

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.189.401 fee schedule,) PROPOSED AMENDMENT AND
24.189.414 nonresident psychological) ADOPTION
services, 24.189.601 application)
procedures, 24.189.607 required)
supervised experience, 24.189.610)
work samples - examination,)
24.189.2309 professional)
responsibility, and the adoption of)
NEW RULE I temporary permit)

TO: All Concerned Persons

1. On March 16, 2012, at 9:30 a.m., a public hearing will be held in room B-07, 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 Psychologists (board) no later than 5:00 p.m., on March 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibspsy@mt.gov.

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

24.189.401 FEE SCHEDULE (1) through (1)(e) remain the same. 100
(f) Temporary permit application fee
(2) remains the same.

AUTH: 37-1-134, 37-17-202, MCA
IMP: 37-1-134, 37-1-141, 37-17-302, MCA

REASON: The board determined it is reasonably necessary to implement a temporary permit application fee to comply with the provisions of 37-1-134, MCA, to set and maintain fees commensurate with associated costs. The board is proposing New Rule I in this notice to implement temporary practice permits, and the process requires board review during meetings, as well as board staff time. The board

estimates that the \$100 fee will affect approximately four license applicants each year and result in an estimated \$400 increase in annual revenue.

24.189.414 NONRESIDENT PSYCHOLOGICAL SERVICES

(1) Nonresident consulting psychological services defined in 37-17-104(4), MCA, may be rendered to individuals, groups, corporations, or the public for compensation or fee.

(2) and (3) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-17-104, MCA

REASON: Section 37-17-104, MCA, the statute implemented through this rule, was renumbered following a 2009 amendment. The board is amending this rule and ARM 24.189.601 to align with the renumbering and to delete internal references to specific MCA sections according to ARM formatting requirements.

24.189.601 APPLICATION PROCEDURES (1) Applications for licensure, when properly filled out by the applicant, must provide the board with that information necessary to ascertain whether or not the applicant meets the requirements of the law as to education and experience. Application forms must reflect satisfactorily the requirements of Montana law.

(a) through (c) remain the same.

(d) An application must be completed for final board review no more than 18 months after the board receives it or it will expire and a new application and fee will be required. If a temporary practice permit is issued, the application will not expire under this provision.

(2) remains the same.

(a) a completed and notarized application form;

(b) and (c) remain the same.

(d) three work samples documents establishing the satisfactory completion of predoctoral and postdoctoral supervision;

(e) and (f) remain the same.

~~(3) Work samples must be written examples of recent work (within two years of application date), at least two of which must be psychological evaluations. The purpose of the evaluations is to demonstrate competence in history taking, administration and interpretation of formal tests of intelligence, and administration and interpretation of objective and projective tests of personality. Tests utilized must be those widely recognized and respected in the practice of psychology. Projective testing will include projective techniques, at least one of which is a Rorschach or an apperception test. Each of the two evaluations must include the integration and interpretation of history taking, intelligence testing, and personality testing leading to an appropriate diagnosis and recommendations. Evaluations must also demonstrate competence in formulating appropriate diagnoses using the five axes specified in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as making appropriate recommendations. Work samples do not include newspaper or other similar articles or publications. All identifying information must be removed~~

~~from work samples submitted to the board. Questions regarding the work samples may be included in the oral examination and candidates may be requested to present the raw data upon which their work samples were based.~~

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

~~(5)~~ (4) The board shall examine the transcript of every applicant to determine whether degrees were awarded by an accredited institution of higher learning with an adequate course of study in psychology as defined in 37-17-302, MCA, and ARM 24.189.604.

(6) remains the same, but is renumbered (5).

~~(7)~~ (6) ~~When the application file is complete and acceptable, the~~ The applicant will be notified in writing as to the time and place of the oral examination once the completed application is received and the board has approved the work samples. It shall be the duty of the applicant to inform the department when it is not feasible to appear at the time and place stated for the examination.

