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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
4.17.102 relating to the organic)
certification program)

TO: All Concerned Persons

1. On January 25, 2007, the Montana Department of Agriculture published MAR Notice No. 4-14-166 relating to the above-stated rule at page 71 of the 2007 Montana Administrative Register, Issue Number 2.

2. The agency has amended ARM 4.17.102 exactly as proposed.

3. The following comment was received and appears with the Department of Agriculture response.

Comment: The Montana Organic Association is supportive of the department's adoption of the National Organic Program revised rule.

Response: The department thanks the Montana Organic Association for their support.

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Gregory H. Ames
Gregory H. Ames
Rule Reviewer

Certified to the Secretary of State, February 26, 2007.

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

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT,
24.168.301 definitions, 24.168.401,)	ADOPTION, AND REPEAL
24.168.402, 24.168.408, and 24.168.411)	
general provisions, 24.168.711 diagnostic)	
permissible drugs, 24.168.901, 24.168.911)	
therapeutic pharmaceutical agents,)	
24.168.2101 and 24.168.2104, continuing)	
education, 24.168.2307 screening panel,)	
the adoption of NEW RULE I fee abatement,)	
and the repeal of 24.168.405 examinations,)	
24.168.701 approved courses and)	
examinations, 24.168.704 new licensees,)	
24.168.904 applicants for licensure,)	
24.168.907 therapeutic pharmaceutical)	
agents, and 24.168.2304 complaint procedure)	

TO: All Concerned Persons

1. On October 26, 2006, the Board of Optometry (board) published MAR Notice No. 24-168-37 regarding the proposed amendment, adoption, and repeal of the above-stated rules, at page 2450 of the 2006 Montana Administrative Register, issue no. 20.

2. On November 20, 2006, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. One commenter submitted comments by the November 28, 2006, deadline.

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

COMMENT 1: One commenter stated that "ophthomological" is misspelled in the title of ARM 24.168.711 and should instead be "ophthalmological".

RESPONSE 1: The board appreciates the comment and is amending the rule catchphrase accordingly.

COMMENT 2: One commenter stated that the term "ocular" is misspelled in the title of ARM 24.168.911 and should instead be "ocular".

RESPONSE 2: The board appreciates the comment and is amending the rule catchphrase accordingly.

COMMENT 3: One commenter suggested that "not less than" be stricken as redundant from ARM 24.168.2101(1).

RESPONSE 3: The board agrees that the language is redundant and unnecessary and is amending the rule accordingly.

4. The board has amended ARM 24.168.301, 24.168.401, 24.168.402, 24.168.408, 24.168.411, 24.168.901, 24.168.2104, and 24.168.2307 exactly as proposed.

5. The board has adopted NEW RULE I (24.168.403) exactly as proposed.

6. The board has repealed ARM 24.168.405, 24.168.701, 24.168.704, 24.168.904, 24.168.907, and 24.168.2304 exactly as proposed.

7. The board has amended ARM 24.168.711, 24.168.911, and 24.168.2101 with the following changes, stricken matter interlined, new matter underlined:

24.168.711 ~~OPHTHOMOLOGICAL~~ OPHTHALMOLOGICAL DIAGNOSTIC PERMISSIBLE DRUGS

(1) through (1)(d) remain as proposed.

24.168.911 ~~OCCULAR~~ OCULAR THERAPEUTIC APPROVED DRUGS

(1) through (1)(h) remain as proposed.

24.168.2101 CONTINUING EDUCATION REQUIREMENTS (1) Each licensed optometrist shall obtain a minimum of ~~not less than~~ 36 hours of continuing education every two years in scientific clinics, forums, or optometric educational studies approved by the board. The board will accept:

(a) through (4) remain as proposed.

