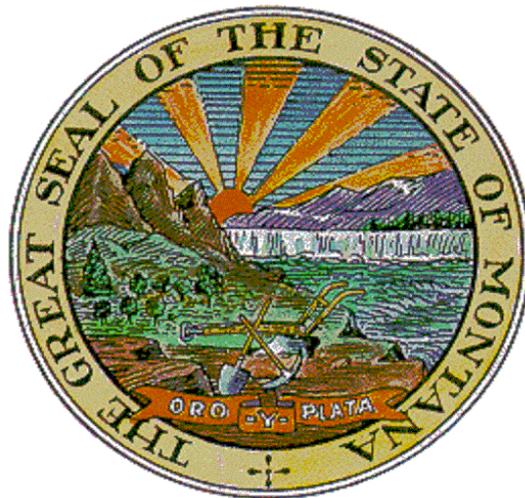


State of Montana  
Department of Labor and Industry  
Business Standards Division

STATUTES RELATING TO THE BOARD OF BARBERS AND COSMETOLOGISTS



For questions please contact:

Board of Barbers and Cosmetologists  
PO BOX 200513  
Helena MT 59620-0513

Website: [www.cosmetology.mt.gov](http://www.cosmetology.mt.gov)  
Email: [dlibsdcos@mt.gov](mailto:dlibsdcos@mt.gov)  
(406) 841-2335

UPDATED 2007

**TITLE 2**  
**CHAPTER 15**  
**PART 17**

**2-15-1701. Department of labor and industry -- head.** (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner must be appointed and serve as provided in [2-15-111](#).

(3) The commissioner must receive an annual salary in an amount equal to other department directors.

(4) Before entering on the duties of the office, the commissioner shall take and subscribe to the oath of office prescribed by the Montana constitution.

**History:** (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979; amd. Sec. 1, Ch. 116, L. 1981; amd. Sec. 85, Ch. 61, L. 2007.

**2-15-1747. Board of barbers and cosmetologists.** (1) There is a board of barbers and cosmetologists.

(2) The board consists of nine members appointed by the governor with the consent of the senate and must include:

(a) three licensed cosmetologists each of whom has been a resident of this state for at least 5 years and has been actively engaged in the profession of cosmetology for at least 5 years immediately prior to being appointed to the board;

(b) one member who has been a resident of this state for at least 5 years and has been actively engaged as a licensed electrologist, esthetician, or manicurist for at least 5 years immediately prior to being appointed to the board;

(c) three licensed barbers each of whom has been a resident of this state for at least 5 years and has been actively engaged in the profession of barbering for at least 5 years immediately prior to appointment to the board; and

(d) two members of the public who are not engaged in the practice of barbering, cosmetology, electrology, esthetics, or manicuring.

(3) Not more than two members of the board may be members of or affiliated with a school.

(4) (a) If there is not a licensed barber qualified and willing to serve on the board in one of the three barber positions, the governor may appoint a cosmetologist, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

(b) If there is not a licensed cosmetologist qualified and willing to serve on the board in one of the three cosmetologist positions, the governor may appoint a barber, electrologist, esthetician, or manicurist otherwise qualified under this section to fill the position.

(5) Each member shall serve for a term of 5 years. The terms must be staggered.

(6) The board is allocated to the department for administrative purposes only as prescribed in [2-15-121](#).

**History:** (1) thru (3)En. Sec. 4, Ch. 104, L. 1929; re-en. Sec. 3228.4, R.C.M. 1935; amd. Sec. 4, Ch. 222, L. 1939; amd. Sec. 4, Ch. 244, L. 1961; Sec. 66-804, R.C.M. 1947; redes. 82A-1602.8 and amd. by Sec. 1, Ch. 196, L. 1973; amd. Sec. 1, Ch. 511, L. 1977; Sec. 82A-1602.8, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.8; amd. Sec. 3, Ch. 106, L. 1981; amd. Sec. 16, Ch. 247, L. 1981; MCA 1979, ; redes. by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 370, L. 1987; amd. Sec. 1, Ch. 88, L. 1989; Sec. , MCA 1999; redes. by Sec. 221(2), Ch. 483, L. 2001; amd. Sec. 1, Ch. 243, L. 2003.

