

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.129.401 fees, 24.129.402 ) ON PROPOSED AMENDMENT,  
supervision, 24.129.603 standards for ) ADOPTION, AND REPEAL  
licensure, 24.129.2301 unprofessional )  
conduct, adoption of NEW RULE I )  
inspections, and repeal of 24.129.2302 )  
notification )

TO: All Concerned Persons

1. On November 20, 2007, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Clinical Laboratory Science Practitioners (board) no later than 5:00 p.m., on November 15, 2007, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcis@mt.gov.

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

24.129.401 FEES (1) through (2)(e) remain the same.  
(f) of license fee  
(g) remains the same.

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AUTH: 37-1-131, 37-1-134, 37-1-319, 37-34-201, MCA  
IMP: 37-1-134, 37-1-141, 37-34-201, MCA

REASON: House Bill 182 (Chapter 467 L. 2005) required standardization among professional and occupational licensing boards. The department adopted rules effective July 1, 2006, to fulfill this requirement including ARM 24.101.403(1)(i) that requires the fee for changing from inactive to active license status to equal the difference between inactive and active renewal fees. The board determined it is reasonably necessary to amend this rule to comply with the department rule. The board estimates that six individuals will be affected by the fee decrease for an annual decrease in revenue of approximately \$60.

Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules and to provide the complete sources of the board's rulemaking authority.

24.129.402 SUPERVISION (1) The degree of supervision required of the clinical laboratory technician by the clinical laboratory scientist or specialist shall be determined by the supervisor after an evaluation of appropriate factors including, but not limited to the following:

(a) through (2) remain the same.

AUTH: 37-34-201, MCA

IMP: 37-34-103, 37-34-201, MCA

REASON: The board is amending this rule to comply with ARM formatting requirements.

24.129.603 MINIMUM STANDARDS FOR LICENSURE (1) through (2)(b) remain the same.

(c) American Society of Clinical ~~Pathologist~~ Pathology (ASCP);

(d) American Society ~~of~~ for Microbiology (ASM);

(e) International Society for Clinical Laboratory Technology (ISCLT); ~~or~~

(f) American Board of Medical Genetics (ABMG); or

~~(f)~~ (g) National Certification Agency (NCA).

AUTH: 37-1-131, 37-34-201, MCA

IMP: 37-34-303, MCA

REASON: The board determined it is reasonable and necessary to amend (2)(c) and (d) to use the correct names of the ASCP and ASM. The board is adding (2)(f) to state the board's approval of the examination administered by the American Board of Medical Genetics (ABGM). The board anticipates an increase in ABGM qualified cytogeneticists seeking licensure and is amending this rule to allow PhD applicants who have examined at this higher level to qualify for licensure without having to take an exam for baccalaureate degree holders.

24.129.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of 37-1-307, MCA, and in addition to the provisions of 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

(1) through (5) remain the same but are renumbered (a) through (e).

(f) failure to provide proof of current licensure upon inspection of clinical laboratory science licenses by the board or its designated or contracted representative; or

(g) failure to comply with other state or federal statutes or rules regulating the practice of clinical laboratory science.

AUTH: 37-1-131, 37-1-319, 37-34-201, MCA

IMP: 37-1-307, 37-1-316, 37-1-319, MCA

REASON: The board is amending this rule and adding (1)(f) to specify that failure to demonstrate current licensure upon an inspector's request is unprofessional conduct. This addition is reasonably necessary to comply with the adoption of New Rule I that clarifies the board's inspection of licenses.

The board determined it is reasonably necessary to add (1)(g) as licensees are also held to federal Clinical Laboratory Improvement Amendments (CLIA) standards under federal statutes and rules. Following this amendment, the board can file an unprofessional conduct complaint based on a licensee's failure to comply with federal laws and rules. The board is renumbering the rule to comply with ARM formatting requirements.

4. The proposed new rule provides as follows:

NEW RULE I INSPECTIONS (1) The board may perform, or have performed on its behalf, inspections of clinical laboratory science licenses at clinical laboratory facilities.

AUTH: 37-1-131, 37-34-201, MCA

IMP: 37-34-102, 37-34-301, 37-34-307, MCA

REASON: The board is adopting this new rule to clarify the board's process of inspecting clinical laboratory science licenses. This new rule delineates the board's longstanding procedure of ensuring current and valid licensure of clinical laboratory science practitioners while they perform licensed functions in laboratory facilities.

5. The rule proposed to be repealed is as follows:

24.129.2302 NOTIFICATION OF DENIAL OR DISCIPLINARY ACTION  
found at ARM page 24-10843.

AUTH: 37-1-131, 37-34-201, MCA

IMP: 37-1-131, 37-1-307, 37-1-309, 37-34-201, MCA

REASON: The board determined it is reasonably necessary to repeal this rule because it is vague and unnecessarily repeats standards adequately set forth in statute at 37-1-307 and 37-1-309, MCA.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdcsls@mt.gov](mailto:dlibsdcsls@mt.gov), and must be received no later than 5:00 p.m., November 28, 2007.

7. 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.cls.mt.gov](http://www.cls.mt.gov). The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Clinical Laboratory Science Practitioners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Clinical Laboratory Science Practitioners administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be mailed or delivered to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdcls@mt.gov](mailto:dlibsdcls@mt.gov), or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on September 26, 2007, by regular mail.

10. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CLINICAL LABORATORY  
SCIENCE PRACTITIONERS  
KAREN MCNUTT, CLS, 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 October 15, 2007