

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.225.401 fee schedule,)	PROPOSED AMENDMENT AND
24.225.501, 24.225.503, 24.225.504,)	ADOPTION
24.225.507, and 24.225.511)	
pertaining to veterinarian licensure,)	
24.225.704 and 24.225.709)	
pertaining to embryo transfer,)	
24.225.904, 24.225.910, 24.225.920,)	
and 24.225.930 pertaining to)	
euthanasia technicians and agencies,)	
and the adoption of NEW RULE I)	
pertaining to continuing education)	
providers)	

TO: All Concerned Persons

1. On October 1, 2009, at 10:30 a.m., a public hearing will be held in room 439, 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 Veterinary Medicine (board) no later than 5:00 p.m., on September 25, 2009, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 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 dlibsdrvvet@mt.gov.

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

24.225.401 FEE SCHEDULE
 (1) through (4) remain the same.
(5) All fees are nonrefundable.

AUTH: 37-1-134, 37-18-202, 37-18-603, MCA
 IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-18-302, 37-18-603, MCA

REASON: The board determined it is reasonably necessary to amend this rule and clarify the department policy that fees are not refundable in response to numerous

requests to withdraw applications and receive fee refunds. This amendment will reduce the number of these requests and staff time needed to field the requests.

24.225.501 TEMPORARY PERMITS (1) and (2) remain the same.

(3) The responsibility for the standard of care provided by a temporary licensee ~~employee~~ remains with the supervising veterinarian.

(4) remains the same.

AUTH: 37-1-319, 37-18-202, MCA

IMP: 37-1-305, MCA

REASON: The board is amending this rule to eliminate redundancy and confusion caused by the terminology. Applicants may only be issued a temporary permit if the veterinarian is working under the supervision of a Montana licensed veterinarian, but a temporary permit holder may or may not be an employee for federal tax or other purposes.

24.225.503 EXAMINATION APPLICATION REQUIREMENTS

(1) Applicants for licensure by examination in the state of Montana shall submit a completed application with the proper fee and supporting documents to the board office. ~~Every year, applicants~~ Applicants for the North American Veterinary Licensing Examination (NAVLE) wishing to sit as a Montana candidate shall submit the Montana state licensure application to the board no later than August 1 for the fall NAVLE administration or January 3 for the spring NAVLE administration. Montana NAVLE candidates shall submit the NAVLE application and fee directly to the National Board of Veterinary Medical Examiners. Supporting documents for the Montana state licensure application must include:

(a) and (b) remain the same.

(c) if applicable, official written verification of licensure in any profession from any state of licensure past or present; ~~and~~

(d) the candidate's work history of all employment concurrent as well as consecutive starting at the date of application and working back to graduation; and

(e) good moral character attestations from three veterinarians.

(2) remains the same.

(a) pass the NAVLE at or above the designated passing standard established by the national examination entity as approved by the board within 62 months; ~~or~~ and

~~(b) have passed the National Board Examination and the Clinical Competency Test within 62 months with a converted score of 70 or greater and have their scores reported to the board office through the official score reporting agency; and~~

~~(c)~~ (b) pass the board's jurisprudence exam with a score of ~~70~~ 90 percent or greater. If the candidate fails the jurisprudence exam twice, the candidate must appear before the board prior to taking it a third time.

(3) Foreign veterinary school graduates from a school not accredited by the AVMA Council on Education shall either have completed the requirements of the American Veterinary Medical Association's Education Commission for Foreign

Veterinary Graduates (ECFVG) as evidenced by a copy of the ECFVG certificate, or must have completed the requirements of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as evidenced by a copy of the PAVE certificate before an application will be accepted.

(a) and (4) remain the same.

AUTH: 37-1-131, 37-18-202, MCA

IMP: 37-1-131, 37-18-302, MCA

REASON: The board is amending this rule to specify that applicants must submit licensure verifications for licenses held in any profession, not just veterinary medicine. The board believes that it is essential for public protection to know of all discipline taken against any license held by an applicant. This amendment aligns board licensure information with the department's standardized renewal application that requires disclosure of all professional licenses.

