

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

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 24.189.401 fee schedule,)	ADOPTION
24.189.601 application procedures,)	
24.189.604 minimum standards,)	
24.189.607 required supervised)	
experience, 24.189.620 licensees)	
from other states or Canadian)	
jurisdictions, 24.189.630 licensure as)	
a psychologist by experience,)	
24.189.633 temporary permit,)	
24.189.2101 continuing education,)	
24.189.2104 continuing education)	
program options, 24.189.2107)	
continuing education implementation,)	
and the adoption of NEW RULE I)	
exemptions and NEW RULE II)	
military training or experience)	

TO: All Concerned Persons

1. On April 10, 2014, the Board of Psychologists (board) published MAR Notice No. 24-189-34 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 652 of the 2014 Montana Administrative Register, Issue No. 7.

2. On May 1, 2014, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the May 9, 2014, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

GENERAL COMMENTS

COMMENT 1: A couple of commenters generally supported the proposed amendments and new rules, aside from the fee increase.

RESPONSE 1: The board appreciates all comments received.

ARM 24.189.401 – FEE SCHEDULE

COMMENT 2: Several commenters opposed raising license renewal fees because Montana psychologists make less than psychologists in other parts of the country,

and the fees are a hardship for some to bear. Some of these commenters pointed out it requires a "robust cadre of professionals" in order to fund the board.

RESPONSE 2: The board does not disagree that licensure fees may be more difficult for some licensees to pay than others. Raising fees is not done lightly, nor is it the board's preference to do so. However, the alternative is for the board's operations to be suspended. This means no enforcement of licensure standards and no enforcement of standards of conduct. This would be contrary to the public's protection, and detrimental to the licensees whose profession would be essentially left without quality assurance.

COMMENT 3: Many commenters opposed raising license renewal fees because the fee increase, which follows significant increases in the recent past, would put Montana's fees at the top of the nation.

RESPONSE 3: Please see RESPONSE 2 above. The fee increase is necessary if the board is to continue serving its intended purpose. The board has resisted increasing fees for several years in the face of rising expenses, trying to keep operating expenses as low as possible, but a fee increase is now necessary to keep the board solvent and functional.

COMMENT 4: Many commenters opposed raising license renewal fees because the fee increase would further deter much-needed psychologists from moving to Montana, isolating the state from psychologists who might otherwise come to Montana, and resulting in a scarcity of psychological resources for consumers.

RESPONSE 4: The board does not know that an annual license fee increase from \$400 to \$600 will deter potential licensees from moving to our state, but the board recognizes this is probably one factor considered by those who wish to move here. This reality motivates the board to seek ways to reduce fees in the future, but it does not change the fact that increased revenue is now necessary to maintain board operations.

COMMENT 5: Some commenters took issue with the rationale provided by the board in support of raising the renewal fees. The commenters said the board cannot reasonably argue Montana's fees are high on account of having so few licensees since fees in Montana are significantly higher than in other states with similar populations and licensees, and because it might be expected that the fewer the licensees, the less the costs of regulation.

RESPONSE 5: The commenters did not identify what costs they expected to be reduced due to fewer licensees. In fact, few costs are incurred based on the number of licensees, and even those are largely outside of the board's control. One cost based on licensee numbers and not within the board's control is the cost of the database used by the department to maintain and monitor licensing and disciplinary records. This database was replaced at a cost to the board of a total of \$4,410.29 for the years 2010 through 2013.

On the other hand, some costs are borne by boards equally, regardless of licensee numbers, such as the hourly rate of legal counsel. For example, when the board denies a license to an applicant who does not meet the licensure requirements, and the applicant requests a hearing, the costs of that litigation do not vary based on the number of licensees. Likewise, when the board enforces its standards in a disciplinary proceeding, which it is required by law to do, the cost of enforcing the board's standards is not cheaper just because there are fewer licensees. Instead, litigation costs (e.g., attorney fee time, expert witness fees, and hearing examiner costs) must be borne by the smaller number of licensees. A smaller number of licensees should translate into a smaller number of cases to prosecute, but the percentage of cases that are litigated, and the degree to which they are litigated, depends not just on the board, but also on responding licensees.

The board also notes that, while the commenters provided some raw data in relation to the population of other states and their respective licensing fees, it was not revealed how licensing and disciplinary standards are set or enforced in those other states, nor whether funds for such activities come solely from licensing fees (as they do in Montana) or if some of the licensing or disciplinary activities are funded in other ways.

COMMENT 6: Some commenters suggested that rather than raise fees, the board should find ways to spend the board's money more responsibly by reducing costs, dropping certain disciplinary matters, or by clarifying or simplifying the board's regulations and licensing requirements.