**TITLE 37  
CHAPTER 1  
PART 1 - 3**

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## Part 1

### Duties and Authority of Department, Director, and Boards

**37-1-101. (Temporary) Duties of department.** In addition to the provisions of 2-15-121, the department shall:

- (1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;
- (2) standardize policies and procedures and keep in Helena all official records of the boards;
- (3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;
- (4) contract for or administer and grade examinations required by each board;
- (5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;
- (6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;
- (7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;
- (8) issue a notice to and pursue an action against a licensed individual, as a party,

before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

**37-1-101. (Effective January 1, 2009) Duties of department.** In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two

times the board's annual appropriation level and adjust fees through administrative rules when necessary;

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005; amd. Sec. 17, Ch. 11, L. 2007; amd. Sec. 39, Ch. 44, L. 2007; amd. Sec. 1, Ch. 225, L. 2007.

**37-1-102. Renumbered 37-1-121.** Code Commissioner, 1981.

**37-1-103. Renumbered 37-1-131.** Code Commissioner, 1981.

**37-1-104. Standardized forms.** The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

History: En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

**37-1-105. Reporting disciplinary actions against licensees.** The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

**37-1-106. Biennial report.** The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

**37-1-107. Joint meetings -- department duties.** (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

- (a) have licensees with dual licensure in related professions or occupations;
  - (b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:
    - (i) health care boards;
    - (ii) mental health care boards;
    - (iii) design boards;
    - (iv) therapeutic boards; or
    - (v) technical boards; or
  - (c) have issues of joint concern or related jurisdiction with each other.
- (2) A quorum is not required for the joint meeting. However, one member from each board shall attend.
- (3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

History: En. Sec. 1, Ch. 11, L. 2007.

**37-1-108 through 37-1-120 reserved.**

**37-1-121. Duties of commissioner.** In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

- (1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.
- (2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.
- (3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.

**37-1-122 through 37-1-129 reserved.**

**37-1-130. Definitions.** As used in this part, the following definitions apply:

- (1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.
- (2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.
- (3) "Board fee" means:
  - (a) a fee established by the board to cover program area costs as provided in 37-1-134;
  - (b) any other legislatively prescribed fees specific to boards and department programs.
- (4) "Department" means the department of labor and industry established in 2-15-1701.
- (5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

History: En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005; amd. Sec. 7, Ch. 502, L. 2007.

**37-1-131. (Temporary) Duties of boards -- quorum required.** (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department

may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

**37-1-131. (Effective January 1, 2009) Duties of boards -- quorum required.** (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311.

R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005; amd. Sec. 2, Ch. 225, L. 2007; amd. Sec. 8, Ch. 502, L. 2007.

**37-1-132. Nominees for appointment to licensing and regulatory boards.** Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

**37-1-133. Board members' compensation and expenses.** Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

**37-1-134. Fees commensurate with costs.** Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

**37-1-135. Licensing investigation and review -- record access.** Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

**37-1-136. (Temporary) Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any

other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

**37-1-136. (Effective January 1, 2009) Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311.

History: En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 3, Ch. 225, L. 2007.

**37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.** (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection

(1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.

**37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.** (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

History: En. Sec. 2, Ch. 271, L. 2003.

**37-1-139 and 37-1-140 reserved.**

**37-1-141. License renewal -- lapse -- expiration -- termination.** (1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.

## Part 2

### Licensure of Criminal Offenders

**37-1-201. Purpose.** It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001; amd. Sec. 1, Ch. 389, L. 2007.

**37-1-202. Intent and policy.** It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

**37-1-203. Conviction not a sole basis for denial.** Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

**37-1-204. Statement of reasons for denial.** When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

**37-1-205. Licensure on completion of supervision.** Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

### Part 3

#### Uniform Professional Licensing and Regulation Procedures

**37-1-301. Purpose.** The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

History: En. Sec. 1, Ch. 429, L. 1995.

**37-1-302. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

History: En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005; amd. Sec. 9, Ch. 502, L. 2007.

**37-1-303. Scope.** This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals.

History: En. Sec. 3, Ch. 429, L. 1995; amd. Sec. 40, Ch. 44, L. 2007.

**37-1-304. Licensure of out-of-state applicants -- reciprocity.** (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

History: En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

**37-1-305. Temporary practice permits.** (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under

the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

**37-1-306. Continuing education.** A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

History: En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

**37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;  
(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background

check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)

History: En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005; amd. Sec. 2, Ch. 389, L. 2007.

**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

History: En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

**37-1-309. Notice -- request for hearing.** (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's

current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

History: En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

**37-1-310. Hearing -- adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

History: En. Sec. 10, Ch. 429, L. 1995.