(a) If a candidate is scheduled for the examination a second time and does not appear, without legitimate excused reasons, ~~he~~ the applicant may lose his eligibility for the examination.

(b) When the application file is complete and acceptable, the board shall notify an applicant who is licensed in another state or province, and who is now a resident of Montana, that the applicant is allowed to practice as a psychologist pursuant to 37-17-104(5), MCA, pending satisfactory completion of the next board oral exam for which the applicant is eligible.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-17-302, MCA

REASON: The board is amending (1)(d) to implement an application expiration date and address the ongoing issue of applicants failing to complete the licensure process in a timely fashion. The board concluded this amendment is reasonably necessary to ensure proper records retention and to provide a conclusion to outstanding applications that are not diligently pursued. The board is further amending this rule to align with current application processes and to reference the statute that provides the educational minimum standards.

The board is amending (2) and (6) to establish a process allowing otherwise qualified applicants to obtain necessary work samples as part of the examination process. For simplicity and to facilitate the issuance of temporary permits, the board is relocating the work sample provisions in (3) to ARM 24.189.610, which addresses the examination process.

24.189.607 REQUIRED SUPERVISED EXPERIENCE (1) Acceptable supervised experience must involve the practice of psychology and must have been performed competently at a professional level in order to be considered satisfactory in scope and quality. The supervised practice of psychology that occurs without the board's preapproval and outside of the activities and services exempted under 37-17-104, MCA, is the unlicensed practice of psychology, which is a disciplinary matter.

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

(b) One year of experience (a minimum of 1600 hours) must be postdoctoral. Each year of required supervised experience that occurs over more than 12 consecutive months (e.g., due to medical reasons) will be considered for board approval on a case-by-case basis. Postdoctoral supervised experience is calculated from the time of completion of all requirements for the doctoral degree and may not commence until all doctoral degree requirements are completed and the board has approved the proposed supervision. Completion of doctoral degree requirements may be established by a certified transcript or communication from an appropriate institutional official, such as the registrar or the dean of the graduate school.

(3) An applicant for postdoctoral supervised experience shall obtain from and submit to the board, a supervision proposal form. The form must indicate an agreement, acceptable to the board, between the applicant and the supervisor, and certify the existence of a supervisory relationship, as defined in this rule, for a specified period. The board shall notify the applicant in writing of the acceptability of the supervision proposal. Regardless of the terms of any supervision agreement, board-approved supervised experience is subject to the rules and statutes governing the practice of psychology and, except as otherwise permitted under these rules, terminates no later than the date that is two years following the date the supervised experience begins.

(4) and (a) remain the same.

(b) be obtained over a period of no more than five two calendar years. The Postdoctoral supervised experience may not continue beyond two years, except that the board may review and approve written requests for additional time in which to complete the postdoctoral supervision in situations where personal or professional matters may necessitate an extension;

(c) through (13) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-17-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the board's role regarding supervised experience and to put an end to supervision arrangements that are not reported to and approved by the board, and those that continue indefinitely. With the implementation of the temporary permit process proposed in New Rule I, the five-year period for acquiring postdoctoral supervised experience is no longer an appropriate length of time. The board concluded that only two years should be allowed to acquire this experience.

24.189.610 WORK SAMPLES - EXAMINATION (1) Once the licensing application is approved by the board, the applicant must submit three work samples for board approval.

(a) Work samples must be written examples of recent work (within two years of the application date), at least two of which must be psychological evaluations. Each of the two psychological evaluations must include a demonstration of competence in:

(i) the integration and interpretation of:

(A) history-taking utilizing a clinical interview conducted by the applicant;

(B) intelligence testing; and

(C) personality testing utilizing at least one objective personality inventory that is widely recognized and used in the field/practice of psychology, has strong empirical foundations, and assesses global personality and psychological functioning;

(ii) the formulation of appropriate diagnoses using the five axes specified in the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

(iii) making appropriate recommendations.

