

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the end of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC  
adoption of new rules I through ) HEARING ON PROPOSED  
III pertaining to implementation ) ADOPTION  
of detention officer transfer to )  
sheriffs' retirement system )

TO: All Concerned Persons

1. On June 2, 2005, at 10:00 a.m. a public hearing will be held in the board room at 100 North Park Avenue, Suite 200 of the Montana Public Employee Retirement Administration building at Helena, Montana, to consider the proposed adoption of rules for members of the Public Employees' and Sheriffs' Retirement Systems pertaining to a Public Employees' Retirement System member transferring membership service and service credit to the Sheriff's Retirement System, criteria for detention officer membership in the Sheriffs' Retirement System, and reporting requirements for sheriffs' department employees.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on May 26, 2005, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@mt.gov.

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

RULE I DETENTION OFFICER MEMBERSHIP IN SHERIFFS' RETIREMENT SYSTEM (SRS) (1) An active PERS member on July 1, 2005 is eligible to become a member of the SRS, and an employee hired by a sheriff after July 1, 2005, must become a member of the SRS, pursuant to Title 19, chapter 7, part 3, MCA, if the member or employee meets the definition of "detention officer" in 19-7-101(2), MCA, which includes:

(a) being employed in a detention center (a detention center does not include a temporary detention center, a detention facility or juvenile detention center);

(b) having authority and responsibility for maintaining custody of an inmate for any period of time and who performs tasks related to the operation of a detention center; and

(c) completing, within their first year of initial employment, a detention officers' basic course as provided by the Montana law enforcement academy or equivalent training in a training school meeting the minimum standards of the board of

crime control, as required by ARM 23.14.526, pursuant to 44-4-301, MCA.

(2) An employee hired by a sheriff after July 1, 2005, who meets all the criteria to be a detention officer except completion of training must be an SRS member from the first day of employment or, if later, the first day all criteria except completion of training are met.

(3) An SRS member who does not complete timely the training specified in (1)(c) will be considered to be a member of PERS from one year after initial employment as a detention officer until training is completed. The member's membership service and service credit, and all contributions, will be adjusted as necessary. Otherwise, an employee who becomes a member of the SRS remains a member of the SRS until the member is no longer employed by the sheriff in a detention center.

(4) A juvenile detention officer is not a detention officer unless the juvenile detention officer meets the definition of a detention officer.

AUTH: 19-2-403, MCA

IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule is necessary to incorporate the appropriate portions of Title 44, MCA, and the Board of Crime Control administrative rule concerning training required for a detention officer basic certification into the definition of detention officer. Because the definition of detention officer doesn't require that training be received, but only that it be expected, and the Board of Crime Control rule requires that it be received within one year of initial employment as a detention officer, the rule clarifies the disposition of those for whom training is expected, but who do not receive the training within the amount of time required by the Board of Crime Control rule.

RULE II DETENTION OFFICER ELECTION TO TRANSFER TO SHERIFFS' RETIREMENT SYSTEM (SRS) (1) An active PERS member who, on July 1, 2005, meets all the criteria to be a detention officer may make an election to become a member of SRS.

(2) To be an effective election, the written election form prescribed by the board, containing all the required information and including all necessary documentation, must be properly signed and must be filed with the board between July 1, 2005, and April 30, 2006, inclusive.

(3) A written election received by the board by the 15th day of a calendar month will be effective the first pay period of the following calendar month. A written election received by the board after the 15th day of a calendar month will be effective the first pay period of the second following calendar month.

(4) A detention officer who becomes a member of the SRS has not terminated from service and is not eligible to receive any benefit from PERS until termination of employment.

AUTH: 19-2-403, MCA  
IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule is necessary to clarify the election procedure, particularly the time administratively necessary between notification of the Montana Public Employee Retirement Administration and the effective date, for purposes of reporting by the local sheriff's office. The rule also clarifies the effect of the election, in conformance with federal law requirements known informally as "the same desk rule" (as applied here, an employee who continues in employment but changes retirement systems has not terminated service for purposes of eligibility).

RULE III DETENTION CENTER REPORTS FROM SHERIFFS (1) The sheriff of each county with a detention center must file a quarterly employer payroll report with the board.

(2) The payroll report will include information necessary for the board to determine the appropriate retirement system for all employees of a detention center, including:

(a) each employee's name, social security number, retirement system and date of initial employment in the employee's current position;

(b) whether the employee is a sheriff, as defined in 19-7-101, MCA;

(c) whether the employee had any authority and responsibility for maintaining custody of an inmate for any period of time in this or any prior reporting period since July 1, 2005;

(d) whether the employee performs tasks related to the operation of the detention center; and

(e) whether the employee has completed a detention officers' basic course or equivalent training at a training school meeting the minimum standards of the board of crime control or is expected to receive such training within one year of initial employment.

(3) Payment of the detention center payroll contributions will be considered delinquent pursuant to 19-2-506, MCA, until both the required contributions and valid payroll reports are received by the board.

AUTH: 19-2-403, MCA  
IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule requires a report from each sheriff's department with a detention center necessary for the Board in classifying the detention center employees who are eligible for membership in the Sheriffs' Retirement System. The report will provide the information on each employee necessary to classify the employee.

4. 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 Mike O'Connor,

Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than June 10, 2005.

5. Carolyn Miller, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana 59620-0131 has been designated to preside over and conduct the hearing.

6. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to cmiller@mt.gov, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Carole Carey

Carole Carey, Acting President  
Public Employees' Retirement Board

/s/ Kelly Jenkins

Kelly Jenkins, General Counsel and  
Rule Reviewer

/s/ Dal Smilie

Dal Smilie, Chief Legal Counsel and  
Rule Reviewer

Certified to the Secretary of State on May 2, 2005.

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

In the matter of the proposed ) NOTICE OF PUBLIC  
amendment of ARM 24.189.601 ) HEARING ON PROPOSED  
application procedures, and ) AMENDMENT  
ARM 24.189.620 licensees from other )  
states or Canadian jurisdictions )

TO: All Concerned Persons

1. On June 2, 2005, at 10:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment 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 no later than 5:00 p.m., on May 26, 2005 to advise us of the nature of the accommodation 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.

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

24.189.601 APPLICATION PROCEDURES (1) and (1)(a) remain the same.

(b) Completed applications shall be delivered to the department, accompanied by the application fee, at least 90 days in advance of the examination dates.

(c) remains the same.

(2) A completed application file consists of the following:

(a) a completed and notarized application form; i

(b) transcripts of all graduate work completed; i

(c) program and course descriptions from the official college catalog(s); i

(d) three work samples; and i

(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. An application file must be complete at least 90 days in advance of the examination dates.

(a) and (b) remain the same but are renumbered (3) and (4).

(3) through (5) remain the same but are renumbered (5) through (7).

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

REASON: The Board determined it is reasonably necessary to amend ARM 24.189.601 to require that license applicants query the National Practitioner Data Bank and submit to the Board a copy of the query record with the application materials. The Board has determined that it is reasonable and necessary to verify the disciplinary status of applicants as compiled from reports submitted by other states, insurance companies, hospitals and other entities that are required to report to this national clearinghouse for healthcare integrity and protection to further protect the Montana public. Grammatical and organizational changes are proposed to provide a clearer, more user-friendly format.

24.189.620 LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS (1) ~~When a person applies for licensure under this provision, the board shall obtain information from the other state(s) or Canadian jurisdiction(s), and determine whether the requirements in place at the time of obtaining such other license(s) or certificate(s) were substantially equivalent to the current requirements of Montana law. Except as provided in (2), applicants licensed in another state or Canadian jurisdiction and seeking licensure under this rule shall provide information for the board to consider in determining whether the qualifications of the applicant are substantially equivalent to or greater than the current requirements of the state of Montana and whether to waive the written examination requirement. Applicants shall provide information regarding:~~

(a) the licensure requirements of such state or jurisdiction in place at the time the applicant obtained the license or certificate;

(b) a copy of a self-query of the national practitioner data bank;

(c) the composition and requirements of the applicant's prior licensing examination(s); and

(d) any additional information the board may require.

~~(2) Persons seeking a license on the basis of having been examined and then issued a license by another state or Canadian jurisdiction shall submit to the board information concerning the nature of the prior examination with their completed application forms. The information shall be evaluated by the board, which may request additional information before making a decision to waive the written examination. The qualifications of the candidate must be verified by the board as at least substantially equivalent to the current requirements of the state of Montana. An applicant will be deemed to have met the substantial equivalency requirements of (1) if the applicant:~~



(a) provides the board with a copy of the response to the applicant's self-query of the national practitioner data bank;

(b) has obtained a minimum required national examination score of either:

(i) a scaled score of 500 on the national computerized examination; or

(ii) a 70% on the national written examination previously administered by the board; and

(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 (CPO) in psychology issued by the association of state and provincial psychology boards (ASPPB).

(3) "License" or "certificate" is interpreted to mean only means those granted by other states or Canadian jurisdictions under statutory provision.

(4) Applicants shall submit completed and notarized application form shall be required from the applicant to initiate consideration for licensing applications, on forms prescribed by the board, including all required fees and documentation.

(5) All candidates applicants for licensure under this rule shall be required to pass an oral examination.

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

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

REASON: The Board has determined that it is reasonable and necessary to facilitate the mobility of licensed psychologists between jurisdictions. This amendment will allow the Board to accept the two national credentials recently implemented to provide an accurate repository of psychologists' licensure information. Applicants from other states or Canadian jurisdictions will be able to submit either credential specified in the rule to meet the substantial equivalence requirement for licensure. Acceptance of these national credentials will reduce staff time spent gathering licensure documents and will likely increase clients' access to psychological services across jurisdictions.

The Board decided to amend the rule to require that license applicants query the National Practitioner Data Bank and submit to the Board a copy of the query record with the application materials. The Board has determined that it is reasonable and necessary to verify the disciplinary status of applicants as compiled from reports submitted by other states, insurance companies, hospitals and other entities that are required to report to this national clearinghouse for healthcare integrity and protection to further protect the Montana public. Grammatical and organizational changes are proposed to provide a clearer, more user-friendly format.

4. Concerned persons may present their data, views or arguments concerning these proposed amendments in writing 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) to be received no later than 5:00 p.m., June 10, 2005.