**37-1-311. (Temporary) Findings of fact -- order -- report.** (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

**37-1-311. (Effective January 1, 2009) Findings of fact -- order -- report.** (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

History: En. Sec. 11, Ch. 429, L. 1995; amd. Sec. 4, Ch. 225, L. 2007.

**37-1-312. Sanctions -- stay -- costs -- stipulations.** (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

- (b) suspension of the license for a fixed or indefinite term;
- (c) restriction or limitation of the practice;
- (d) satisfactory completion of a specific program of remedial education or treatment;
- (e) monitoring of the practice by a supervisor approved by the disciplining authority;
- (f) censure or reprimand, either public or private;
- (g) compliance with conditions of probation for a designated period of time;
- (h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.

- (i) denial of a license application;

- (j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

History: En. Sec. 12, Ch. 429, L. 1995.

**37-1-313. Appeal.** A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: En. Sec. 13, Ch. 429, L. 1995.

**37-1-314. Reinstatement.** A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 14, Ch. 429, L. 1995.

**37-1-315. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 15, Ch. 429, L. 1995.

**37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

- (2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;
- (3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;
- (4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;
- (5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;
- (6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;
- (7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.
- (8) failure to comply with a term, condition, or limitation of a license by final order of a board;
- (9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;
- (10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;
- (11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;
- (12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;
- (13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;
- (14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;
- (15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;
- (16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;
- (17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:
  - (a) peer review committee;
  - (b) professional association; or
  - (c) local, state, federal, territorial, provincial, or Indian tribal government;
- (18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

History: En. Sec. 16, Ch. 429, L. 1995.

**37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

History: En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

**37-1-318. Violation of injunction -- penalty.** A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 18, Ch. 429, L. 1995.

**37-1-319. Rules.** A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

History: En. Sec. 19, Ch. 429, L. 1995.

**37-1-320. Mental intent -- unprofessional conduct.** A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

History: En. Sec. 7, Ch. 492, L. 2001.

**37-1-321 through 37-1-330 reserved.**

**37-1-331. Correctional health care review team.** (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the

decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

History: En. Sec. 2, Ch. 375, L. 1999.

## **CHAPTER 31**

### **BARBERING, COSMETOLOGY, ELECTROLOGY, ESTHETICS, AND MANICURING**

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## Part 1

### General

**37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of barbers and cosmetologists provided for in 2-15-1747.
- (2) "Booth" means any part of a salon or shop that is rented or leased for the performance of barbering, cosmetology, electrology, esthetics, or manicuring services, as specified in 39-51-204.
- (3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (4) (a) "Electrology" means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.  
(b) Electrology does not include pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.
- (5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.
- (6) "Esthetics" means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.
- (7) "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.
- (8) "Place of residence" means a home and the following residences defined under 50-5-101:
  - (a) an assisted living facility;
  - (b) an intermediate care facility for the developmentally disabled;
  - (c) a hospice;
  - (d) a critical access hospital;
  - (e) a long-term care facility; or
  - (f) a residential treatment facility.
- (9) "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:
  - (a) shaving or trimming a beard;

- (b) cutting, styling, coloring, or waving hair;
- (c) straightening hair by the use of chemicals;
- (d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;
- (e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or
- (f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(10) (a) "Practice or teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

(11) (a) "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering, cosmetology, electrology, esthetics, or manicuring.

(b) The term does not include a room provided in a place of residence that is used for the purposes of barbering, cosmetology, electrology, esthetics, or manicuring unless the owner, manager, or operator allows the room to be used for the practice of barbering or the practice of cosmetology to serve nonresidents for compensation, in which case the room must be licensed as a salon or a shop.

(12) "School" means a program and location approved by the board with respect to its course of instruction for training persons in barbering, cosmetology, electrology, esthetics, or manicuring and that meets any other criteria established by the board.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 260, L. 1985; amd. Sec. 1, Ch. 602, L. 1985; amd. Sec. 2, Ch. 88, L. 1989; amd. Sec. 1, Ch. 473, L. 1993; amd. Sec. 1, Ch. 305, L. 1997; amd. Sec. 17, Ch. 491, L. 1997; amd. Sec. 137, Ch. 483, L. 2001; amd. Sec. 5, Ch. 243, L. 2003; amd. Sec. 1, Ch. 36, L. 2007.