During an analysis of the board's business processes, it was discovered that 37-18-302, MCA, requires satisfactory evidence of an applicant's good moral character, but no rule outlined the requirement. The board is amending this rule to require attestations from three veterinarians to implement the statutory requirement.

The board is striking the provision that allowed applicants to pass the National Board Examination and the Clinical Competency Test in lieu of the NAVLE exam. The board is amending the rule to reflect that these examinations have not been offered since 2000 and are no longer available.

The board is amending this rule to increase the minimum passing score on the board's jurisprudence exam from 70 to 90 percent. This exam is now an online exam done in open book format and the board determined it is reasonable to require a higher passing score to test an applicant's knowledge of the laws and rules.

The AVMA Council on Education has now begun to accredit foreign schools. The board is amending (3) to clarify that an education equivalency evaluation is required only for graduates of any non-AVMA accredited schools.

24.225.504 EXAMINATION FOR LICENSURE (1) ~~The~~ After 2000, the examination for licensure as a veterinarian shall consist of:

~~(a) the National Board Examination and the Clinical Competency Test pursuant to the requirements set forth in ARM 24.225.503, which must have been passed with a converted score of 70 or greater. The scores must be received by the board from the official score reporting agency; or~~

(b) remains the same but is renumbered (a).

~~(c)~~ (b) a jurisprudence examination as composed ~~and corrected~~ by the board, which measures the competence of the applicant regarding the statutes and rules governing the practice of veterinary medicine in Montana. The jurisprudence examination must be passed with a score of ~~70~~ 90 percent or greater.

(2) A candidate may not sit for the NAVLE more than five times and may not sit for the examination at a date that is later than five years after a candidate's initial attempt. Each of the final two attempts must be at least one year from the previous attempt. Any previous attempts by a candidate to pass the NAVLE, prior to the fall 2007 administration of the examination, will not count towards the five attempt limit.

~~(2)~~ (3) Any applicant who has failed the jurisprudence examination may apply to be reexamined at a subsequent examination ~~but may not retake the examination for six months.~~

AUTH: 37-1-131, 37-18-202, MCA

IMP: 37-1-131, 37-18-302, 37-18-303, MCA

REASON: The board is striking the provision that allowed applicants to pass the National Board Examination and the Clinical Competency Test in lieu of the NAVLE exam. The board is amending the rule to reflect that these examinations have not been offered since 2000 and are no longer available.

It is reasonable and necessary to amend this rule to clarify that since the jurisprudence exams are taken online, they are corrected by staff and not by the board itself.

The board is amending this rule to increase the minimum passing score on the board's jurisprudence exam from 70 to 90 percent. This exam is now an online exam done in open book format and the board determined it is reasonable to require a higher passing score to test an applicant's knowledge of the laws and rules.

The board is also amending this rule to comply with NAVLE's national effort to better protect the NAVLE examination from compromise and to help assure the exam's integrity by limiting candidates to sitting for the exam five times.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.225.507 LICENSURE ENDORSEMENT OF OUT-OF-STATE

APPLICANTS (1) remains the same.

(a) The candidate has graduated from and holds a degree from a school of veterinary medicine accredited or approved by the American Veterinary Medical Association Council on Education as evidenced by a certified copy of the transcript sent directly from the veterinary school. Graduates of foreign veterinary schools not approved by the AVMA Council on Education shall have completed the requirements of the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates (ECFVG) or the Program for the Assessment of Veterinary Education Equivalence (PAVE).

(b) through (d) remain the same.

(e) The candidate provides three good moral character attestations from veterinarians.

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

(f) (g) The candidate has passed a jurisprudence examination prepared to measure the competence of the applicant regarding the statutes and rules governing the practice of veterinary medicine in Montana with a score of ~~70~~ 90 percent or greater. If the candidate fails the jurisprudence examination twice, the candidate must appear before the board prior to taking it a third time.