(b) Work samples do not include newspaper or other similar articles or publications. Tests utilized must be those widely recognized and respected in the practice of psychology. All identifying information must be removed from work samples submitted to the board. Questions regarding the work samples may be included in the oral examination and candidates may be requested to present the raw data upon which their work samples were based.

~~(4)~~ (3) The applicant will be notified of the oral examination time schedule at least two weeks in advance. This examination schedule will establish: time(s), place(s), the amount of the examination fee, and other pertinent information and/or instructions.

~~(2) The board shall determine the subject matter and scope of specialized psychological areas and techniques for the examination.~~ Examinations for licensure will be a computerized national examination and an oral examination. These will be conducted by the board or its ~~duly-constituted~~ duly constituted representative(s). The computerized examination developed by the national licensing program, with the support of the ~~Association of State and Provincial Psychology Boards~~ association of state and provincial psychology boards, may be given.

(a) and (b) remain the same.

~~(3)~~ (4) The board shall determine the subject matter and scope of specialized psychological areas and techniques for the oral examination. Oral examinations shall include such matters as professional ethics for the purpose of determining the applicant's competence to conduct ~~himself~~ the applicant in a professional manner and to probe ~~his~~ the applicant's knowledge and judgement. The examination shall be scored on a ~~5-point~~ five-point scale: 5 (excellent), 4 (good), 3 (fair), 2 (poor), 1 (very poor). A mean score of three derived from the ratings of all examiners is required for passing. Candidates must have a mean of three, based on total points, divided by the number of scales evaluated. Additionally, they cannot have a mean of two or less on any one scale they are evaluated on. Oral examinations for candidates shall include, but not be limited to, questions in the following areas:

(a) through (f) remain the same.

~~(4)~~ (5) Applicants shall be informed of the results of the ~~examination~~ examinations by the department. All applicants who pass both examinations shall be considered licensed if they have met all other requirements. The department shall transmit the board's decision in writing to applicants and, when appropriate, inform them of their right to appeal. Reasons for actions shall be specified. The communication shall be sent to the last known address of the applicant by mail.

~~(5)~~ (6) Applicants who fail the computerized examination will be required to retake both the computerized and oral examinations. Applicants failing the oral examination once will only be required to retake the oral examination. Applicants

who fail the computerized or oral examinations twice shall, in addition to being retested, file in advance a statement regarding arrangements plan that must be preapproved by the board and must include a time period for securing further professional training and experience. The license applicant is then obligated to complete the preapproved plan prior to being authorized to take the examination or to being licensed.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, 37-17-303, MCA

REASON: In addition to moving the work sample provisions to this rule, the board is amending this rule to delete the requirement for a projective test from the work samples, clarify the work sample requirements, and clarify and tighten portions of the oral examination procedures. The board determined these changes are necessary to address any misunderstanding of what constitutes adequate work samples, and reduce the instances where improper work samples delay the processing of the license application.

The board is removing the requirement for work samples to use projective testing because projective testing is no longer taught in all schools and is used less frequently in the clinical setting. The board is also amending this rule to ensure that an applicant who has repeatedly failed any of the examinations will be properly prepared before having the opportunity to retest. Implementation cites are being amended to provide all statutes implemented through the rule and delete reference to repealed statutes.

24.189.2309 PROFESSIONAL RESPONSIBILITY (1) through (1)(d) remain the same.

(e) shall make reasonable efforts to plan for facilitating care in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, or relocation, or by the client's relocation or financial limitations;

(f) and (g) remain the same.

(h) shall continue the defined professional relationship with the client until a relationship is established with the professional person to whom the client is referred or until the relationship has been terminated by mutual agreement. In situations where referral, consultation, or other changes in the conditions of the treatment are indicated, and the client refuses referral, the psychologist shall carefully weigh the possible harm to the client, the psychologist, and the psychologist's profession that might ensue from continuing the relationship.

(2) remains the same.

