

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.216.402 fees, and)
24.216.2103 sanitarian in training)

TO: All Concerned Persons

1. On January 29, 2009, the Board of Sanitarians (board) published MAR Notice No. 24-216-19 regarding the public hearing on the proposed amendment of the above-stated rules, at page 75 of the 2009 Montana Administrative Register, issue no. 2.

2. On February 19, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the February 27, 2009, deadline.

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

COMMENT 1: Several commenters asserted that increasing fees will discourage potential licensees from joining the profession.

RESPONSE 1: When faced with the budgetary shortfall, the board considered several different scenarios for reducing costs and increasing revenue. The board chose to raise fees as proposed so as to not disproportionately impact either new or renewing licensees. The board rejected other proposals that would have placed a greater increase on new applicants.

COMMENT 2: Several commenters stated that the board did not sufficiently explain and justify the need for the fee increase.

RESPONSE 2: The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. The board also reviews a current financial report, including the board's fiscal year income and expenditures to date, at each full board meeting. This fiscal information is publicly available from the board office and is open to public inspection and scrutiny. The board and department fully complied with statutory requirements for the publication and public notice of the administrative rulemaking process.

The board is statutorily required to set and maintain fees that are commensurate with associated costs. Without the additional revenue generated by the proposed fee increase, the board's costs will exceed its revenue, and the board may not be permitted to continue operations.

COMMENT 3: Numerous commenters stated the proposed increase is too large and that sanitarians cannot afford licensing fees anymore.

RESPONSE 3: Because the board is required to set fees commensurate with costs, any lesser increase would have generated too little revenue to cover projected expenses for the biennium. The board notes that the proposed increase will generate only enough revenue to cover the board's actual costs and will not result in excess revenue.

COMMENT 4: Commenters stated this fee increase is proposed too soon after the last increase.

RESPONSE 4: The board last raised fees in response to legislation that increased costs by adding two members to the board. Due to changes in the department's method of allocating costs to boards, each board is now responsible for all expenses actually incurred by that board, rather than just sharing in total department costs.

COMMENT 5: Commenters suggested the board cut costs before raising fees.

RESPONSE 5: All licensing boards are statutorily mandated by 37-1-134, MCA, to set board fees commensurate with the costs of licensure and regulation. The board cannot set fees according to inflation, cost of living, or current salaries of licensees. A fairly constant number of licensees combined with inflationary increases in costs such as rent, supplies, and electricity and a change in the department's method of allocating costs to boards have resulted in the need to increase fees.

The board notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this are the recent shift to using electronic board books instead of paper ones, having some board meetings by telephone conference instead of in-person attendance, and reducing examination expenses.

COMMENT 6: A few commenters stated the increase would make it harder to fill vacant positions, and it is already difficult to find qualified applicants.

RESPONSE 6: The board's purpose is to protect the Montana public by licensing and regulating sanitarians in the state and is required to set and maintain fees that are commensurate with the board's costs. The board notes that only a licensee can practice as a sanitarian in Montana. If cost is the only obstacle to filling vacancies, an agency may need to build the fee increase into the cost of filling the position.

COMMENT 7: A commenter requested that the board create an inactive or retired status license.

RESPONSE 7: The board will consider creating an inactive status license at a future meeting.

COMMENT 8: One commenter suggested disbanding the board and changing the law to require registration with the National Environmental Health Association (NEHA) instead.

RESPONSE 8: The board is an executive branch agency created by the Montana Legislature to protect the public by licensing and regulating sanitarians in the state. The Legislature also enacted the statute that mandates the board fund itself solely through its own licensure fees. Thus, the existence, function, or funding of the board can only be changed through the actions of the Montana Legislature.

If the law required only NEHA registration and the board was disbanded, the state would have no jurisdiction to enforce professional practice by sanitarians. Further, professional associations have entirely different functions than state regulatory agencies. Licensure boards exist to protect the public by licensing and regulating the individual members of a profession. Professional associations are created to promote and advance the professions themselves.

COMMENT 9: A commenter alleged that the services provided by the board are not commensurate with the fees charged.

RESPONSE 9: The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. This checks-and-balances system ensures that fees remain commensurate with costs.

The board also reviews a current financial report, including the board's fiscal year income and expenditures to date and budget projections, at each full board meeting. This fiscal information is publicly available from the board office and is open to public inspection and scrutiny.

COMMENT 10: A commenter stated that the board should do a better job holding sanitarians responsible for their actions.

RESPONSE 10: The board understands the importance of its role in upholding the professional practice of sanitarians. However, the board must rely on its licensees and the public to initiate complaints regarding unprofessional conduct, which the board will then address through the established complaint process.

COMMENT 11: A commenter stated that raising fees may increase the number of sanitarian retirements in Montana.

RESPONSE 11: The board acknowledges an increase in retirements as a possible consequence of higher fees, but is obligated to keep fees commensurate with increasing costs. The board notes that it will consider the possibility of a less costly inactive license status for those contemplating retirement.

4. The board has amended ARM 24.216.402 and 24.216.2103 exactly as proposed.

BOARD OF SANITARIANS
JERRY CORMIER, RS, 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 April 20, 2009