BOARD OF OPTOMETRY
DOUGLAS MCBRIDE, O.D., 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 February 26, 2007

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
24.171.401 fees, 24.171.512 inactive) AND ADOPTION
license, 24.171.702 transfer of river-use days,)
24.171.2301 unprofessional conduct and)
misconduct, and the adoption of NEW RULES)
I - III pertaining to guide logs)

TO: All Concerned Persons

1. On November 9, 2006, the Board of Outfitters (board) published MAR Notice No. 24-171-25 regarding the amendment and adoption of the above-stated rules, at page 2769 of the 2006 Montana Administrative Register, issue no. 21.

2. On December 8, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the December 18, 2006, deadline.

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

COMMENT 1: One comment was received regarding ARM 24.171.2301. The commenter suggested adding "when providing services as a licensed guide or licensed outfitter acting as a guide" to the beginning of (3)(t) to clarify who must submit a log book and to avoid disciplining outfitters who are not acting as guides on these rivers.

RESPONSE 1: The board decided that because the board is not adopting proposed New Rules I-III that would require guide log books on the Beaverhead and Big Hole rivers, it is not necessary to add failure to comply with these rules as unprofessional conduct. The board is amending ARM 24.171.2301 accordingly.

COMMENT 2: Numerous comments were received opposing the adoption of New Rules I-III. The commenters questioned how the rules could be enforced, whether the rules were necessary, whether the rules would effectively address the identified problem, whether the rules would create opportunities for guides to exploit outfitters' proprietary client information, and whether specific alternative approaches to the problem would be more effective.

RESPONSE 2: After careful consideration, the board decided not to adopt proposed New Rules I-III at this time and to further review the issues raised by the commenters before proceeding.

4. The board has amended ARM 24.171.401, 24.171.512, and 24.171.702 exactly as proposed.

5. The board has amended ARM 24.171.2301 with the following changes, stricken matter interlined, new matter underlined:

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT

(1) through (1)(q) remain as proposed.

(r) not fail to respond to board inquiries and requests; or

(s) not remit a "nonsufficient fund check" or a check on a closed account for board fees or fines; ~~or .~~

~~(t) maintain a current, true, complete, legible, and accurate log book of all individuals guided on the Beaverhead and Big Hole rivers, and submit the log books to the board office postmarked by December 1 of each license year.~~

6. The board is not adopting New Rules I, II, or III.

BOARD OF OUTFITTERS
KELLY FLYNN, CHAIRPERSON

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

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

Certified to the Secretary of State February 26, 2007

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) CORRECTED NOTICE OF
24.301.131, 24.301.138, 24.301.142,) AMENDMENT AND ADOPTION
24.301.146, 24.301.154, 24.301.171,)
24.301.172, 24.301.173, 24.301.208,)
24.301.301, 24.301.602, 24.301.710,)
24.301.714, 24.301.717, 24.301.718,)
and 24.301.719, and the adoption of)
NEW RULE I pertaining to building codes)

TO: All Concerned Persons

1. On October 5, 2006, the Department of Labor and Industry (department) published MAR Notice No. 24-301-203 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 2319 of the 2006 Montana Administrative Register, issue no. 19. On January 25, 2007, the department published the notice of amendment and adoption of MAR Notice No. 24-301-203 at page 112 of the 2007 Montana Administrative Register, issue no. 2.

2. Upon publication of the notice of amendment and adoption of MAR Notice No. 24-301-203 it was discovered that ARM 24.301.718(2) through (2)(b) were inadvertently omitted from the original proposal and adoption notices. The original proposal and adoption notices should have shown that there were no proposed changes to ARM 24.301.718(2), (2)(a), and (2)(b). The rule, as amended, reads as follows, deleted matter interlined, new matter underlined:

24.301.718 BOILER INSPECTIONS (1) through (1)(e)(ii) remain as amended.
(2) through (2)(b) remain the same.

AUTH: 50-60-203, 50-74-101, MCA
IMP: 50-60-203, 50-74-206, 50-74-209, MCA

/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 February 26, 2007

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

In the matter of the amendment of ARM)
37.78.102 and 37.78.807 pertaining to)
temporary assistance for needy families)
(TANF) incorporation of policy manuals)
)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On December 21, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-397 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 3026 of the 2006 Montana Administrative Register, issue number 24.
2. The department has amended ARM 37.78.102 and 37.78.807 as proposed.
3. No comments or testimony were received.