(2) remains the same.

AUTH: 37-1-131, 37-18-202, MCA

IMP: 37-1-304, 37-18-302, MCA

REASON: The AVMA Council on Education has now begun to accredit foreign schools. The board is amending this rule to clarify that an education equivalency evaluation is required only for graduates of any non-AVMA accredited schools.

During an analysis of the board's business processes, it was discovered that 37-18-302, MCA, requires satisfactory evidence of an applicant's good moral character, but no rule outlined the requirement. The board is amending this rule to require attestations from three veterinarians to implement the statutory requirement.

The board is amending this rule to increase the minimum passing score on the board's jurisprudence exam from 70 to 90 percent. This exam is now an online exam done in open book format and the board determined it is reasonable to require a higher passing score to test an applicant's knowledge of the laws and rules.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.225.511 CONTINUING EDUCATION (1) through (1)(a)(i)(F) remain the same.

(b) A veterinarian may be granted a grace period of three months after the deadline set by ARM 24.101.413 in which to fulfill the continuing education requirements. This grace period shall be granted only upon written request to the board, payment of the renewal fee, and payment of the late penalty fee. A license to practice veterinary medicine valid for the duration of the grace period will be issued to those persons granted a grace period. At the conclusion of the grace period, the veterinarian shall submit proof of CE compliance to the board, prior to the issuance of a full license.

(c) Continuing education ~~credits obtained~~ programs attended during a grace period cannot be used for the next reporting period.

(2) through (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA

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

REASON: The board is amending this rule to specify that a veterinarian granted a continuing education (CE) grace period must submit proof of CE compliance. The board determined that requiring proof of CE prior to issuance of the full license helps ensure that CE is completed and recorded timely, and not used in the next reporting period.

The board is amending (1)(c) to clarify that CE programs attended during a grace period are to be used solely for that reporting period. It is the board's intent that licensees obtain CE on a continual, ongoing basis, and this amendment helps achieve that goal.

24.225.704 APPLICATION REQUIREMENTS AND QUALIFICATIONS FOR CERTIFICATION (1) through (4) remain the same.

(5) An application shall remain active for two years from the date the application is received at the board office. An applicant who, for any reason, fails or

neglects to complete the licensing process within two years shall be required to file another application and submit another application fee.

AUTH: 37-18-202, MCA

IMP: 37-18-104, MCA

REASON: Following an analysis of the boards' business processes, the department recommended that all boards set end dates in rule for the retention of pending application materials. Noting that the department does not maintain incomplete application materials perpetually, and because some materials need updating after a period of time, the board is setting a two year end date for embryo transfer technician applications.

24.225.709 RENEWALS AND CONTINUING EDUCATION (1) through (4) remain the same.

(5) A certificate holder may be granted a grace period of three months after the renewal date set by ARM 24.101.413 in which to fulfill continuing education requirements. This grace period will be granted only upon written request to the board, payment of the renewal fee, and payment of the late penalty fee. A certificate valid for the duration of the grace period will be issued only to a person granted a grace period. At the conclusion of the grace period, verification of CE compliance shall be submitted to the board, prior to the issuance of a full license.

(6) It is the responsibility of the certificate holder to maintain proof of the certificate holder's continuing education attendance. The board will randomly audit two percent of the renewed licensees and all licensees requesting a grace period.

(7) Continuing education ~~credits obtained~~ programs attended during a license year or grace period cannot be used for the next year.

(8) and (9) remain the same.

AUTH: 37-1-319, 37-18-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-18-104, MCA

REASON: The board is amending this rule to specify that embryo transfer technicians granted a continuing education (CE) grace period must submit proof of CE compliance. The board determined that requiring proof of CE prior to issuance of the full license helps ensure that CE is completed and recorded timely and not used in the next reporting period.

The board is amending this rule to specify the random audit standards. These provisions are already in place for veterinarians, but were not previously set forth in rule for embryo transfer technicians.