RESPONSE 6: The board is committed to simplifying and reducing costs, and has already done so by separating work samples from applications and using samples solely for oral examinations, providing for temporary permits, engaging the ASPPB to help with applicants whose education is not from an APA-accredited program, keeping travel expenses down by holding phone meetings instead of in-person meetings, and providing feedback to the department to remedy bottlenecks in the application process. Board members are provided very minimal reimbursement (i.e., per diem state rates) for their service on the board, and their costs are never fully covered. Thus, board members pay out of their own pockets to cover some costs.

Complaints filed by the public must be reviewed by the board in fulfillment of its mandate to protect the public. After review, the screening panel dismisses most cases. The board is not free to comment on matters currently being adjudicated, but the board has followed all appropriate procedures regarding such matters. The board's efforts have not eliminated the need for a fee increase.

COMMENT 7: One commenter suggested the board may be defending against "justified legal actions" for "discriminatory behavior by the board," and another recounted past events that cost the board significant amounts of money. The commenters asked what other legal cases the board has lost, and what the board is now doing that "adversely affects the financial well-being of psychologists in Montana and damages the practice of psychology in Montana."

RESPONSE 7: Aside from a case cited by this commenter as indicative of current or ongoing board conduct, which was based on board action taken nearly two decades ago, the board has lost no litigation resulting in a judgment against the board. The board is not defending against any legal actions, justified or not, for allegedly discriminatory behavior.

COMMENT 8: One commenter offered a rebuttal to the board's explanation that increased board costs necessitating the fee increase include the litigation of significant legal cases. The commenter suggested that costs and fees of ongoing significant litigation should be recoverable by the board when the board is successful in prosecuting and if so, licensees should not have to bear the burden of those costs and fees through higher licensure fees.

RESPONSE 8: Recently, the board successfully defended its denial of licensure to an applicant whose education did not meet the minimum licensure standards in Montana, a case that was heard by the Montana Supreme Court. The board is also currently pursuing sanctions for licensee unprofessional conduct in a case that involves core principles of professional conduct that the board is enforcing as required by law. Unfortunately, cases that are considered by the board do not legally allow for a recovery of costs as a possible remedy, and therefore, the board cannot hope to spare the licensees by placing the responsibility on the licensee or license applicant. Cost recovery for such cases must be provided by the legislature, which the department has previously requested and been denied.

COMMENT 9: Several commenters asked the board to provide an explanation or accounting as to how and why board finances justify the proposed fee increase.

RESPONSE 9: At the October and April meetings, at a minimum, and at other regular board meetings, the board provides financial statements showing revenues and expenditures for the current period and a number of past periods. In addition to those publicly available documents, and in response to these comments, the board has posted a financial statement for the period of 2009 through 2013 on its web site (www.psy.mt.gov). The financial statement shows significant increases in several expense categories between 2009 and 2013, such as a 61 percent increase in the cost of department employee benefits billed to the board, a 57 percent increase of department salaries billed to the board, and a 65 percent increase in rent. Those three, alone, combine to equal about 60 percent of the board's total 2013 expenditures. The increases are partly attributable to the department's, not the board's, efforts to reorganize the way it delivers administrative services to the boards. Some increases are also attributable to the board's efforts to comply with its statutory obligation to enforce its regulations, resulting in necessary and successful litigation.

COMMENT 10: Some commenters expressed concern about the fee increase in terms of how the department is allocating its costs among the boards.

RESPONSE 10: The department is statutorily authorized to determine the appropriate allocation of its costs, and the board has been unsuccessful in its efforts to modify that allocation process. The board raised this issue to the department some months ago and argued for a different way to allocate costs. Unfortunately board efforts have been unsuccessful, to date. At present, the allocation to the boards for personal services is based on services provided on an hourly basis. All boards pay the same rate for personal services. The result is that boards having more licensees pay less for personal services on a per-licensee basis. An alternative method for allocating costs has been proposed to the department, but using an hourly rate that differs among the boards based on the number of licensees is only favored by the boards that would benefit from it.

COMMENT 11: One commenter asked why the board has not changed the way the board is funded.

RESPONSE 11: The law provides that the board must be funded through licensing fees. As described in RESPONSE 10, how the board is funded is a matter out of the board's control. However, the commenters are encouraged to bring ideas to the board that might be used in future legislation if an appropriate alternative or supplementary source of income can be identified.

COMMENT 12: A few commenters expressed concern about the possibility that, as a result of finances, the board may be joined with another board involving licensees with lesser qualifications, thereby diluting the board's expertise to the detriment of the public. If the board is no longer self-sustaining, a proposed solution was to be joined with the Board of Medical Examiners.