/s/ Francis Clinch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State February 26, 2007.

COMMUNITY COLLEGES - Legislative approval for organization of community college district;
COMMUNITY COLLEGES - Absence of requirement that Board of Regents approve organization of community college district before submission for legislative approval;
REGENTS, BOARD OF - Absence of requirement that Board of Regents approve organization of community college district before submission for legislative approval;
STATUTORY CONSTRUCTION - Reference to bill title as evidence of legislative intent;
STATUTORY CONSTRUCTION - Plain meaning controls in absence of ambiguity;
UNIVERSITY SYSTEM - Legislative approval for organization of community college district;
UNIVERSITY SYSTEM - Absence of requirement that Board of Regents approve organization of community college district before submission for legislative approval;
MONTANA CODE ANNOTATED - Title 20, chapter 15, part 2; sections 20-15-202; -203, -204, -209;
MONTANA LAWS OF 1971 - Chapter 5, section 459; chapter 164, section 1; chapter 407, section 2;
REVISED CODES OF MONTANA, 1947 - Section 75-8112.

- HELD:
1. The Legislature has the final authority under Montana law to approve creation of a new community college district.
 2. The approval of the Legislature for the creation of a new community college district required by Mont. Code Ann. § 20-15-209 occurs after the approval by the local voters but before the Board of Regents issues its organizational order.
 3. Montana law does not require approval of the Board of Regents for creation of the district, but does require the board to make a recommendation.

February 15, 2007

Ms. Sheila Stearns
Commissioner of Higher Education
P.O. Box 203201
Helena, MT 59620-3201

Dear Commissioner Stearns:

You have requested my opinion on the following questions:

1. Does Mont. Code Ann. § 20-15-209 require legislative approval of a proposed new community college district before or after the

organizational election conducted under Mont. Code Ann. § 20-15-203?

2. Under Mont. Code Ann. § 20-15-209 does the Legislature consider a proposed new community college district only if the Board of Regents affirmatively recommends approval?

The questions arise from a proposal for the creation of a new community college in Ravalli County. The procedures for creation of a new community college are found in Mont. Code Ann. Tit. 20, ch. 15, pt. 2, which was passed by the Legislature in 1971. The statutes have not yet been used successfully to create a new community college, and the procedures have never been considered in a pertinent way by a court or by a prior opinion of this office. In addition, no helpful legislative history materials from the 1971 legislative session are readily available.

For these reasons, I am able to formulate responses to your questions only by reliance on general principles of statutory construction.

I.

Under the statutes, creation of a new community college district begins with the submission to the Board of Regents of a petition seeking creation of the district. Mont. Code Ann. § 20-15-202. The board then orders an election serving two purposes--to seek the approval of the voters in the district and to elect the district's trustees if the voters approve the proposal. Mont. Code Ann. §§ 20-15-203, -204.

Mont. Code Ann. § 20-15-209 describes what happens after the election:

- (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast thereon, and the coordinator of community college districts, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district shall be granted at the discretion of the legislature acting upon the recommendation of the regents. Should the certificate of the coordinator of community college districts show that the proposition to organize such community college district has received a majority of the votes cast thereon in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy thereof to be recorded in the office of the county clerk and recorder in each county in which a portion of such new district is located. If the proposition carries, the regents also shall determine which candidates have been elected trustees. Should the proposition to organize the community college district fail to receive a

majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the duly elected trustees of their membership and of the organization meeting. Such notification shall designate a temporary chairman and secretary for the purposes of organization.

