

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.168.2301 unprofessional) PROPOSED AMENDMENT,
conduct, the adoption of NEW RULE I) ADOPTION, AND REPEAL
nonroutine applications, and the)
repeal of ARM 24.168.2115 renewals)

TO: All Concerned Persons

1. On November 5, 2014, at 1:00 p.m., a public hearing will be held in the Small Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, 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 October 31, 2014, 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 rule proposed to be amended provides as follows:

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

(a) through (p) remain the same.

(q) ~~for any person to sell,~~ selling or offer offering to sell, any eyeglasses or lenses for the correction of refractive error, except for over-the-counter readers between the powers of +.75 dioptors to +5.50 dioptors, except on prescription of a licensed optometrist or licensed physician;

(r) and (s) remain the same.

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA

IMP: 37-1-131, 37-1-316, 37-1-319, 37-10-301, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the scope of unprofessional conduct. Following board counsel's recommendation, the board is amending (1)(q) to accurately reflect the board's jurisdiction over its licensees, and not any person.

The board is further amending (1)(q) to clarify the board's intent that selling certain over-the-counter readers does not qualify as unprofessional conduct, as these products are routinely sold in retail stores.

4. The rule proposed to be adopted provides as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for licensure that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued:

- (a) the applicant has ever been convicted of a felony;
- (b) the applicant has pled guilty or no contest to or been convicted of two or more misdemeanors, other than minor traffic violations, within the past five years, regardless of whether an appeal is pending and regardless of whether the sentence was suspended or deferred;
- (c) any of the applicant's occupational or professional licenses have been disciplined or an application for a license was denied in any state or jurisdiction;
- (d) a pending or completed legal or disciplinary action involving licensure in this state, another state, territory, or jurisdiction; or
- (e) any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

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

IMP: 37-1-101, 37-1-131, MCA

REASON: It is reasonably necessary to adopt this new rule to further implement 37-1-101, MCA, which provides that the department shall process routine license applications on behalf of the professional and occupational licensing boards. Although the board has previously relied on the department's definitions for routine and nonroutine applications in ARM 24.101.402, this new rule will provide licensing staff further clarification and guidance from the board on differentiating between routine and nonroutine applications.

5. The rule proposed to be repealed provides as follows:

24.168.2115 RENEWALS found at ARM page 24-18242.

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

IMP: 37-1-141, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

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 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., November 14, 2014.

7. An electronic copy of this notice of public hearing is available at www.optometry.mt.gov (department and board's web site). 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 that 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.

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

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.168.2301 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.168.2115 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or e-mail dlibsdopt@mt.gov.

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

BOARD OF OPTOMETRY
DOUG KIMBALL, PRESIDENT

/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 September 29, 2014