

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to licensee lookup)
database)

TO: All Concerned Persons

1. On January 29, 2009, the Department of Labor and Industry (department) published MAR Notice No. 24-101-203 regarding the public hearing on the proposed adoption of the above-stated rule, at page 61 of the 2009 Montana Administrative Register, issue no. 2.

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

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

COMMENT 1: Two commenters questioned how long a licensee's discipline will be posted on the licensee lookup system.

RESPONSE 1: Senate Bill 453, as implemented through New Rule I, did not provide for any time limitation on the posting of final disciplinary actions against licensees. Therefore, the public posting of final discipline will be perpetual.

COMMENT 2: One commenter stated that posting all discipline forever is unfair. The commenter suggested the department limit indefinite posting for health and safety infractions, and post other discipline only until a licensee makes the necessary corrections.

RESPONSE 2: Senate Bill 453, as implemented through New Rule I, did not differentiate between types of violations or levels of severity in disciplinary actions to be included in licensee lookup. Therefore, all disciplinary actions will be publicly posted pursuant to the statutory requirements of 37-1-311 and 37-1-405, MCA.

COMMENT 3: One commenter opposed the new rule and stated that it duplicates what is currently in place. The commenter stated that posting discipline creates a hardship to those wrongly accused and allows people doing internet searches to find a "conviction without due process."

RESPONSE 3: Senate Bill 453 required the department to report certain final disciplinary actions to the public and do so via a publicly available web site. New Rule I further implements the legislation to accomplish the statutory intent. No final

orders will be placed on licensee lookup prior to completion of administrative due process.

COMMENT 4: One commenter suggested amending the new rule to require that the beginning and end dates of a licensee's discipline are included on licensee lookup.

RESPONSE 4: The updated licensee lookup system will provide a link between the licensee and the actual final disciplinary documents issued in a specific case. Individuals will be able to read the final documents themselves to determine dates of licensee discipline.

COMMENT 5: A commenter questioned how the discipline posting would work when a licensee holds more than one license.

RESPONSE 5: The updated licensee lookup system will link final disciplinary documents to the appropriate license or licenses.

COMMENT 6: A commenter asked how posting would be accomplished if a board decision went to a department contested case hearing or was appealed to district court.

RESPONSE 6: The final disciplinary documents will not be posted on licensee lookup until the board or departmental program has issued a final order in a particular case regardless of whether the licensee seeks judicial review. If a case is later reversed on appeal, the department would then remove the discipline and the related documents from licensee lookup.

COMMENT 7: One commenter asked that her discipline be removed from licensee lookup.

RESPONSE 7: Disciplinary actions are reported and maintained indefinitely; therefore, the department is unable to grant the commenter's request.

COMMENT 8: A commenter suggested omitting from licensee lookup those licensees with single nonsevere offenses who complied with all disciplinary requirements and didn't reoffend. The commenter recommended licensee lookup only for those with severe offenses or those who reoffend.

RESPONSE 8: Senate Bill 453, as implemented through New Rule I, did not differentiate between types or number of violations or levels of severity in disciplinary actions to be included in licensee lookup. Therefore, all disciplinary actions will be publicly posted pursuant to the statutory requirements of 37-1-311 and 37-1-405, MCA.

COMMENT 9: A few commenters stated that the current language on licensee lookup is misleading and requested that the department provide complete information on the nature and timing of the discipline.

RESPONSE 9: The updated licensee lookup system will provide a link between the licensee and the actual final disciplinary documents issued in a specific case. Individuals will be able to read the final documents themselves to determine the nature and timing of licensee discipline. The department anticipates that the language in question will be modified or eliminated.

COMMENT 10: One commenter suggested amending the new rule to reference the definition of "disciplinary action" in ARM 24.101.402, or placing the new rule close to the definitions rule.

RESPONSE 10: The department intends to locate New Rule I in the same vicinity as ARM 24.101.402, the definitions rule.

COMMENT 11: A commenter suggested amending New Rule I to clarify what is meant in 37-1-311 and 37-1-405, MCA, by posting discipline within "a reasonable amount of time." The commenter also suggested adding a deadline for when such discipline has to be posted online.

RESPONSE 11: The fact that a licensee has an action pending before a board will be noted on the licensee lookup and the public can contact the applicable board or program for additional information. Final disciplinary documents will not be posted on licensee lookup until the board or program has issued a final order in a particular case. Because there is no way to predict when each case will be resolved and a final order issued, it is not feasible to set a deadline for posting updated information.

4. The department has adopted NEW RULE I (24.101.404) exactly as proposed.

/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 July 6, 2009