Your questions arise from the lack of clarity of the second sentence of subsection (1) calling for approval by the legislature “upon the recommendation of the regents.”

This statute is actually an amalgam of three different bills passed by the 1971 Legislature. 1971 Mont. Laws ch. 5, § 459; ch. 164, § 1; ch. 407, § 2. The second and third bills amended the first after it was codified as Rev. Codes Mont. 1947 § 75-8112, and the compiler’s comments to the original codification of the statute indicate that the amending bills did not refer to each other and were in some respects inconsistent with one another. Meaning therefore cannot be sensibly drawn from the organization of the material within the statute.

Guidance on your first question can be found in the title of the third amendment, which is the one that added the provisions of what is now the second sentence of subsection (1). Peretti v. State, 238 Mont. 239, 777 P.2d 329 (1989) (“[T]he title of an act is presumed to indicate the legislature’s intent with regard to the provisions contained therein.”) The title of 1971 Mont. Laws reads in pertinent part:

An Act to . . . Amend Section 75-8112, R.C.M. 1947, . . . requiring Final Approval By the Legislature Upon Recommendation of the Board of Regents for the Establishment of a New Community College District.

(Emphasis added.) Given the detailed procedural requirements set forth elsewhere in the statute, the inclusion of the word “Final” can fairly be read as an indication that the Legislature intended its approval to be the last substantive step authorizing the district to begin operation.

It would have been a simple matter for the Legislature clearly to state the contrary if that were its intent. Moreover, it would be odd for the Legislature to pass on a proposal for the creation of a district without knowing whether the proposal had enough support in the local community to generate a favorable vote. I therefore conclude that the legislative approval requirement in Mont. Code Ann. § 20-15-209 occurs after the coordinator of community colleges certifies that the proposal has received the required votes for voter approval.

The provision of the statute for the Board of Regents to issue an organizational order is therefore properly viewed to be triggered by legislative approval. The timeline you have provided appears consistent with the statutory procedures in this respect.

II.

Your second question is whether the phrase “acting upon recommendation of the regents” means that the Legislature may approve creation of the district only if the Board of Regents positively recommended approval. In my opinion the answer is no. “Recommendation” is different from “approval” in that a recommendation may be either positive or negative, or in some cases neither completely positive nor completely negative. The statute nowhere else provides a requirement that the Board of Regents approve creation of the district. Rather it appears to create a role for the Board of Regents and the commissioner’s staff that is ministerial in nature. If the Legislature had intended to require regent approval before submission of the proposal to the Legislature, it could easily have said so directly.

In my view the term “recommendation” is not ambiguous with respect to whether it contemplates only positive advice. Its plain meaning includes any sort of recommendation, whether positive, negative, or otherwise. When a statute’s plain meaning may be discerned from its language, no further interpretation is required. State ex rel. Cobbs v. Montana Dep’t of Social and Rehabilitation Servs., 274 Mont. 157, 162, 906 P.2d 204, 208 (1995) (“The Court is to effectuate the intent of the Legislature, and if the Legislature’s intent can be determined from the plain meaning of the words used in a statute, the courts may not go further and apply any other means of interpretation.”) I therefore conclude that the Board of Regents must make a recommendation as to the advisability of creating the district, with the final decision resting with the Legislature.

THEREFORE IT IS MY OPINION:

1. The Legislature has the final authority under Montana law to approve creation of a new community college district.
2. The approval of the Legislature for the creation of a new community college district required by Mont. Code Ann. § 20-15-209 occurs after the approval by the local voters but before the Board of Regents issues its organizational order.
3. Montana law does not require approval of the Board of Regents for creation of the district, but does require the board to make a recommendation.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/cdt/jym

5-3/8/07

Montana Administrative Register

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 or Register) 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 Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department 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 September 30, 2006. This table includes those rules adopted during the period September 1 through December 31, 2006 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 include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2006, 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 2006 and 2007 Montana Administrative Register.

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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