

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
AND THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.101.413 renewal dates and )  
requirements, and the adoption of )  
New Rules I through XIII licensure )  
and regulation of marriage and family )  
therapists )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
ADOPTION

TO: All Concerned Persons

1. On May 5, 2011, at 1:00 p.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 Social Work Examiners and Professional Counselors (board) no later than 5:00 p.m., on April 29, 2011, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdswwpc@mt.gov.

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted Chapter 403, Laws of 2009 (Senate Bill 271), an act providing for the regulation and licensure of marriage and family therapists, and certain exemptions from such licensure. The bill was signed by the Governor on April 28, 2009, and became effective on July 1, 2009. The board determined it is reasonably necessary to adopt New Rules I through XIII to further implement the statutory provisions and set the standards of qualification, education, training, and experience for licensed marriage and family therapists. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

3. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(ak) remain the same.

(al)	Social Workers and Professional Counselors	Professional Counselor - Clinical	Annually	December 31
		Social Worker - Clinical	Annually	December 31
		<u>Marriage and Family Therapist</u>	<u>Annually</u>	<u>December 31</u>

(am) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

4. The board proposes to adopt the following new rules. The proposed new rules provide as follows:

NEW RULE I FEE SCHEDULE FOR MARRIAGE AND FAMILY

<u>THERAPISTS</u> (1) Application/original license fee	\$100
(2) Renewal fee (based on annual renewal)	100
(3) Renewal fee (inactive to active)	100
(4) Temporary permit	50
(5) Additional standardized fees are specified in ARM 24.101.403.	

AUTH: 37-1-134, 37-37-201, MCA

IMP: 37-1-134, 37-1-141, 37-37-201, MCA

REASON: To align with the provisions of Senate Bill 271, the board is proposing New Rule I to set licensure, renewal, and temporary permit fees for marriage and family therapists. Professional and occupational licensing boards are mandated by 37-1-134, MCA, to set and maintain licensure fees commensurate with associated costs. The board estimates that the fees will affect approximately 150 licensees and applicants and result in \$17,500.00 of annual revenue.

NEW RULE II APPLICATION PROCEDURES (1) Any person seeking

licensure must apply on the board's official forms, which may be obtained through the department. All requirements with documentation must be met at the time of application. Incomplete applications will not be considered by the board.

(2) Completed applications must include:

(a) application fee;

(b) verification of the applicant's education via official transcripts provided directly from the school(s) and/or educational institution(s) to the board office; and

(c) three professional or academic reference letters, including one from the applicant's supervisor which shall include:

(i) name of applicant and supervisor, including the supervisor's type of license and number and signature;

(ii) dates and total hours of supervision received and number of supervised hours of clinical contact; and

(iii) recommendation to approve for licensure or not.

(3) Applicants shall be given written notice of examination eligibility or ineligibility.

(4) The license will be effective as of the date all requirements, including payment of the original license fee, are met. An applicant shall not work as a licensed marriage and family therapist until the effective date of the license.

(5) Applicants shall be allowed a maximum of three attempts to successfully pass the examination.

(6) After the third attempt, if the applicant has not achieved a passing score, the applicant must request in writing to the board to retake the examination. The board may require the applicant to complete a preapproved remediation plan prior to additional exam administrations.

(7) If the applicant fails to satisfy the requirements for licensure within one year of the date the application is determined by the department to be complete, the application will expire, the application fee will be forfeited, and a new completed application and application fee will be required.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-37-201, MCA

NEW RULE III LICENSURE REQUIREMENTS (1) Applicants must provide documentation of obtaining a doctoral or master's degree in:

(a) marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE);

(b) marriage and family counseling from a program accredited by the Council for the Accreditation of Counseling and Related Educational Programs (CACREP); or

(c) a closely related field, for example, marriage and family counseling with an educational program consisting of a minimum of 48 semester hours (or 72 quarter hours) that includes at least 36 hours of courses comprised of human development, family development/family dynamics, marriage and family systems/systems theory, marriage and family therapy, ethics in marriage and family therapy, and research in marriage and family therapy; and

(d) in addition, at least nine hours of credit must be earned in actual direct client contact, including at least six semester hours of practicums and three or more semester hours of internship or externship to include a minimum total of 500 direct-client contact hours of which at least 50 percent is with couples or families, and 100 hours of supervision of which at least 75 are in individual supervision with, at most, one other supervisee.

