: The board has determined it is reasonably necessary to amend this rule and allow a three-month extension for licensees who fail to meet the continuing education (CE) requirements and are selected in a random audit. The board consistently receives licensee requests to extend the audit response time, but the requests must be scheduled for review at the next board meeting. This amendment will allow board staff to respond to these requests promptly and consistently, and requests will not have to wait until the next board meeting for consideration.

The board is deleting an erroneous authority cite to accurately reflect the sources of the board's rulemaking authority.

4. The rule proposed to be repealed is as follows:

24.168.408 LICENSURE BY ENDORSEMENT found at ARM page 24-18033.

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

IMP: 37-1-304, MCA

REASON: The board is repealing this rule as the endorsement licensure requirements are being incorporated into ARM 24.168.402 in this notice.

5. 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, and must be received no later than 5:00 p.m., March 12, 2010.

6. 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. 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.

7. 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 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. 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 February 1, 2010