**37-31-102. Exemptions.** The provisions of this chapter do not prohibit:

- (1) service in case of emergency or domestic administration without compensation;
- (2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or
- (3) barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual arts production, including television or motion pictures, by persons employed or under contract to provide these services.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818; amd. Sec. 6, Ch. 243, L. 2003; amd. Sec. 2, Ch. 244, L. 2003.

**37-31-103. Purpose.** It is a matter of legislative policy in the state of Montana that the practice of barbering, cosmetology, electrology, esthetics, and manicuring affects the public health, safety, and welfare and is subject to regulation and control in order to protect the public from unauthorized and unqualified practice.

History: En. Sec. 3, Ch. 243, L. 2003.

## **Part 2 Board of Barbers and Cosmetologists**

**37-31-201. Organization -- seal.** (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1)En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2)En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

**37-31-202. Compensation of members -- expenses.** Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 25, Ch. 474, L. 1981.

**37-31-203. Rulemaking powers.** The board shall prescribe rules for:

- (1) the conduct of board business;
- (2) the qualification and licensure of applicants to practice barbering, cosmetology, electrology, esthetics, or manicuring or to teach barbering, cosmetology, electrology, esthetics, or manicuring;
- (3) the regulation and instruction of apprentices and students;
- (4) the conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring for apprentices and students;
- (5) the qualification and licensure of applicants for booth rental licenses; and
- (6) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979; amd. Sec. 2, Ch. 602, L. 1985; amd. Sec. 3, Ch. 88, L. 1989; amd. Sec. 2, Ch. 305, L. 1997; amd. Sec. 7, Ch. 243, L. 2003; amd. Sec. 82, Ch. 467, L. 2005.

**37-31-204. Sanitary rules.** The board, subject to the approval of the department of public health and human services, shall prescribe sanitary rules that it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812; amd. Sec. 68, Ch. 418, L. 1995; amd. Sec. 97, Ch. 546, L. 1995.

**Part 3**  
**Licensing**

**37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice barbering, cosmetology, electrology, esthetics, or manicuring for compensation;

(b) own, manage, operate, or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) manage or operate a salon or shop or a booth; or

(d) teach in a school of barbering, cosmetology, electrology, esthetics, or manicuring.

(2) It is unlawful:

(a) for a person who owns, manages, or controls a salon or shop to employ or use an unlicensed person as a barber, cosmetologist, electrologist, esthetician, or manicurist;

(b) to operate a school of barbering, cosmetology, electrology, esthetics, or manicuring without complying with all of the regulations of 37-31-311;

(c) to practice barbering, cosmetology, electrology, esthetics, or manicuring in any place other than in a licensed salon or shop as provided in this chapter, except when a licensee is requested:

(i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from a licensed salon or shop; or

(ii) by a customer with a disability or homebound customer to go to the customer's place of residence; or

(d) to violate any of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B); amd. Sec. 3, Ch. 602, L. 1985; amd. Sec. 4, Ch. 88, L. 1989; amd. Sec. 1, Ch. 23, L. 1993; amd. Sec. 2, Ch. 473, L. 1993; amd. Sec. 3, Ch. 305, L. 1997; amd. Sec. 28, Ch. 472, L. 1997; amd. Sec. 8, Ch. 243, L. 2003.

**37-31-302. License required to practice, teach, or operate salon or shop, booth, or school.** (1) A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license.

(2) A place may not be used or maintained for the teaching of barbering, cosmetology, electrology, esthetics, or manicuring for compensation unless licensed as a school.

(3) A person may not operate or manage a salon or shop without a license or a temporary operating permit as provided in 37-31-312.

(4) A person may not operate or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license to teach barbering, cosmetology, electrology, esthetics, or manicuring.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, corporation, or other legal entity desiring to operate a salon or shop shall apply to the department for a license. The application must be accompanied by the license fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1,

Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801; amd. Sec. 4, Ch. 106, L. 1981; amd. Sec. 4, Ch. 602, L. 1985; amd. Sec. 5, Ch. 88, L. 1989; amd. Sec. 3, Ch. 473, L. 1993; amd. Sec. 4, Ch. 305, L. 1997; amd. Sec. 38, Ch. 492, L. 1997; amd. Sec. 9, Ch. 243, L. 2003; amd. Sec. 1, Ch. 194, L. 2005; amd. Sec. 83, Ch. 467, L. 2005.