(2) For the purpose of meeting the 3,000 clock-hour requirement of 37-37-201, MCA, an applicant shall provide verification of the following:

(a) up to 500 client contact hours accumulated during the attainment of the graduate degree, with:

(i) supervision of up to 100 hours, using a 5:1 ratio of client contact hours to supervision hours of which at least 75 percent are in individual supervision as described in (1)(d) above; and

(ii) group supervision must consist of no more than six supervisees.

(b) at least 1,000 hours of client contact accumulated after the attainment of the graduate degree and within the last five years, with a minimum of 50 percent of those hours providing services to couples and families and under the supervision of a qualified supervisor, using a 5:1 ratio of client contact hours to supervision hours with:

(i) at least 200 hours of supervision of which at least 75 percent are in individual supervision as defined in (1)(d) above, and of which a minimum of 80 hours is earned with each supervisor; and

(ii) at least 50 percent of supervision must involve raw clinical data, i.e., live observation in the therapy room or through a one-way mirror or live-feed camera, videotape, or audiotape.

(c) the 3,000 hours shall have been completed in their entirety at the time of submission of the application.

(3) An applicant must achieve a passing score on the National Marriage and Family Therapy Licensing Examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB).

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-37-201, MCA

NEW RULE IV TEMPORARY PRACTICE PERMIT (1) An applicant for licensure by examination who has completed the education and experience requirements for a marriage and family therapy license may be granted a temporary permit to practice marriage and family therapy, provided that an application for Montana licensure, supporting credentials, and fees has been submitted to the board.

(2) Except as provided in (3), a temporary permit issued to an applicant who passes the examination remains valid until the license is granted, or for up to one year from the date the temporary permit was granted, whichever is shorter.

(3) A temporary permit expires one year after the date it was issued and may not be renewed.

(4) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice marriage and family therapy, provided the applicant has submitted a completed application as described in [NEW RULE VI], and that the initial screening by board staff shows that the current license is in good standing and not on probation or subject to ongoing disciplinary action. The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first. In the event that neither contingency has occurred within one year of issuance of the temporary permit to the endorsement applicant, the temporary permit shall expire and may not be renewed.

(5) An individual holding a temporary practice permit shall use the title "Licensed Marriage and Family Therapy Candidate."

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-305, 37-37-101, MCA

NEW RULE V APPLICATION TO CONVERT AN ACTIVE STATUS LICENSE TO AN INACTIVE STATUS LICENSE AND CONVERSION FROM INACTIVE TO ACTIVE STATUS (1) A licensee may place a license on inactive status by either indicating on the renewal form that inactive status is desired or by informing the board office in writing that an inactive status is desired. The license must have been active and in good standing prior to the first time it is placed on inactive status. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the inactive license fee annually to maintain license status.

(2) A license shall not be on inactive status for more than five consecutive years. At the end of the fifth year that a license has been on inactive status, the license must be converted to active status. If the license is not converted to active status, the provisions of 37-1-141, MCA, apply to the renewal, lapse, expiration, or termination of the license.

(3) An inactive status license does not entitle the holder to practice as a licensed marriage and family therapist in the state of Montana. Upon application and payment of the appropriate fee, the board may reactivate an inactive license if the applicant does each of the following:

(a) presents satisfactory evidence that the applicant has not been out of active practice for more than five years and that the applicant has attended 20 hours of continuing education per year of inactive status, with a maximum of 40 hours of continuing education, which comply with the continuing education rules of the board and is approved by the board. The continuing education hours must have been acquired within the 24 months immediately preceding application to reactivate; and

(b) submits certification from the marriage and family therapy licensing body of all jurisdictions where the applicant is licensed or has practiced; that the applicant is in good standing and has not had any disciplinary action taken against the applicant's license; or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status including the extent of the disciplinary treatment imposed.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-319, 37-37-101, MCA

NEW RULE VI LICENSURE OF OUT-OF-STATE APPLICANTS (1) A license to practice as a licensed marriage and family therapist in the state of Montana may be issued to the holder of an out-of-state marriage and family therapist license, provided the applicant completes, and files with the board, an application for licensure and the required application fee. The candidate must meet the following requirements:

(a) the candidate has held a valid and unrestricted license as a licensed marriage and family therapist in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s); or

(b) for applications received before July 1, 2011, the candidate is a clinical member of the American Association of Marriage and Family Therapists (AAMFT) in good standing.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-1-304, 37-37-201, MCA

NEW RULE VII RENEWALS (1) Renewal notices will be sent as specified in ARM 24.101.414.