5. 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.healthcarelicense.mt.gov](http://www.healthcarelicense.mt.gov) under the Board of Psychologists rule notice section. 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, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

6. The Board of Psychologists 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 and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Psychologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed 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 may be made by completing a request form at any rules hearing held by the Department.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS  
JAY PALMATIER, PhD, CHAIRPERSON

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State May 2, 2005.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the )  
amendment of ARM 37.86.1004 )  
and 37.86.1006 pertaining to )  
medicaid dental reimbursement )  
and coverage )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On June 2, 2005, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 23, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.1004 REIMBURSEMENT METHODOLOGY FOR SOURCE BASED RELATIVE VALUE FOR DENTISTS (1) For procedures listed in the relative values for dentists scale, reimbursement rates shall be determined using the following methodology:

(a) The fee for a covered service shall be the amount determined by multiplying the relative value unit specified in the relative values for dentists scale by the conversion factor specified in (1)(b) or (c). The department ~~hereby~~ adopts and incorporates by reference the relative values for dentists scale published ~~January 2003~~ in 2004 for use in 2005 and 2006. Copies of the relative values for dentists scale are available upon request from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(b) The conversion factor used to determine the medicaid payment amount for services provided to eligible individuals age 18 and above is ~~\$20.40~~ \$21.77.

(c) The conversion factor used to determine the medicaid payment amount for services provided to eligible individuals age 17 and under is ~~\$26.52~~ \$28.30.

AUTH: Sec. 53-6-113, MCA  
IMP: Sec. 53-6-101, MCA

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) For purposes of specifying coverage of dental services through the medicaid program, the department incorporates by reference the dental and denturist services provider manual effective July ~~2002~~ 2005. The dental and denturist services provider manual, provided to providers of those services, informs the providers of the requirements applicable to the delivery of services. Copies of the manual are available on the medicaid provider website at [www.dphhs.mt.gov](http://www.dphhs.mt.gov) and from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Health Resources Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) Dentists may bill medical "CPT" procedure codes as provided in ARM 37.85.212 and 37.86.101 for any medicaid-covered medical procedure which they are allowed to provide under the Dental Practice Act that is not otherwise listed in the dental services provider manual.

(3) through (6) remain the same.

(7) Full band orthodontia for recipients 21 and younger who have malocclusion caused by traumatic injury or needed as part of treatment for a medical condition with orthodontic implications are covered in the department's orthodontic coverage and reimbursement guidelines, published December 1999. The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference the department's orthodontic coverage and reimbursement guidelines updated through December 1999. The guidelines, issued by the department to all providers of orthodontic services, informs providers of the requirements applicable to the delivery of services. A copy of the department's orthodontic coverage and reimbursement guidelines is available from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Health Resources Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(8) Unless otherwise provided by these rules, interceptive orthodontia is limited to children 12 years of age or younger with one or more of the following condition(s):

(a) through (9) remain the same.

(10) Orthodontic treatment not progressing to the extent of the treatment plan because of non-compliance by the recipient and which jeopardizes the health of the recipient may result in termination of orthodontic treatment. If termination of orthodontic treatment occurs because of non-compliance by the recipient, medicaid will not authorize any future orthodontic requests for that recipient.

(11) through (14) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA  
IMP: Sec. 53-6-101 and 53-6-113, MCA

3. ARM 37.86.1004

The Department is proposing to amend ARM 37.86.1004 to use the relative values for dentists (RVDs) scale published in 2004, for use in 2005 and 2006. The existing rule references the RVDs published in 2003. The proposed amendment is not a change in the methodology used by the Department to set dental fees.

The Department uses Relative Value Studies, Inc., to determine the relative value for each CDT (current dental terminology) code established by the American Dental Association. The relative value is based on the time and skill required to complete a dental procedure, the risk, the severity of the problem and the provider's costs. The American Dental Association publishes new CDT codes every two years, to reflect changes in the above factors and dental procedures over time. In order to stay current with dental practices and the revised CDT codes, the RVDs utilized by the department are updated when Relative Value Studies, Inc., publishes revisions. Adopting the most current RVDs is necessary to incorporate the best available assessment of the relative value of various dental procedures. After incorporation of the updated RVDs, the new codes will be available for Medicaid providers to use to bill, effective July 1, 2005. The rule is also being amended to use the Division's current name.

The Department is also proposing to amend the conversion factors, effectively increasing dental fees as necessary to implement the 2005 Legislature's appropriation for Medicaid dental services.

The estimated cumulative amount for all persons of the proposed rule change is \$478,164 and the numbers of persons affected are 340 enrolled Medicaid dental providers and 118,000 Medicaid clients eligible for dental services.

ARM 37.86.1006

The reference to the July 2002 Dental Provider Manual is proposed to be amended to incorporate the July 2005 provider manual and thereby include the new CDT codes established by the American Dental Association and any service limitations for each. This proposed rule change also states that provider manuals are available on the internet at the Department's website, which is necessary to inform users of the most readily available source for the manual.

4. The Department of Public Health and Human Services proposes to amend ARM 37.86.1004 and 37.80.1006 effective July 1, 2005. The rules implement Montana Medicaid dental services.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva,

Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 9, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Ellie Parker  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to Secretary of State May 2, 2005.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of ARM 12.11.202, 12.11.205, ) RULES TO COMPLY WITH  
12.11.210, 12.11.215, and ) RULES UNTIL COMMISSION  
12.11.220, pertaining to the ) CAN COMPLETE  
Beaverhead and Big Hole rivers ) CONSIDERATION OF RULE  
 ) PROPOSAL

TO: All Concerned Persons

1. On January 27, 2005, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-303 regarding public hearings on the proposed adoption of new rules I through IV and the amendment of ARM 12.11.202, 12.11.205, 12.11.210, 12.11.215, and 12.11.220 pertaining to the Beaverhead and Big Hole rivers at page 144 of the 2005 Montana Administrative Register, issue no. 2.