**37-31-303. Application for license to practice or teach.** An applicant for a license to practice or teach barbering, cosmetology, electrology, esthetics, or manicuring shall file an application provided by the department and pass the examination prescribed by the board to qualify for licensure.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3); amd. Sec. 5, Ch. 602, L. 1985; amd. Sec. 6, Ch. 88, L. 1989; amd. Sec. 10, Ch. 243, L. 2003; amd. Sec. 84, Ch. 467, L. 2005.

**37-31-304. Qualifications of applicants for license to practice.** (1) Before a person may practice:

- (a) barbering, the person shall obtain a license to practice barbering from the department;
- (b) cosmetology, the person shall obtain a license to practice cosmetology from the department;
- (c) electrology, the person shall obtain a license to practice electrology from the department;
- (d) manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology; or
- (e) esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice barbering, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 1,500 hours in a licensed barbering school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file an application and deposit the application fee with the department and pass an examination as to fitness to practice barbering.

(c) The board shall issue a license to practice barbering, without examination, to a person licensed in another state if the board determines that:

- (i) the other state's course of study hour requirement is equal to or greater than the hour requirement in this state; and
- (ii) the person's license from the other state is current and the person is not subject to pending or final disciplinary action for unprofessional conduct or impairment.

(3) (a) To be eligible to take the examination to practice cosmetology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school

diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a licensed cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (3)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice cosmetology.

(4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of education, training, and experience in the field of electrology as prescribed by the board by rule.

(b) A person qualified under subsection (4)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice electrology.

(5) (a) To be eligible to take the examination to practice manicuring, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board in a licensed school of cosmetology or a licensed school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent or a certificate of completion from a vocational-technical program. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (5)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice manicuring.

(6) (a) To be eligible to take the examination to practice esthetics, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a licensed school of cosmetology or a licensed school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (6)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice esthetics.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1); amd. Sec. 2, Ch. 260, L. 1985; amd. Sec. 6, Ch. 602, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 520, L. 1989; amd. Sec. 4, Ch. 473, L. 1993; amd. Sec. 26, Ch. 308, L. 1995; amd. Sec. 5, Ch. 305, L. 1997; amd. Sec. 11, Ch. 243, L. 2003; amd. Sec. 85, Ch. 467, L. 2005.

**37-31-305. Qualifications of applicants for license to teach.** (1) Before a person may teach manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics or to teach cosmetology, the person shall obtain from the department a license to

teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a licensed school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.

(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.

(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.

(7) To be eligible to take an examination to obtain a license to teach barbering, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice barbering issued by the department and have received a diploma from a school licensed as a teacher-training unit certifying satisfactory completion of 500 hours of student teacher training; or

(ii) have been actively engaged as a barber for 3 continuous years immediately before taking the teacher's examination.

(8) To be eligible to take an examination for a license to teach electrology, a person must:

(a) be a high school graduate or possess an equivalent of a high school diploma recognized by the superintendent of public instruction;

(b) have a 100-hour teacher certificate; and

(c) have been actively engaged as an electrologist for 3 continuous years immediately preceding taking the teacher's examination.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3,

R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2); amd. Sec. 5, Ch. 106, L. 1981; amd. Sec. 3, Ch. 260, L. 1985; amd. Sec. 7, Ch. 602, L. 1985; amd. Sec. 5, Ch. 473, L. 1993; amd. Sec. 6, Ch. 305, L. 1997; amd. Sec. 12, Ch. 243, L. 2003; amd. Sec. 86, Ch. 467, L. 2005.

**37-31-306. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1; amd. Sec. 6, Ch. 106, L. 1981.

**37-31-307. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979; amd. Sec. 7, Ch. 106, L. 1981; amd. Sec. 1, Ch. 29, L. 1989.

**37-31-308. Exemption for persons with disabilities.** A person with a physical disability who is trained for barbering, cosmetology, electrology, esthetics, or manicuring by the department of public health and human services is, for a period of 1 year immediately following graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a school of barbering, cosmetology, electrology, esthetics, or manicuring, the department shall issue the person the necessary license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808; amd. Sec. 8, Ch. 106, L. 1981; amd. Sec. 4, Ch. 260, L. 1985; amd. Sec. 8, Ch. 602, L. 1985; amd. Sec. 7, Ch. 88, L. 1989; amd. Sec. 6, Ch. 473, L. 1993; amd. Sec. 98, Ch. 546, L. 1995; amd. Sec. 7, Ch. 305, L. 1997; amd. Sec. 29, Ch. 472, L. 1997; amd. Sec. 13, Ch. 243, L. 2003; amd. Sec. 87, Ch. 467, L. 2005.

