

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
24.189.601 application procedures,	)	ADOPTION
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 May 1, 2014, at 2:00 p.m., a public hearing will be held in the Basement Conference Room, 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 April 24, 2014, 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](mailto: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) and (1)(a) remain the same.
- (b) Active license renewal fee ~~400~~ 600
- (c) through (2) remain 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 increase the active license renewal fee to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with associated costs, including personal services, the litigation of significant legal cases, and updating computer software necessary to do the board's work. In providing administrative services to the board, the department has concluded that unless the renewal fee is increased as proposed, the board will have a shortage of operating funds by the 2014 licensure renewal period. The board estimates that the amendment will affect approximately 235 renewing psychologists and will result in an estimated increase of \$47,000 in annual revenue.

24.189.601 APPLICATION PROCEDURES (1) through (1)(d) remain the same.

(e) An applicant applying under 37-17-302(3)(c), MCA, shall submit an application to the board office. The board office will notify the applicant when the application is complete for purposes of review by the Association of State and Provincial Psychology Boards, and the applicant must then submit the curriculum review fee, which is set by the Association of State and Provincial Psychology Boards, directly to the Association of State and Provincial Psychology Boards. When the Association of State and Provincial Psychology Boards recommendation is received in the board office, the application will be scheduled for board review.

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

(e) a copy of a self-query of the National Practitioner Data Bank; and

(f) completed reference forms from a minimum of five references attesting to the applicant's good moral character; and

(g) if applicable, the Association of State and Provincial Psychology Boards recommendation as to whether the applicant's course of studies meets minimum standards specified in ARM 24.189.604.

(3) through (6) remain the same.

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

IMP: 37-17-302, MCA

REASON: The board has faced a number of challenges to the board's interpretation of its own minimum standards when evaluating psychology programs that are not clinical psychology programs approved by the American Psychological Association. The challenges are expensive to the board, and to applicants and licensees, as well. The board concluded that it is reasonably necessary to amend this rule and ARM 24.189.604 to increase the time and cost efficiency of the application process and introduce additional assurances of objectivity, which will hopefully discourage litigation of future board decisions in this area.

24.189.604 MINIMUM STANDARDS (1) If the applicant is applying based on 37-17-302(3)(c), MCA, the applicant's course of studies must meet the minimum standards specified in this rule. The course of studies must be evaluated by the Association of State and Provincial Psychology Boards. The board shall consider,

but is not bound by, the recommendation of the Association of State and Provincial Psychology Boards when determining whether the course of studies meets minimum standards.

(1) remains the same but is renumbered (2).

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA

IMP: 37-17-302, MCA

REASON: See reason for ARM 24.189.601.

24.189.607 REQUIRED SUPERVISED EXPERIENCE (1) through (1)(c) remain the same.

(i) administering and interpreting psychological tests and providing clients or patients assistance in solving their professional or personal problems for a total of no less than 25 percent of one year (a minimum of 400 hours);

~~(ii) providing clients or patients assistance in solving their professional or personal problems~~ supervising graduate-level practicum for a total of no more than 25 percent of one year (a maximum of 400 hours); and

(iii) designing original research projects, analyzing and reporting research data, and teaching one or more courses in psychology for a total of no more than 50 percent of one year (a maximum of 800 hours) ;

~~(iv) analyzing and reporting research data; and~~

~~(v) teaching a course in psychology.~~

(2) through (4)(b) remain the same.

(c) involve the supervisee providing direct clinical services to clients at least ~~50~~ 25 percent of the time; and

(d) through (13) remain the same.

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

IMP: 37-17-302, MCA

REASON: The board has been requested to reconsider the types of supervised experience and the amount of the various types of experience that individuals are allowed to use toward licensure. The board acknowledges that supervised experience opportunities for those involved in academia or research after receiving their doctoral degrees are limited, and that limitation may be a disincentive for individuals to pursue academic and research-related activities. The board further agrees that this effect will not benefit the profession, professionals, or the public. The board is amending this rule in response to those concerns and as reasonably necessary to accommodate those whose careers begin with an emphasis on academia and research.

24.189.620 LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS (1) through (2)(b)(ii) remain the same.

(c) either:

~~(i) is currently credentialed as a health service provider in psychology by the National Register of Health Service Providers in Psychology; or~~

(ii) holds a current certificate of professional qualification (CPQ) in psychology issued by the Association of State and Provincial Psychology Boards (ASPPB).