2. The purpose of this notice is to notify concerned citizens of the commission's decision to temporarily amend the existing Beaverhead and Big Hole rules by extending the rules' expiration date to June 1, 2005. The commission extended the expiration date to allow more time for the commission to evaluate public comment on the rule proposal referenced in paragraph one of this notice. The commission intends to reach a final rulemaking decision on this rule proposal at the May 12, 2005, commission meeting. This final decision will affect the temporary rule amendments as well as all of the proposed changes outlined in the rule proposal notice.

At its April meeting in 2003 the commission inserted language into the Beaverhead and Big Hole river recreation rules that states that the commission shall repeal or amend the rules on or before May 1, 2005. This language was added to provide time for the completion of the statewide rules governing river recreation management. The commission instructed the department to reevaluate the Beaverhead and Big Hole rules after the statewide rules were completed.

The commission adopted the statewide river recreation rules in October of 2004. At that time the department appointed a Beaverhead and Big Hole Rivers Citizen Advisory Committee and tasked the committee with evaluating the rules currently governing recreational use on these two rivers and recommending a course of action to the commission. At its December meeting the commission proposed amendments to the rules based on the recommendations of the committee. The department proceeded to conduct an environmental analysis on the proposed rules and three alternative actions. Public hearings were conducted in Bozeman, Butte, and Dillon for the purpose of soliciting comments on the proposed rule changes and the department's environmental analysis.

The commission received written comments from 69 individuals or entities. The commission also received postcards from 361 individuals and a petition signed by 372 individuals. Twenty-two people provided oral testimony at the public hearings.

The commission had originally planned to make a final decision on the rules at its April 14 meeting. The department has informed the commission that due to the complexity and the volume of the public comments, more time is needed to conduct a thorough analysis. Therefore, the commission decided to complete the rulemaking process in two steps. At its April 14 meeting the commission decided to amend the language in the rules that states the commission shall repeal or amend the rules on or before May 1, 2005. The date was changed to June 1, 2005. The commission made no changes to the remainder of the rules. The commission directed the department to complete its analysis on the public comments in order for the commission to make a final decision on the rule proposal at its May 12 meeting. The commission will base its final decision on the recommendations of the Beaverhead and Big Hole Rivers Citizen Advisory Committee, public comments, and the department's environmental analysis.

3. The commission has amended the following rules with the following changes, stricken matter interlined, new matter underlined:

12.11.202 RIVER DEFINITIONS The following definitions apply to this subchapter:

Any rule amendments proposed in (1) through (5) of this rule are still under commission consideration and are not yet being adopted in this rule notice.

(6) The commission shall repeal or amend this rule on or before June 1, 2005.

Any rule amendments proposed in the remainder of this rule remain under commission consideration and are not yet being adopted in this rule notice.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.205 BEAVERHEAD RIVER RECREATIONAL USE RESTRICTIONS

Any rule amendments proposed in (1) and (2) of this rule remain under commission consideration and are not yet being adopted in this rule notice.

(3) The commission shall repeal or amend this rule on or before June 1, 2005.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA



12.11.210 BIG HOLE RIVER RECREATIONAL USE RESTRICTIONS

Any rule amendments proposed in (1) and (2) of this rule remain under commission consideration and are not yet being adopted in this rule notice.

(3) The commission shall repeal or amend this rule on or before June 1, 2005.

AUTH: 87-1-301, 87-1-303, MCA  
IMP: 87-1-303, MCA

12.11.215 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BEAVERHEAD RIVER

Any rule amendments proposed in (1) through (6) of this rule remain under commission consideration and are not yet being adopted in this rule notice.

(7) The commission shall repeal or amend this rule on or before June 1, 2005.

AUTH: 87-1-301, 87-1-303, MCA  
IMP: 87-1-303, MCA

12.11.220 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BIG HOLE RIVER

Any rule amendments proposed in (1) through (6) of this rule remain under commission consideration and are not yet being adopted in this rule notice.

(7) The commission shall repeal or amend this rule on or before June 1, 2005.

AUTH: 87-1-301, 87-1-303, MCA  
IMP: 87-1-303, MCA

/s/ M. Jeff Hagener  
M. Jeff Hagener, Secretary  
Fish, Wildlife and Parks  
Commission

/s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State May 2, 2005

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rules I through V )  
pertaining to operation of the )  
Criminal Intelligence Information )  
Section and access of )  
participating law enforcement )  
agencies to information )  
maintained by the Criminal )  
Intelligence Information Section )

TO: All Concerned Persons

1. On February 24, 2005, the Montana Department of Justice published MAR Notice No. 23-12-162 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 304, 2005 Montana Administrative Register, Issue No. 4.

2. The Department has adopted the new rules with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (23.12.301) DEFINITIONS (1) through (4) remain as proposed.

(5) "Need-to-know" means establishment of the fact that a person authorized to request information from a criminal intelligence file actually requires the information for a purpose directly concerning investigation of a crime enumerated in ~~Title 45, MCA~~ the Montana Code Annotated.

(6) through (14) remain as proposed.

AUTH: ~~44-5-505~~ 44-5-105, 44-5-504, MCA  
IMP: ~~44-5-501, 44-5-502, 44-5-503, 44-5-504, 44-5-505, 44-5-506, 44-5-511, and 44-5-515~~, MCA

NEW RULE II (23.12.302) CONTENT OF CRIMINAL INTELLIGENCE FILES (1) Any entry of information in any criminal intelligence file must ~~consist of an identification of a specific~~ identify the suspected criminal act ~~enumerated in Title 45, violation of the Montana Code Annotated MCA.~~

(2) remains as proposed.