(2) Marriage and family therapy licenses must be renewed on or before the date set by ARM 24.101.413.

(3) The provisions of ARM 24.101.408 apply.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-1-141, MCA

NEW RULE VIII CODE OF ETHICS - LICENSED MARRIAGE AND FAMILY THERAPISTS (1) Pursuant to 37-22-201 and 37-23-103, MCA, the board adopts the following professional and ethical standards for licensed professional counselors, licensed social workers, and licensed marriage and family therapists to ensure the ethical, qualified, and professional practice of social work, professional counseling, and marriage and family therapy for the protection of the general public. These standards supplement current applicable statutes and rules of the board. A violation of the following is considered unprofessional conduct as set forth elsewhere in rule, and may subject the licensee to such penalties and sanctions provided in 37-1-136, MCA.

(2) A licensed marriage and family therapist shall abide by the following code of professional ethics.

(a) Licensees shall not:

(i) commit fraud or misrepresent services performed;

(ii) divide a fee or accept or give anything of value for receiving or making a referral;

(iii) violate a position of trust by knowingly committing any act detrimental to a client;

(iv) exploit in any manner the professional relationships with clients or former clients, supervisees, supervisors, students, employees, or research participants;

(v) engage in or solicit sexual relations with a client or commit an act of sexual misconduct or a sexual offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(vi) condone or engage in sexual harassment. Sexual harassment is defined as: "deliberate or refuted comments, gestures, or physical contact of a sexual nature that are unwelcome by the recipient";

(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age, or national origin;

(viii) provide professional services while under the influence of alcohol or other mind-altering or mood-altering drugs which impair delivery of services; or

- (ix) engage in any advertising which is in any way fraudulent, false, deceptive, or misleading.
- (b) All licensees shall:
  - (i) provide clients with accurate and complete information regarding the extent and nature of the services available to them;
  - (ii) terminate services and professional relationships with clients when such services and relationships are no longer required or where a conflict of interest exists;
  - (iii) make every effort to keep scheduled appointments;
  - (iv) notify clients promptly and seek the transfer, referral, or continuation of services pursuant to the client's needs and preferences if termination or interruption of services is anticipated;
  - (v) attempt to make appropriate referrals pursuant to the client's needs;
  - (vi) obtain informed written consent of the client or the client's legal guardian prior to the client's involvement in any research project of the licensee that might identify the client or place them at risk;
  - (vii) obtain informed written consent of the client or the client's legal guardian prior to taping, recording, or permitting third-party observation of the client's activities that might identify the client or place them at risk;
  - (viii) safeguard information provided by clients. Except where required by law or court order, a licensee shall obtain the client's informed written consent prior to releasing confidential information; and
  - (ix) disclose to and obtain written acknowledgement from the client or prospective client as to the fee to be charged for professional services, and/or the basis upon which the fee will be calculated.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-136, 37-1-316, 37-22-201, 37-37-101, MCA

NEW RULE IX HOURS, CREDITS, AND CARRY OVER (1) Each marriage and family therapist licensee shall earn 20 clock hours of accredited continuing marriage and family therapy education for each year. Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) A maximum of ten clock hours may be given for the first-time preparation of a new course, in-service training workshop, or seminar which is related to the enhancement of marriage and family therapy practice, values, skills, and knowledge; or a maximum of ten clock hours credit may be given for the preparation by the author or authors of a professional marriage and family therapy paper published for the first time in a recognized professional journal, or given for the first time at a statewide or national professional meeting.

(3) If a licensee completed more than 20 hours of continuing education, excess hours in an amount not to exceed 20 hours may be carried forward to the next year.

(4) Any licensee may apply for an exemption from the continuing marriage and family therapy education requirements of these rules by filing a statement with the board setting forth good faith reasons why he or she is unable to comply with these rules, and an exemption may be granted by the board.

(5) Marriage and family therapy applicants licensed before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those licensed after July 1 are required to obtain one-half of the 20-hour requirement; and those licensed after October 1 will not be required to obtain continuing education credits for renewal.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA  
IMP: 37-1-131, 37-1-306, 37-37-101, MCA

NEW RULE X ACCREDITATION AND STANDARDS (1) The following standards shall govern the approval of continuing marriage and family therapy education activities by the board:

(a) they shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional competence as a marriage and family therapist; and

(b) they shall constitute an organized program of learning, dealing with matters directly related to the practice of marriage and family therapy, professional responsibility, or ethical obligations of marriage and family therapists.