RESPONSE 12: The board is aware that a failure to be self-sustaining could result in being combined with another board. The board disagrees that the proposed solution of being combined with the Board of Medical Examiners would work very well because on that large board, which governs many licensure types already, there is no expertise in psychological evaluation and assessment.

COMMENT 13: One commenter suggested that the board consider a fee structure that allows for a reduced fee for those who are semi-retired or who work on a part-time basis, similar to how rates for malpractice insurance are determined.

RESPONSE 13: The board agrees that conceptually, this idea has some appeal. However, the board notes that implementation would involve an administrative cost to create rules and a way to enforce them, would likely require an honor system that would be difficult as a practical matter to implement, and would ultimately reduce the board's income, thereby worsening the board's current financial predicament.

ARM 24.189.601 – APPLICATION PROCEDURES

COMMENT 14: A few commenters asserted that it is inappropriate to require applicants from counseling psychology programs, but not clinical psychology

programs, to submit paperwork to the Association of State and Provincial Psychology Boards (ASPPB) to determine if their course of studies satisfies the board's minimum standards when both types of programs may be accredited by the American Psychological Association (APA). The commenters reasoned that APA accreditation of doctoral programs is the standard benchmark and does not differentiate between counseling and clinical psychology programs, the proposed process would cost the board more money, and suggested the board instead consider facilitating the adoption of competency benchmarks that are shared by other state boards of psychology.

RESPONSE 14: The board has already discussed this matter and has voted to propose a rule that would acknowledge APA-approved psychology programs for counseling psychology and school psychology programs as meeting the board's minimum standards without further review. The board's newly adopted process of utilizing the ASPPB for applicant programs not accredited by the APA is not expected to cost the board any more money since applicants will be responsible for the cost of the review. As to standardizing competency benchmarks across multiple jurisdictions to improve portability of licensure, the ASPPB has been studying this issue and is working toward a solution. The board is fully supportive of these efforts.

ARM 24.189.620 – LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS

COMMENT 15: Many commenters expressed opposition to removing the National Register of Health Service Providers in Psychology (National Register) as a way to verify credentials for licensure because the National Register supports needed licensure mobility.

RESPONSE 15: The board desires to have a reliable tool to help facilitate licensure mobility, and intended the National Register to serve that purpose, but it has proven to be unreliable. Because the National Register does not adhere to the same educational standards as the board, applicants that did not meet basic educational standards for licensure were able to rely upon the National Register and be granted licensure in Montana. Licensure mobility is not a paramount consideration and is not sufficient to disregard the board's duty to ensure minimum qualifications of license applicants. The board would remind the commenters that the board still provides mobility for all those who hold a current certificate of professional qualification (CPQ) in psychology issued by the ASPPB.

COMMENT 16: One commenter asked why the National Register is being removed.

RESPONSE 16: The board refers this commenter to the other responses regarding this rule change. In essence, the standards recognized by the National Register have not been adequately compatible with the board's standards for licensure.

COMMENT 17: Several commenters asked the board to identify the ways in which National Register standards are deficient in relation to Montana's, which are

supposed to be minimum standards. Some of these commenters did not accept the rationale in the proposal notice because they did not perceive a problem with respect to applicants using the National Register who do not meet the board's minimum standards for licensure.

RESPONSE 17: As the board pointed out above, the National Register does not adhere to the same educational standards to which the board adheres, and some applicants who did not meet basic educational standards for licensure relied on the National Register and were granted Montana licensure. For example, one applicant used the National Register and had no degree in psychology, even though Montana law requires a doctoral degree in psychology as a prerequisite for licensure. Using the National Register, someone with a doctoral degree in education was licensed as a psychologist. This is clearly an insufficient educational background to be licensed as a Montana psychologist, but the National Register does not share Montana's minimum standards.

COMMENT 18: One commenter suggested the board would rather duplicate efforts than use the National Register.

RESPONSE 18: As indicated above, the board is seeking ways to avoid duplicative efforts, including promoting the use of the CPQ. The National Register, which does not share Montana's minimum standards, does not provide an appropriate alternative to board review of an applicant's qualifications.

COMMENT 19: Several commenters opposed removing the National Register as a way to verify applicant qualifications, opining that the board's licensure process already poses an unnecessary burden on and obstacle to those who would otherwise come to Montana to practice psychology. Commenters asserted that this change will create an additional barrier to licensure, further isolating Montana from psychologists and harming consumers by limiting available psychological services.

RESPONSE 19: The board notes that the commenters failed to mention, and were possibly unaware of the board's relatively recent rule changes that provide temporary practice permits for those seeking licensure in Montana and speed the process to application approval for purposes of taking the oral examination. Removing the National Register is necessary to ensure the minimum educational standards are not being ignored.