AUTH: ~~44-5-505~~ 44-5-105, 44-5-504, MCA  
IMP: ~~44-5-501, 44-5-502, 44-5-503, 44-5-504, 44-5-505, 44-5-506, 44-5-511, and 44-5-515~~, MCA

NEW RULE III (23.12.303) DESIGNATION OF CRIMINAL INTELLIGENCE INFORMATION FILES FOR PURPOSES OF DETERMINING ALLOWABLE PERIOD OF RETENTION BY CRIMINAL INTELLIGENCE INFORMATION SECTION (1) and (2) remain as proposed.

AUTH: ~~44-5-505~~ 44-5-105, 44-5-504, MCA  
IMP: ~~44-5-501~~, ~~44-5-502~~, ~~44-5-503~~, ~~44-5-504~~, ~~44-5-505~~, ~~44-5-506~~, ~~44-5-511~~, and ~~44-5-515~~, MCA

NEW RULE IV (23.12.304) DISSEMINATION OF INFORMATION CONTAINED IN THE CENTRAL CRIMINAL INTELLIGENCE FILE

(1) through (3) remain as proposed.

AUTH: ~~44-5-505~~ 44-5-105, 44-5-504, MCA  
IMP: ~~44-5-501~~, ~~44-5-502~~, ~~44-5-503~~, ~~44-5-504~~, ~~44-5-505~~, ~~44-5-506~~, ~~44-5-511~~, and ~~44-5-515~~, MCA

NEW RULE V (23.12.305) PARTICIPATION OF AUTHORIZED AGENCIES WITH THE CRIMINAL INTELLIGENCE INFORMATION SECTION AND ACCESS BY AUTHORIZED AGENCIES TO CENTRAL CRIMINAL INTELLIGENCE FILES (1) through (4)(g) remain as proposed.

(h) that all requests for or receipt of information must be predicated on investigation of a specific crime enumerated in ~~Title 45, MCA~~ the Montana Code Annotated; and

(i) remains as proposed.

AUTH: ~~44-5-505~~ 44-5-105, 44-5-504, MCA  
IMP: ~~44-5-501~~, ~~44-5-502~~, ~~44-5-503~~, ~~44-5-504~~, ~~44-5-505~~, ~~44-5-506~~, ~~44-5-511~~, and ~~44-5-515~~, MCA

3. The following comment was received and appears with the Department's response:

COMMENT NO. 1: John MacMaster made comments and suggestions relating to the Department's designation of rulemaking authority and implementing sections. The Department agreed with his comments and has changed those provisions accordingly. Mr. MacMaster also suggested that where the Department had made references to a criminal act as enumerated in Title 45, it may be more appropriate to refer generally to a criminal act as defined by the MCA rather than limit to those criminal acts set forth in Title 45. The Department agreed with his suggestions and incorporated them into the new rules.

By: /s/ Mike McGrath  
MIKE MCGRATH  
Attorney General

/s/ Ali Bovingdon  
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State May 2, 2005.

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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.32.305 educational )  
requirements and other )  
qualifications applicable to )  
advanced practice registered )  
nursing, ARM 8.32.307 clinical )  
nurse specialist practice, )  
ARM 8.32.801 application for )  
initial approval, ARM 8.32.807 )  
special reports, ARM 8.32.1504 )  
initial application requirements )  
for prescriptive authority, and )  
ARM 8.32.1506 special limitations )  
related to the prescribing of )  
controlled substances )

TO: All Concerned Persons

1. On February 24, 2005, the Board of Nursing published MAR Notice No. 8-32-65 regarding the public hearing on the proposed amendment of the above-stated rules at page 311 of the 2005 Montana Administrative Register, issue no. 4.

2. A public hearing on the proposed amendment of the above-stated rules was held on March 30, 2005.

3. The Board of Nursing (Board) has thoroughly considered all of the comments made. A summary of the comments received and the Board's response are as follows:

8.32.807 SPECIAL REPORTS

COMMENT 1: Roger Barber, Deputy Commissioner of Academic Affairs, on behalf of the Office of Commissioner of Higher Education and Board of Regents, requested that (1)(h) of the proposed rule be modified to make the rule consistent with the Board of Regent's policy relating to approval of nursing programs. He recommended that (1)(h) read as follows:

(h) an expansion involving:

(i) an increase in the number of students served by a program that equals or exceeds the numerator in the student/faculty ratio requirements for clinical settings set by the board and national nursing accrediting agency standards; and

(ii) the increase in (i) requires at least one of the following:

(A) the addition of one or more faculty to the program;

(B) the addition of clinical experiences at clinical agencies not currently used by the program; or

(C) the addition of clinical experiences at clinical agencies currently used by the program but utilizing nontraditional times or nontraditional instructional methods.

RESPONSE 1: The board agrees with Mr. Barber's recommendation. In order to implement the change, (1)(c) of the proposed rule needs to be stricken so that the rule, read as a whole, is consistent with the language change recommended by Mr. Barber and approved by the board. The rule subsections need to be renumbered accordingly. In the proposal notice, subsection (i) was inadvertently listed twice, once as "(f) through (i) remain the same but are renumbered (d) through (g)" and also as "~~(i)~~ (h)". The proposal should have read, "(f) through (h) remain the same but are renumbered (d) through (f)" followed by "~~(i)~~ (g)". The correct earmarking is shown in the revision.