The board is amending (7) to clarify that CE programs attended during a grace period are to be used solely for that reporting period. It is the board's intent that licensees obtain CE on a continual, ongoing basis, and this amendment helps achieve that goal.

24.225.904 APPLICATION REQUIREMENTS AND QUALIFICATIONS FOR CERTIFICATION AND ENDORSEMENT AS A CERTIFIED EUTHANASIA TECHNICIAN (1) through (3) remain the same.

(4) An application shall remain active for one year from the date it is received at the board office. An applicant who, for any reason, fails or neglects to complete the licensing process within one year shall be required to file another application and submit another application fee.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

REASON: Following an analysis of the boards' business processes, the department recommended that all boards set end dates in rule for the retention of pending application materials. Noting that the department does not maintain incomplete application materials perpetually, and because some materials need updating after a period of time, the board is setting a one year end date for certified euthanasia technician applications.

24.225.910 CERTIFIED EUTHANASIA TECHNICIAN TEST CRITERIA

(1) and (2) remain the same.

(3) A passing score on the practical test will be determined by the successful completion of hands-on demonstrations which indicate that the applicant has been properly trained in procedures which enable the applicant safely and effectively to perform humane euthanasia with sodium pentobarbital. The practical examination will be graded on a pass/fail basis. The practical test shall be administered by the board approved course provider.

(4) remains the same.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

REASON: The board is amending this rule to specify that only board approved course providers can administer practical tests. It is the board's intent that the instructors also provide the tests in an examination setting, not in a work setting. This amendment will ensure proper test administration.

24.225.920 APPLICATION FOR CERTIFIED EUTHANASIA AGENCIES

(1) through (2)(c) remain the same.

(d) indication of which CET is responsible for all aspects of euthanasia at the agency; and

(e) completed power of attorney form as required by the DEA; and

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

(3) An application will remain active for one year from the date it is received at the board office. An applicant who fails or neglects to complete the licensing process within one year shall be required to file a new application and submit another application fee.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, 37-18-604, MCA

REASON: The board is amending this rule to align its licensing requirements with the federal Drug Enforcement Administration's (DEA) requirement for a completed power of attorney. This amendment is necessary since controlled substances are used in euthanasia facilities and require DEA oversight.

Following an analysis of the boards' business processes, the department recommended that all boards set end dates in rule for the retention of pending application materials. Noting that the department does not maintain incomplete application materials perpetually, and because some materials need updating after a period of time, the board is setting a one year end date for certified euthanasia agency applications.

24.225.930 APPROVED EUTHANASIA DRUGS (1) remains the same.
(2) The following drugs are approved euthanasia restraint drugs:
(a) ace-promazine; and
(b) xylazine.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

REASON: In response to several requests to use restraint drugs to enhance the comfort of animals during euthanasia, the board is amending this rule by adding two restraint drugs. The board determined it is reasonably necessary to allow use of these drugs to make the euthanasia process more humane and after determining that the addition of these drugs will not encourage off-label use or drug diversion.

Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

4. The proposed new rule provides as follows:

NEW RULE I CONTINUING EDUCATION PROVIDERS (1) A veterinarian licensed in another jurisdiction, a faculty member of a school of veterinary medicine, or the holder of a doctor of philosophy in a field of science applicable in any manner to the practice of veterinary medicine who presents a continuing education course approved by the board in Montana, is not considered to be practicing veterinary medicine within the meaning of 37-18-102(d) or (g).

AUTH: 37-1-319, 37-18-202, MCA
IMP: 37-1-131, 37-18-102, MCA

REASON: The board is proposing this new rule to clarify that appropriately trained individuals are competent and able to provide continuing education training to Montana licensed veterinarians in board approved courses. The new rule sets forth the specific individuals that are either licensed elsewhere or adequately trained to provide the CE training without needing a Montana veterinarian license.

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 Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrv@mt.gov, and must be received no later than 5:00 p.m., October 9, 2009.

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.vet.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 Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdrv@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. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF VETERINARY MEDICINE
BRUCE SORENSON, DVM, 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 August 31, 2009