(3) remains the same.

(4) Applicants shall submit completed and ~~notarized~~ applications, on forms prescribed by the ~~board~~ department, including all required fees and documentation.

(5) remains the same.

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

IMP: 37-1-304, 37-17-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule to no longer accept credentialing from the National Register of Health Service Providers in Psychology when determining substantial equivalency to Montana standards. The board has received applications from applicants with this credential, and discovered that the credentialing organizations approved academic degrees from psychology programs not meeting the requirements of the board's minimum standards rule, ARM 24.189.604. The board has determined that only a current certificate of professional qualification (CPQ) in psychology issued by the Association of State and Provincial Psychology Boards (ASPPB) will reliably establish substantial equivalency under ARM 24.189.620(1) and meet the requirements of ARM 24.189.604. The board is also amending (4) to facilitate the standardization of application forms and licensure processes within the department.

24.189.630 LICENSURE AS A PSYCHOLOGIST BY EXPERIENCE

(SENIOR) (1) and (1)(a) remain the same.

(b) submits verification of current licensure as a psychologist and at least 20 years of licensure as a psychologist in a United States or Canadian jurisdiction(s). Official ~~written~~ verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);

(c) provides documentation of at least ten years of clinical experience in the last 15 years prior to filing the application. This verification shall be on forms prescribed by the ~~board~~ department, including specific dates, and shall consist of an employer's statement; or verification by two licensed psychologists (if in private practice); or a combination of both;

~~(d) pays any fees required by another jurisdiction(s) to provide official written verification that the licensee has never been disciplined, which will be requested by the Montana board directly from the other state(s) or jurisdiction(s) and from the Association of State and Provincial Psychology Boards national psychologist data bank~~ submits verification of applicant's license discipline history from each United States and Canadian jurisdiction where applicant is or was licensed as a psychologist. Official written verification of such license discipline history must be received by the board directly from each of the other state(s) or jurisdiction(s);

(e) submits a complete, ~~notarized~~ application form with the proper fees at least 90 days in advance of the April or October examination dates. Such application will include work samples and reference letters as described in ARM 24.189.601;

(f) remains the same.

AUTH: 37-17-202, MCA

IMP: 37-17-307, 37-17-310, MCA

REASON: The board is amending (1)(d) to simplify and streamline the out-of-state license verification process for those applying by experience. Currently, board staff contacts other licensure states and the national psychologist association to obtain license verification. Sometimes, the other jurisdiction has not yet received the applicant's fees, and board staff must facilitate a process that depends entirely on the applicant's participation and efforts. The board is further amending this rule to facilitate the standardization of application forms and licensure processes within the department.

24.189.633 TEMPORARY PERMIT (1) through (8) remain the same.

(9) A temporary permit is valid until the ~~person either fails~~ date of the first oral examination for which the person is eligible, following issuance of the permit, ~~or is granted a license, whichever occurs first.~~

(10) and (11) remain the same.

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

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

REASON: Since the 2012 adoption of this rule, the board discovered an error regarding the duration of a temporary practice permit. The rule provides that a temporary permit is valid from issuance until the applicant either fails the first oral examination for which the person is eligible, or until the applicant is granted a license, whichever occurs first. The language is based upon the premise that the permit holder will take the first oral examination for which the person is eligible. Because an argument could be made that a permit holder who does not take the first oral examination for which the person is eligible would neither have failed nor been granted a license, and could continue to have a temporary practice permit, it is reasonably necessary to amend this rule to clarify the board's intent that temporary permits are valid only to the date of the first eligible oral examination.

24.189.2101 CONTINUING EDUCATION REQUIREMENTS (1) through (3) remain the same.

(a) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive psychological issues, psychological skills or laws or rules and ethical standards related to one's role as a psychologist. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the psychologist demonstrates that the activity is substantially related to his or her role as a psychologist. ~~The following are examples of activities that typically do not qualify for continuing education credit:~~

~~(i) management of a professional practice;~~

~~(ii) investments;~~

~~(iii) marketing;~~

- ~~(iv) profitability of the practice;~~
  - ~~(v) office organization;~~
  - ~~(vi) management;~~
  - ~~(vii) legislative issues;~~
  - ~~(viii) peer review;~~
  - ~~(ix) general, nonspecific supervision;~~
  - ~~(x) general staffing; and~~
  - ~~(xi) consultation, except if presented in a study group.~~
- (b) and (c) remain the same.
- (i) full name and qualifications of the ~~presenter~~ presenter;
- (ii) through (d) remain the same.