4. The Board amends ARM 8.32.305, ARM 8.32.307, ARM 8.32.801, ARM 8.32.1504 and ARM 8.32.1506 exactly as proposed.

5. After consideration of the comments, the Board has amended the following rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

8.32.807 SPECIAL REPORTS (1) through (1)(b) remain as proposed.

~~(c) changes in enrollment by 10 or more students;~~  
~~(d) (c) major curriculum revisions;~~  
~~(e) (d) change in degree offerings or program options;~~  
~~(f) (e) additional geographic sites or locations; and~~  
[(i) renumbered (g) in the proposed notice was in error.]  
~~(h) any expansion requiring one or more of the following:~~

~~(i) the addition of two or more faculty to the program;~~  
~~(ii) the addition of clinical experiences at the medical settings currently used by the program;~~  
~~(iii) the addition of clinical experiences at medical settings used by the program, but using nontraditional times or nontraditional instructional methods;~~  
~~(iv) the reallocation of internal funds that require a reduction in other academic program budgets.~~

(f) an expansion involving:  
(i) an increase in the number of students served by a program that equals or exceeds the numerator in the student/faculty ratio requirements for clinical settings set by the board and national nursing accrediting agency standards; and

(ii) the increase in (1)(f)(i) requires at least one of the following:

(A) addition of one or more faculty to the program;  
(B) addition of clinical experiences at clinical agencies not currently used by the program; or  
(C) addition of clinical experiences at clinical agencies currently used by the program, but utilizing

nontraditional times or nontraditional instructional methods.  
(2) through (10) remain as proposed.

AUTH: 37-8-202, 37-8-301, MCA  
IMP: 37-8-301, 37-8-302, MCA

BOARD OF NURSING  
KAREN POLLINGTON, RN, PRESIDENT

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State May 2, 2005

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 24.111.301 definitions, )  
ARM 24.111.511 naturopathic )  
physician natural substance )  
formulary list, ARM 24.111.602 )  
direct-entry midwife )  
apprenticeship requirements, and )  
ARM 24.111.613 required reports )

TO: All Concerned Persons

1. On November 18, 2004, the Board of Alternative Health Care published MAR Notice No. 24-111-18 regarding the public hearing on the proposed amendment of the above-stated rules at page 2786 of the 2004 Montana Administrative Register, issue no. 22.

2. A public hearing on the proposed amendment of the above-stated rules was held on December 9, 2004.

3. The Board of Alternative Health Care (Board) has thoroughly considered all of the comments made. A summary of the comments received and the Board's responses are as follows:

GENERAL COMMENTS:

Comment 1: One commenter objected globally to all proposed amendments in MAR Notice No. 24-111-18 as going beyond the original intended scope of the initial authorizing legislation and on the grounds that licensees are not educationally prepared for the privileges sought.

Response 1: The commenter did not specify in what respect ARM 24.111.301, ARM 24.111.602, or ARM 24.111.613 are in excess of the Board's statutory authority over direct-entry midwives. The proposed amendments relating to those three rules do not grant any privilege to direct-entry midwives that doesn't already exist under the current administrative rules. ARM 24.111.301 is a definitions rule and ARM 24.111.613 provides clarification on reports that are already required for direct-entry midwives. The proposed amendment to ARM 24.111.301 continues to require personal supervision of all direct-entry midwife apprentices but would allow, with Board approval, indirect supervision during the final level of apprenticeship. The Board determined that the educational and experience requirements set forth in statute and rules sufficiently prepare direct-entry midwife apprentices to practice safely under indirect supervision during the final level of their apprenticeship. The Board is authorized to set standards governing licensure, education requirements, and

criteria limiting apprenticeships under 37-1-131 and 37-27-105, MCA. Comments on ARM 24.111.511 are addressed below.

24.111.511 NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE FORMULARY LIST

Comment 2: Several commenters opposed the current formulary either in total or as to specific substances listed in the formulary that were not included in the proposed notice and are not being amended at this time.

Response 2: The Board declines to address comments relating to sections of the current formulary rule that the Board did not include in the proposed notice and that are not being amended. Comments received regarding substances in the current formulary that remain unchanged are not timely or relevant to this rule notice. For edification of the commenters, however, the Board notes that a letter co-written by the attorneys for the Montana Board of Pharmacy and the Montana Board of Medical Examiners dated August 28, 2002, expressed that the then-existing formulary was within the scope of the Board's authority to adopt. To date, no amendments have been made to the formulary rule since the date of the above referenced letter. A copy of the referenced letter may be obtained from the Board office.

Comment 3: Several commenters questioned the Board's authority to amend the rule by adding to the formulary, in total or as to specific substances or classes of substances, as being in excess of the Board's legislative authority and on the grounds the drugs are synthetic, semi-synthetic, or are legend drugs as defined in 50-31-301, MCA.

Response 3: The Board has concluded that the proposed additions to the formulary (except as otherwise provided in response #4) are within the statutory authority granted the Board under 37-26-301(1), (2) and (3), MCA. The Board's conclusion is based upon the Board's collective knowledge of naturopathic pharmacology, consultation of recognized naturopathic medicine resources, reviewing the curricula of several approved colleges of naturopathic medicine and information on available naturopathic pharmacology continuing education courses. The Board determined it prudent to clarify that ketoconazole is for topical use, and has amended subsection (3)(v) accordingly.

Comment 4: Several commenters stated that the quinolones are synthetic and should not be included in the formulary.

Response 4: The Board has determined that the issue of whether the quinolones are synthetic remains unsettled among recognized authorities. The Board has therefore chosen not to include floroquinolone and its derivatives (ciprofloxacin, levofloxacin and ofloxacin) in the formulary at this time pending further study and has amended the rule accordingly.