(2) Providers of continuing marriage and family therapy education shall apply to the board for accreditation and demonstrate that the offered course complies with the standards.

(3) The board, in its discretion, may determine the number of hours acceptable for any continuing education credit.

(4) Licensees and course providers may inquire in advance of continuing education activity for board accreditation.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA  
IMP: 37-1-131, 37-1-306, 37-37-101, MCA

NEW RULE XI REPORTING REQUIREMENTS (1) Each licensee shall attest to completion of the licensee's continuing education requirements prior to renewal.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA  
IMP: 37-1-131, 37-1-306, 37-37-101, MCA

NEW RULE XII CONTINUING EDUCATION NONCOMPLIANCE

(1) In the event that a licensed marriage and family therapist fails to comply with these continuing education rules in any respect, the board shall promptly send a notice of noncompliance. The notice shall specify the nature of the noncompliance and state that unless the noncompliance is corrected or a request for a hearing before the board is made within 60 days, the statement of noncompliance shall be considered grounds for suspension or revocation.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-22-201, MCA  
IMP: 37-1-131, 37-1-136, 37-1-306, 37-1-316, 37-37-101, MCA

NEW RULE XIII UNPROFESSIONAL CONDUCT FOR MARRIAGE AND FAMILY THERAPISTS (1) Any violation of this rule constitutes unprofessional conduct.

- (2) A licensee shall not:
- (a) misrepresent the type or status of license held by the licensee;
  - (b) intentionally cause physical or emotional harm to a client;
  - (c) misrepresent or permit the misrepresentation of his or her professional qualifications, affiliations, or purposes;
  - (d) have sexual relations with a client, solicit sexual relations with a client, or to commit an act of sexual misconduct or a sexual offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;
  - (e) engage in sexual acts with a client or with a person who has been a client within the past 18 months. A licensee shall not provide marriage and family therapy services to a person with whom the licensee has had a sexual relation at any time;
  - (f) engage in sexual contact or a romantic relationship with current clients;
  - (g) engage in sexual contact with a former client. The licensee who engages in such activity following termination of professional services, bears the burden of demonstrating that there has been no exploitation in light of all relevant factors, including:
    - (i) the amount of time that has passed since professional services terminated;
    - (ii) the nature and duration of the professional services;
    - (iii) the circumstances of termination;
    - (iv) the client's personal history;
    - (v) the client's current mental status;
    - (vi) the likelihood of adverse impact on the client; and
    - (vii) any statements or actions made by the licensee during the defined professional relationship, suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.
  - (h) perform or hold himself or herself out as able to perform professional services beyond his or her field or fields of competence as established by his or her education, training, and/or experience;
  - (i) permit a person under his or her supervision or control to perform or permit such person to hold himself or herself out as competent to perform professional services beyond the level of education, training, and/or experience of that person;
  - (j) prior to the commencement of treatment, fail to disclose to the counselee or prospective counselee the fee to be charged for the professional services or the basis upon which such fee will be computed;
  - (k) engage in a dual relationship with a client or former client if the dual relationship has the potential to compromise the client's well-being, impair the licensee's objectivity and professional judgment, or create or increase the risk of exploitation of the client. If a dual relationship arises as a result of unforeseeable and unavoidable circumstances, the licensee shall promptly take appropriate professional precautions. Appropriate professional precautions must ensure that the client's well-being is not compromised and that no exploitation occurs, and should

include consultation, supervision, documentation, or obtaining written informed consent of the client;

(l) participate in bartering, unless bartering is considered to be essential for the provision of services negotiated without coercion and entered into at the client's initiative and with the client's informed consent. Licensees who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship; or

(m) falsify or misrepresent a record of supervision submitted in connection with an application for licensure.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-136, 37-1-316, 37-37-101, MCA

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 Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdswwpc@mt.gov](mailto:dlibsdswwpc@mt.gov), and must be received no later than 5:00 p.m., May 13, 2011.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at [www.swpc.mt.gov](http://www.swpc.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 Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdswwpc@mt.gov](mailto:dlibsdswwpc@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 sponsor was contacted on July 23, 2009, by electronic mail.

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
LINDA CRUMMETT, LCSW, PRESIDENT

/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 4, 2011