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

IMP: 37-1-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule and strike the list of activities that generally do not qualify as acceptable continuing education. The board concluded that the list is unnecessary and does not meaningfully contribute to public health, safety, and welfare. The board is amending this rule and ARM 24.189.2104 to provide only those restrictions necessary to guide licensees in choosing continuing education that will increase competency and safe practice while remaining flexible to meet licensee needs.

#### 24.189.2104 CONTINUING EDUCATION PROGRAM OPTIONS

(1) Acceptable continuing education may be chosen from ~~(a), (b), (c), or (d)~~ below (a) through (e). No more than ~~20~~ 30 of the total continuing education units required can be met by (b) and up to 15 continuing education units can be met by (c).

##### (a) Acceptable continuing education includes:

~~(a)~~ (i) Any American Psychological Association-approved continuing education activity or program for psychologists that meets ARM 24.189.2101(3)(a) through (c) ~~above~~ will qualify for continuing education credit.

(ii) Credit may be given for workshops and other educational activities offered at professional conferences and conventions sponsored by the American Psychological Association and its affiliates if the content of such presentations meets the standards established by ARM 24.189.2101(3)(a) through (c) ~~above~~. General business meetings do not qualify.

(iii) Any other specific activities, i.e. audio tapes or conference/workshops, meeting requirements of ARM 24.189.2101(3)(a) through (c) ~~above~~ will qualify for continuing education credit.

(b) ~~(b)~~ (b) No more than 30 continuing education units meeting the following criteria:

(i) Documentation of successful completion of an advanced credential requiring extensive preparation of work samples, research, oral examination, e.g. ABPP, ~~may be submitted in fulfillment of no more than 20 continuing education units.~~

(ii) Study groups may qualify for continuing education if:

(A) through (C) remain the same.

(D) Minutes are kept of each study group meeting and are available to the Board of Psychologists upon request. The minutes shall include the names of the participants present, the subject matter, and references which relate to any written material utilized. Each such group shall designate an individual to serve as the recorder of the minutes. The name of the recorder shall be noted on the continuing education form.

(iii) Formally organized classes, with preassigned credit and attendance verifiable by transcript, offered under the auspices of regionally accredited institutions of higher education that meet criteria specified in ARM 24.189.2101(3)(a) and (b) ~~above~~.

(iv) The following professional activities that meet criteria specified in ARM 24.189.2101(3)(a) and (b) ~~above~~ may be submitted in fulfillment of no more than ~~ten~~ 30 continuing education units:

(A) through (E) remain the same.

(c) No more than 15 continuing education units of personal growth activities that meet the following criteria:

(i) individual psychotherapy that:

(A) remains the same.

(B) is conducted by a certified or licensed professional.

(C) through (iii)(D) remain the same.

(d) No more than ten continuing education units may be granted for courses relative to the management of a professional practice.

(d) remains the same but is renumbered (e).

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

IMP: 37-1-306, 37-17-202, MCA

REASON: The board determined it is reasonably necessary to amend the allowable continuing education units within different categories to better reflect what the board believes is the the proper balance necessary for continued practitioner competence.

24.189.2107 CONTINUING EDUCATION IMPLEMENTATION (1) through (2)(c) remain the same.

(d) All licensed psychologists must ~~either~~ submit attestation to the board on the appropriate year's license renewal that they have obtained the required continuing education ~~or submit a plan to complete the continuing education credits.~~ The board may randomly audit up to 50 percent of the licensees attesting to continuing education. Certificates of completion or programs for continuing education credits reported must be submitted upon request of the board. ~~The board will review these renewals and, if appropriate, notify the licensee regarding his/her noncompliance. Prior to the next consecutive year's license renewal, those licensees who have not complied with continuing education requirements will be referred to the board screening panel for possible disciplinary action. Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance.~~ Notices of continuing education audit will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing

education plan requirements for licensure can be used to meet the continuing education requirements for the next continuing education reporting period. Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.

(e) remains the same.

~~(f) The board will randomly audit 25 percent of the licensees attesting to continuing education in addition to all licensees requiring a plan. Certificates of completion or programs for continuing education credits reported must be submitted upon request of the board. Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.~~

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-17-202, MCA

REASON: The board is required to raise renewal fees in ARM 24.189.401 to meet its statutory obligation to set and maintain fees commensurate with associated costs of board functions. The board is always trying to reduce costs, as well. Noting a significant cost associated with annually auditing 25 percent of licensees to enforce CE compliance, the board is amending this rule to remove the mandatory audit of a particular number of licensees and to further reduce board costs.