Comment 5: Some commenters questioned whether doctors of naturopathic medicine (ND) are sufficiently trained and educated in pharmacology and whether NDs understand the potential for side effects, drug interactions, abuse of drugs and serious complications of drugs including death.

Response 5: Pharmacology is included in the curricula of approved naturopathic medical colleges, per 37-26-103(1), MCA. The national certification examination, as required for ND licensure in Montana, tests applicants' knowledge of pharmacology. Moreover, in contrast to the continuing education requirements for other health care providers, NDs are required to obtain at least five continuing education credits annually in naturopathic pharmacy, which amounts to a third of the total annual continuing education obligation of NDs. The Board fully recognizes the need for NDs to be well educated in pharmacology and has determined that this is achieved through education, licensure examination and required continued education. Montana licensed NDs understand the potential for side effects, drug interactions, drug abuse and serious complications of drugs.

Comment 6: One commenter expressed general concern about suboptimal use of antimicrobials leading to more resistant strains of organisms.

Response 6: The Board is aware of public health issues relating to the suboptimal use of antimicrobials. As previously stated, pharmacology is included in the curricula of approved naturopathic medical colleges and antimicrobials are covered in this pharmacology coursework. The Board notes that the Montana Board of Pharmacy initiated an informal survey in Missoula, MT, a number of years ago, regarding the prescribing of antibiotics by NDs. The survey results showed unequivocally that there existed no suboptimal prescribing of antibiotics by NDs during the period encompassed by the survey.

Comment 7: Several commenters opposed inclusion of oxycodone and hydrocodone in the formulary on the basis of their great potential for diversion and abuse.

Response 7: Hydrocodone has been included in the formulary list since the formulary's initial adoption in 1998. (See the Board's response #2.) The Board's screening panel has received no complaints since 1998 regarding the diversion or abuse of hydrocodone by NDs, or complaints alleging that NDs are facilitating their patients' abuse of hydrocodone. Further, the Board's screening panel has received no complaints about prescribing practices of NDs or any formulary-related complaints at all. The Board recognizes that oxycodone has great diversion and abuse potential, but there exists no evidence (and the commenters presented none) that NDs are more apt than other authorized prescribers to divert or abuse oxycodone, or facilitate or contribute to their patients' abuse of the drug. As previously stated, the NDs' education includes pharmacology

and the national certifying examination required for licensure in Montana tests the applicants' knowledge of pharmacology.

Comment 8: One commenter pointed out that "prgenenolone" in subsection (10)(a)(vi) contains a typographical error and that the name of the substance should be spelled as "pregnenolone".

Response 8: The Board acknowledges the misspelled word and has amended the rule accordingly.

Comment 9: One commenter requested that the Board add metformin and alendronate to the formulary.

Response 9: The Board is unable to add substances to the formulary at this time that were not included in the proposed rule notice, as the public would not be provided notice of such changes or any opportunity to comment on the amendments.

Comment 10: One commenter requested that ephedra, ephedrine and pseudoephedrine be deleted from the current formulary.

Response 10: The Board notes that the proposed rule notice did not include the suggested deletion of the three substances. The Board is unable to delete them at this time, as the public would not be provided notice of the deletion or any opportunity to comment on the amendments.

4. The Board amends ARM 24.111.301, ARM 24.111.602 and ARM 24.111.613 exactly as proposed.

5. After consideration of the comments, the Board has amended ARM 24.111.511 exactly as proposed, but with the following changes, stricken matter interlined, new matter underlined:

24.111.511 NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE FORMULARY LIST (1) through (3)(a)(iv) remain as proposed.

- (v) ketoconazole for topical use;
- (vi) through (g)(i) remain as proposed.
- (ii) trimethoprim/sulfamethoxazole; ~~and~~ .
- ~~(h) floroquinolone derivatives;~~
- ~~(i) ciprofloxacin;~~
- ~~(ii) levofloxacin; and~~
- ~~(iii) ofloxacin;~~
- (4) through (10)(a)(v) remain as proposed.
- (vi) ~~prgenenolone~~ pregnenolone; and
- (vii) through (17) remain as proposed.

AUTH: 37-1-131, 37-26-201, MCA

IMP: 37-26-301, MCA

BOARD OF ALTERNATIVE HEALTH CARE  
DOLLY BROWDER, LM, CHAIRPERSON

9-5/12/05

Montana Administrative Register

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ DARCEE L. MOE  
Darcee L. Moe  
Alternate Rule Reviewer

Certified to the Secretary of State May 2, 2005

BEFORE THE BOARD OF LANDSCAPE ARCHITECTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment            ) NOTICE OF AMENDMENT  
of ARM 24.153.403, fee schedule         )

TO: All Concerned Persons

1 On March 17, 2005, the Board of Landscape Architects published MAR Notice No. 24-153-28 regarding the public hearing on the proposed amendment of the above-stated rule at page 365 of the 2005 Montana Administrative Register, issue no. 5.

2 On April 7, 2005, a public hearing was conducted in Helena, Montana, on the proposed amendment, and members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period.

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

Comment 1: Ronald Yates believed there was enough flexibility in how administrative costs are spread and that they could be spread to other boards as well.

Response 1: The Board is required to make fees commensurate with costs under section 37-1-134, MCA. Boards are also required to be 'self-sufficient'. For this to occur, the Board will need to increase its fee schedule. The Legislative Auditor's office has determined in its last audit that it is improper to cost-shift one board's costs to other boards.