COMMENT 20: One commenter opposed the elimination of the National Register for verifying qualifications by first explaining that "The National Register standard is a doctoral degree in psychology from an APA/CPA Accredited or ASPPB/National Register Designated doctoral program." The commenter also addressed a specific situation in the rule's reasonable necessity statement where a Montana applicant's qualifications were approved by the National Register, but the board concluded that the person's qualifications failed to meet Montana's statutory minimum requirement of a doctoral degree in psychology from an accredited college or university. In the commenter's view, the National Register appropriately verified that the license

applicant's credentials in fact met the National Register's standard of a doctoral degree in psychology, as it has done for licensing boards on behalf of more than 1,500 health service psychologists.

RESPONSE 20: Although the written expression of the National Register's standards has not changed, the board determined that the application of those standards has, in at least two instances, failed with respect to ensuring that the board's standards are met by license applicants. For example, one applicant with a doctoral degree in education (not psychology) was approved by the National Register as meeting its standards. Montana law, however, requires a doctoral degree in psychology. In another case, an applicant's coursework was reviewed by the board in relation to its minimum standards rule and found to be deficient by the board. When the same education was reviewed by the National Register, it was approved. In both instances, the applicant's education failed to meet the board's standards and Montana law, and in both instances the National Register approved the education.

COMMENT 21: One commenter opposed the elimination of the National Register for qualifications verification and stated that the National Register is widely approved as a method of providing licensure mobility in the United States and Canada, its standards are the foundation of many state licensure laws, it is endorsed as a mobility mechanism in the American Psychological Association Model Act for State Licensure of Psychologists, and its standards have not changed since the board adopted the National Register in the mid-2000s.

RESPONSE 21: The board would direct the commenter to RESPONSE 20, which indicates that in spite of the written expression of its widely approved standards, the National Register's application of its standards has failed to ensure adequate compliance with the board's licensure requirements.

ARM 24.189.2104 – CONTINUING EDUCATION PROGRAM OPTIONS

COMMENT 22: One commenter suggested amending the continuing education rules to require that licensees acquire continuing education hours in trauma and abuse every five or ten years.

RESPONSE 22: This comment does not address any particular change being proposed, but the board is appreciative of all comments. The board notes that such a change would add a burden to all licensees, even if such specific training is not a priority for every licensee. There would also be an administrative cost that is unnecessary since licensees may use their professional judgment to determine whether such training is pertinent to them.

ARM 24.189.2107 – CONTINUING EDUCATION IMPLEMENTATION

COMMENT 23: A commenter was concerned that the audit process did not seem to be random since the commenter has been audited so frequently, and suggested that

the board audit no more than 25 percent of licensees to reduce costs and reflect the rate of noncompliance that occurs.

RESPONSE 23: The board notes that the audit process is random, and that the proposed change is consistent with the statute authorizing boards to audit up to fifty percent of all licensees, annually. The board recognizes that the audit involves cost, which the board will consider when deciding what percentage of licensees to audit. Due to the board's financial predicament, the board chose not to perform an audit of continuing education compliance for 2012.

NEW RULE I – EXEMPTIONS

COMMENT 24: One commenter was unsure of whether the new rule would be protective enough of the public and in-state psychologists or if it would open the "floodgates" to the unlicensed practice of psychology.

RESPONSE 24: The board notes the commenter's concern, but believes its interpretation of the exemptions does not compromise the public's protection.

NEW RULE II – MILITARY TRAINING OR EXPERIENCE

COMMENT 25: A commenter pointed out that certain military personnel (reservists and national guardsmen who have never been activated) do not receive a DD 214 form upon their discharge from the military. It was suggested that the proposed new rule be amended in the final notice to allow the board to consider other evidence of military discharge in addition to or in lieu of a DD 214 form.

RESPONSE 25: The board agrees that the rule needs to be amended to allow for other forms of documentation showing discharge. The board is amending New Rule II accordingly.

4. The board has amended ARM 24.189.401, 24.189.601, 24.189.604, 24.189.607, 24.189.620, 24.189.630, 24.189.633, 24.189.2101, 24.189.2104, and 24.189.2107 exactly as proposed.

5. The board has adopted NEW RULE I (ARM 24.189.602) exactly as proposed.

6. The board has adopted NEW RULE II (ARM 24.189.603) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II MILITARY TRAINING OR EXPERIENCE (1) and (2) remain as proposed.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a psychologist. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

- (a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);
- (b) through (4) remain as proposed.

BOARD OF PSYCHOLOGISTS
GEORGE WATSON, PH.D., CHAIRPERSON

/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