4. The rules proposed to be adopted provide as follows:

NEW RULE I EXEMPTIONS (1) To be exempt from licensure under 37-17-104(1)(b), MCA, "within the confines of the agency or institution" means that the person is providing activities and services limited to the purposes and used only within the confines of the organization. For example, a person may not perform activities and services that, at the time they are performed, include evaluations, assessments, or other activities and services that would produce a report or other record that is intended or anticipated to be admitted into a court proceeding to determine the person's competency or fitness in relation to the person's rights or privileges outside the organization.

(2) For the limited services described in 37-17-104(1)(d), MCA, to be exempt as "consulting" services, including but not limited to services provided via electronic means on behalf of clients located within the state of Montana, the person claiming the exemption must not be a resident of Montana, must be licensed to provide the services in another state or Canadian province, and provide all such activities and services either:

(a) in association with, at the direction of, or upon the recommendation of a licensed Montana psychologist who bears primary responsibility for those activities and services; or

(b) in fulfilling a strictly forensic role as an expert witness and not as a treating psychologist.

(3) To be exempt under 37-17-104(1)(e), MCA, one must have submitted a completed application to the board within 12 months of becoming a Montana resident. Whether someone is a resident of Montana is a question determined by considering all relevant facts, including but not limited to the location of the person's

primary domicile, whether the person has a Montana driver's license, and whether the person is registered to vote or has voted in Montana.

(4) "Qualified" members of other professions under 37-17-104(1)(a) and (2), MCA, for purposes of administering tests and making evaluations or assessments means only those individuals who are licensed by:

(a) the Board of Medical Examiners or the Board of Nursing and whose scope of practice specific to their license includes the administering of psychological tests and the making of evaluations or assessments; or

(b) the Board of Social Work Examiners and Professional Counselors as Licensed Clinical Social Workers and Licensed Clinical Professional Counselors and who meet the qualifications set by that board in compliance with 37-17-104, MCA.

AUTH: 37-1-131, MCA

IMP: 37-17-104, MCA

REASON: The board is frequently asked to determine, based on a given set of facts, whether certain conduct is the practice of psychology, which is generally proscribed in the absence of a license, or if the conduct is permissible under one or more of the exemptions in 37-17-104, MCA. Such requests are time-sensitive and waiting for a board meeting may be inconvenient or even a hardship for the requester. The board determined it is reasonably necessary to adopt this new rule to provide additional guidance as to the board's intention regarding the statutory exemptions, and address the lack of specificity in a statute that excuses certain individuals from licensure under limited circumstances.

The exemption provided in 37-1-104(1)(c), MCA, is a commonly occurring exemption that applies only to those who have applied for Montana licensure, thus the conduct of license applicants is specifically regulated by the board. The application of the remainder of the exemptions is relevant to licensees whose conduct may be subject to discipline based on aiding or abetting the unlicensed practice of psychology, a prohibited act under 37-1-316, MCA. In determining whether certain conduct is prohibited as unlicensed, the board must, at times, determine whether that conduct is exempt from licensure under 37-17-104, MCA. The board must also determine whether certain conduct is exempt from licensure under 37-17-104, MCA, before deciding whether to seek to enjoin such conduct per 37-1-136, MCA.

NEW RULE II MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a psychologist.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(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 evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214);

(b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and

(c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule II to coincide with and further implement the legislation.

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 [dlibspsy@mt.gov](mailto:dlibspsy@mt.gov), and must be received no later than 5:00 p.m., May 9, 2014.

6. An electronic copy of this notice of public hearing is available at [www.psy.mt.gov](http://www.psy.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.

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 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 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](mailto: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, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.401 will significantly and directly impact small businesses and prepared a small business impact analysis regarding this amendment. The group of small businesses likely affected are independently owned and operated psychologist businesses with fewer than 50 full-time employees, and that renew psychologist licensee-employees. The probable significant direct effect is a capital impact on each licensee of the affected small businesses in the amount of \$200 per year for license renewal. The board has no alternative methods through which to increase board revenue other than raising licensure fees.

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

Documentation of the board's above-stated determinations is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or e-mail [dlibspsy@mt.gov](mailto:dlibspsy@mt.gov).

10. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

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 March 31, 2014