Comment 2: Kent Watson commented that this is the largest fee increase ever proposed by the Board and it would severely cripple the profession because licensees can "ill afford" to pay the fee increase proposed. He also questioned the \$9,000 consultant's fee.

Response 2: The Board states that the consultant's fee was for the CLARB Examination fees and was basically a "pass-through" expense. Again the Board referred to its need to make fees commensurate with costs and acknowledged that there may be a diminishment of the number of licensees because of the proposed increase in fees.

Comment 3: Angela Feser testified that these fee increases are prohibitive and would give her incentive to pack up and move out of state. She also believed that the fee

increases would cause fewer licensed landscape architects to operate in Montana.

Response 3: The Board agrees with her comment but feels it is caught between a 'rock and a hard place'. Fee increases are absolutely necessary.

Comment 4: Bruce Lutz wrote that since renewal fees occur once a year, staff time should be minimal and the current fees should cover that.

Response 4: The Board notes that the renewal fees must cover not only the staff time for issuing annual license renewals, but the fees must cover the rest of the Board's operations. Those costs include providing for the Board's regular meetings, the cost of a proportionate share of program staff and Board counsel, the cost of a proportionate share of the prosecuting counsel and disciplinary functions, the proportionate cost of maintaining the on-line licensee database (including on-line renewal and licensee look-up functions). In addition, the proportionate cost of program operations includes having Department staff available to answer questions from licensees, applicants, and the general public, concerning licensed landscape architects. There are numerous "behind the scenes" costs, such as office rent, accounting and budgeting support, mailing costs, etc. that go into the costs allocated to the Board and the landscape architect licensing program. While a portion of those costs are paid for by license applicants, the bulk of the costs are paid for by existing licensees.

Comment 5: James Pool wrote that practitioners in this state need to be presented with accurate, thorough and easy to understand spreadsheets clearly outlining the board's finances so that they can see, understand and trust the numbers.

Response 5: The Board acknowledges that the State of Montana's accounting and budgeting system is complex and rather intimidating for those individuals who are not familiar with that system. The Board pledges to continue to work with the Department to obtain financial information regarding the Board's operations that can be presented in a format understandable by ordinary individuals and the licensees.

Comment 6: Shelly Engler felt that approximately half of the landscape architects would surrender their license(s) if the fees were increased as originally proposed. She stated that as a consequence, there would be fewer landscape architects to serve the public. She also expressed her dismay at the way budget issues related to the Board have been handled by the Department.

Response 6: The Board acknowledges her concerns and notes that other boards are also suffering from this type of

budgetary crisis. The Board's response comes back to the fact that fees must be commensurate with costs. If the Board's fees are not, then the Board would not be in compliance with statutory mandate. After considering all of the comments, the Board concludes that the least onerous resolution to the Board's dilemma is to increase the initial application fee and the annual renewal fee, but to significantly reduce the amount of the increase from what was originally proposed. The Board acknowledges that its decision is a compromise, but believes that it is the best it can do at the present. The Board will continue to engage in a dialogue with the Department to see what options exist to decrease the costs of operation of the licensing program for landscape architects.

4. The Board expresses its appreciation for all the comments and testimony given and was grateful to those who took the time for such commentary and testimony.

5. After considering the comments, the Board has adopted ARM 24.153.403 exactly as proposed, but with the following changes, stricken matter interlined, new matter underlined:

- 24.153.403 FEE SCHEDULE (1) remains as proposed.
- (2) The fees for landscape architects are as follows:
  - (a) Application fee for license by examination (includes original license fee) ~~\$575~~ 325
  - (b) License renewal ~~500~~ 250
  - (c) through (3) remain as proposed.

AUTH: 37-1-131, 37-1-134, 37-66-202, MCA  
IMP: 37-1-134, 37-66-202, 37-66-301, 37-66-304, 37-66-307, MCA

BOARD OF LANDSCAPE ARCHITECTS  
SHELLY ENGLER, CHAIRPERSON

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

This rule notice has been reviewed by a rule reviewer for the Department of Labor and Industry ("the Department") pursuant to 2-4-110(2), MCA, on behalf of the Board of Landscape Architects. The Board of Landscape Architects is attached to the Department for administrative purposes only pursuant to 2-15-1762, MCA. Pursuant to 2-15-121(1)(a), MCA, the Board may exercise its quasi-legislative functions without the approval or control of the Department. The Department does not necessarily agree with the Board that ARM 24.153.403 appropriately implements 37-1-134, MCA, because current projections indicate that the Board of Landscape Architects will operate with a deficit. However, under the

circumstances, the Department concurs that amendments to ARM 24.153.403 adopted by the Board of Landscape Architects better implement the statutes the rule purports to implement than the rule did without those amendments.

/s/ KEVIN BRAUN  
Kevin Braun,  
Rule Reviewer

Certified to the Secretary of State May 2, 2005

**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

**Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

**Economic Affairs Interim Committee:**

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Office of the State Auditor and Insurance Commissioner;

and

- ▶ Office of Economic Development.

**Education and Local Government Interim Committee:**

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

**Children, Families, Health, and Human Services Interim Committee:**

- ▶ Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

- ▶ Department of Corrections; and
- ▶ Department of Justice.



**Energy and Telecommunications Interim Committee:**

- ▶ Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

**State Administration, and Veterans' Affairs Interim Committee:**

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

**Environmental Quality Council:**

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2004. This table includes those rules adopted during the period January 1, 2005 through March 31, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2004, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2004 and 2005 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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