(a) shall not exploit persons over whom they have supervisory, evaluative, or other authority such as students, supervisees, employees, research participants, or clients;

(b) who performs interventions or administers, scores, interprets, or uses assessment techniques shall be familiar with the reliability, validation, and related standardization or outcome studies of, and proper applications and uses of, the techniques they use; and

(i) shall recognize limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals;

(ii) shall attempt to identify situations in which particular interventions or assessment techniques or norms may not be applicable or may require adjustment in administration or interpretation, because of factors such as individuals' gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status;

(iii) shall, when offering assessment or scoring procedures to other professionals, accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use;

(iv) remains the same.

(v) shall, regardless of whether the scoring and interpretation are done by the psychologist, by assistants, or by automated or other outside services, take reasonable steps to ensure that appropriate explanations of results are given and adequate provisions are made for referring and counseling individuals when needed;

(c) through (4) remain the same.

(a) shall provide psychological services for the purpose of diagnosis, assessment, or treatment only in the context of a defined professional relationship. However, nothing in these rules precludes the provision of psychological services for crisis management or intervention, even in the absence of a defined professional relationship;

(b) shall not prepare personnel reports and recommendations based on test data secured solely by mail, unless such appraisals are an integral part of a continuing client relationship with a company;

(i) ~~The~~ the reports shall not be embellished with detailed analyses of the subject's personality traits, as would be appropriate only after intensive interviews with the subject;

(ii) ~~The~~ the reports shall not make specific recommendations as to the employment or placement of the subject, which go beyond the psychologist's knowledge of the job requirements of the company; and

(iii) ~~The~~ the reports shall not purport to eliminate the company's need to carry on other regular employment or personnel practices such as appraisal of the work history, checking of references, or past performance in the company;

(c) shall not undertake or continue a defined professional relationship with a client when the psychologist is, or could reasonably be expected to be impaired due to mental, emotional, physiologic, pharmacologic, or substance abuse conditions. If such a condition develops after a defined professional relationship has been initiated, the psychologist shall terminate the relationship in an appropriate manner, shall notify the client in writing of the termination, and shall assist the client in obtaining services from another professional;

(d) shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client;

(e) shall make assessments, recommendations, reports, and psychological, diagnostic, or evaluative statements based on information and techniques (including personal interviews of the individual when appropriate) sufficient to provide appropriate substantiation for their findings; and

(f) through (5)(a) remain the same.

(b) shall not teach the use of techniques or procedures that require specialized training, licensure, or expertise, including, but not limited to, hypnosis, biofeedback, and projective techniques, to individuals who lack the prerequisite training, legal scope of practice, or expertise;

(c) shall establish an appropriate process for providing feedback to students and supervisees in academic and supervisory relationships; and

(d) through (6)(a) remain the same.

(b) shall delegate to their employees, supervisees, and research assistants only those responsibilities that such persons can reasonably be expected to perform competently, on the basis of their education, training, or experience, either independently or with the level of supervision being provided;

(c) shall not, prior to obtaining the board's approval, commence supervision of a person practicing psychology;

(d) shall, upon board approval of the supervision, reasonably and adequately supervise persons practicing psychology, so as to ensure the client's mental and physical health and safety are not at risk and that each supervisee complies with all applicable standards, rules, and statutes; and

(e) shall strictly comply with the rules governing supervision.

(7) remains the same.

(8) The violation of any statute, rule, or standard applicable to the licensee in relation to the licensee's practice of psychology is unprofessional conduct.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, 37-17-101, MCA

REASON: Consistent with other changes being proposed to the board's rules, the board is amending this rule to provide appropriate disciplinary measures to ensure proper supervision of unlicensed practitioners in both postdoctoral and temporary permit settings. The board is adding (8) to clarify the board's disciplinary authority over the conduct of licensees.

4. The proposed new rule provides as follows:

NEW RULE I TEMPORARY PERMIT (1) An applicant requesting a temporary permit must submit to the board:

(a) an application for a temporary permit, which must include a supervision agreement signed by the proposed supervisor;

(b) the fee for the temporary permit application;

(c) a completed license application; and

(d) the fee for the license application.

(2) An applicant for licensure may be issued a temporary permit if the applicant:

(a) lacks only the examination for licensure; and

(b) works under the supervision of a board-approved psychologist.

(3) The supervised practice of psychology that occurs without the board's preapproval and outside of the activities and services exempted under 37-17-104, MCA, is the unlicensed practice of psychology, which is a disciplinary matter.

- (4) Before commencing supervision of a temporary permit holder, a supervisor shall obtain board approval. Supervisors must, at a minimum:
 - (a) be licensed in Montana throughout the period of supervision;
 - (b) have no less than three years experience as a licensed psychologist prior to the date supervision begins; and
 - (c) during the period of supervision, remain free of disciplinary sanctions against each psychology license held by the supervisor.
- (5) The supervisor shall:
 - (a) not be required to work in the same setting as nor be an actual employee of the organization or institution where the temporary permit holder works;
 - (b) be available in a timely manner for supervision in the event of an emergency;
 - (c) be available to the temporary permit holder's clients for emergency consultation and intervention via no less than telephone communication;
 - (d) determine the adequacy of the temporary permit holder's preparation for the tasks to be performed and determine the level of supervision;
 - (e) be ethically and legally responsible for all of the professional activities of the temporary permit holder;
 - (f) terminate the temporary permit holder's activities and inform the board of the reasons for terminating those activities when it is reasonably necessary to ensure the protection of the public; and
 - (g) report to the board any breach in ethical, legal, or professional responsibilities of the temporary permit holder.
- (6) During the supervision period, the temporary permit holder shall:
 - (a) when describing his or her activities and services, use the title "temporary permit practitioner in psychology";
 - (b) when signing psychological reports and other professional opinions, conclusions, and written work rendered by the temporary permit holder, use the title "temporary permit practitioner in psychology", and obtain the countersignature of the supervisor; and
 - (c) inform each client orally and in writing of the supervised nature of the work and provide each client the name of the supervisor.
- (7) A supervisor whose primary responsibilities are in another employment position shall not supervise more than a total of three supervisees, including temporary permit holders, at any one time.
- (8) A supervisor shall not be involved in a dual relationship with a temporary permit holder, which would compromise the supervisory relationship; e.g., related by marriage, immediate family, business partnership, employee of the temporary permit holder, or a former client-professional relationship. If the temporary permit holder pays the supervisor for the supervision, the supervisor shall be especially cautious to avoid negative impacts from the financial arrangements on the supervisory relationship.
- (9) A temporary permit is valid until the person either fails the first oral examination for which the person is eligible, following issuance of the permit, or is granted a license, whichever occurs first.
- (10) The first oral examination for which the person is eligible is the next oral examination occurring at least 90 days following the date the person submits the

required work samples, but not later than the second oral examination test date following the date the temporary permit is issued. Except, however, that on a case-by-case basis, and upon good cause, the first oral examination for which the person is eligible may be set by the board to allow the applicant additional time to obtain the required work samples and to continue the supervised practice of psychology. If the time is extended, it shall be extended to the date of what will then constitute the first oral examination for which the person is eligible.

(11) A person who has held a temporary permit in the past may be granted another temporary permit only upon a justifiable excuse and when good cause appears, and then only if it is shown that the refusal of a temporary permit would preclude the person from licensure, because, without it, the person would be unable to obtain the necessary work samples for the oral examination.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-305, MCA

REASON: The board is proposing this new rule to establish criteria for temporary permits and enable license applicants to practice under supervision while obtaining the required work samples for the oral examination. The board regularly receives applicant requests for permission to complete the examination process, including the work samples, without unnecessarily delaying their ability to practice in the interim. This new rule will allow license applicants to practice while completing the examination process, while ensuring the public's safety through the applicants' supervision.

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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpsy@mt.gov, and must be received no later than 5:00 p.m., March 23, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.psy.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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibspsy@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. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
GEORGE WATSON, PhD., 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 February 13, 2012