**37-31-309. Booth rental license.** No person may receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

History: En. Sec. 9, Ch. 88, L. 1989.

**37-31-310 reserved.**

**37-31-311. Schools -- license -- requirements -- bond -- curriculum.** (1) A person, firm, partnership, corporation, or other legal entity may not operate a school for the purpose of

teaching barbering, cosmetology, electrology, esthetics, or manicuring for compensation unless licensed by the department. Application for the license must be filed with the department on an approved form.

(2) A school for teaching barbering may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of barbering.

(c) It maintains a school term of not less than 1,500 hours and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of barbering.

(3) A school for teaching cosmetology may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(4) A school for teaching electrology may not be granted a license unless the school maintains a school term and a course of practical training and technical instruction prescribed by the board, and possesses apparatus and equipment necessary for teaching electrology as prescribed by the board.

(5) A school for teaching manicuring may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of manicuring.

(b) It maintains a school term and a course of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

(6) A school for teaching esthetics may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

(7) Licenses for schools of barbering, cosmetology, electrology, esthetics, or manicuring may be refused, revoked, or suspended as provided in 37-31-331.

(8) A teacher or student teacher may not be permitted to practice barbering, cosmetology, electrology, esthetics, or manicuring on the public in a school of barbering, cosmetology, electrology, esthetics, or manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(9) The board may make further rules necessary for the proper conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring.

(10) The board shall require the person, firm, partnership, corporation, or other legal entity operating a school of barbering, cosmetology, electrology, esthetics, or manicuring to furnish a bond or other security in the amount of \$5,000 and in a form and manner prescribed by the board.

(11) A professional salon or shop may not be operated in connection with a school of barbering, cosmetology, electrology, esthetics, or manicuring.

(12) The board may, by rule, establish a suitable curriculum for teachers' training in licensed schools of barbering, cosmetology, electrology, esthetics, or manicuring.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8); amd. Sec. 9, Ch. 602, L. 1985; amd. Sec. 7, Ch. 473, L. 1993; amd. Sec. 8, Ch. 305, L. 1997; amd. Sec. 14, Ch. 243, L. 2003; amd. Sec. 88, Ch. 467, L. 2005.

**37-31-312. Inspection -- temporary permits.** (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, school of barbering, school of cosmetology, school of electrology, school of esthetics, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of a licensee's or school's license.

(2) When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board, the board:

(a) may authorize the department to grant to a new salon or shop a temporary operating permit; or

(b) shall, in order to avoid a disruption of business, authorize the department to grant a temporary operating permit to an existing shop or salon whose owner or operator is currently in good standing with the board, as defined by the board, and who is relocating to a new location. An owner or operator of an existing shop or salon may not receive a temporary operating permit under this section within 90 days of a license renewal date.

(3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever comes first. A temporary permit is not renewable.

(4) The department shall require an inspector appointed under subsection (1) to conduct an annual inspection of each salon or shop in the state.

History: (1)En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3)En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1; (4)En. Sec. 9, Ch. 106, L. 1981; amd. Sec. 56, Ch. 345, L. 1981; amd. Sec. 5, Ch. 260, L. 1985; amd. Sec. 10, Ch. 602, L. 1985; amd. Sec. 8, Ch. 88, L. 1989; amd. Sec. 1, Ch. 458, L. 1991; amd. Sec. 8, Ch. 473, L. 1993; amd. Sec. 9, Ch. 305, L. 1997; amd. Sec. 15, Ch. 243, L. 2003; amd. Sec. 2, Ch. 194, L. 2005; amd. Sec. 89, Ch. 467, L. 2005.

**37-31-313 through 37-31-320 reserved.**

**37-31-321. Repealed.** Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M. 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807; amd. Sec. 16, Ch. 243, L. 2003.

**37-31-322. Repealed.** Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979; amd. Sec. 57, Ch. 345, L. 1981; amd. Sec. 6, Ch. 260, L. 1985; amd. Sec. 11, Ch. 602, L. 1985; amd. Sec. 9, Ch. 473, L. 1993; amd. Sec. 94, Ch. 429, L. 1995; amd. Sec. 17, Ch. 243, L. 2003; amd. Sec. 38, Ch. 271, L. 2003.

**37-31-323. Fees.** (1) Fees for licenses must be paid to the department in amounts prescribed by the board.

(2) The license fees must be paid in advance to the department unless otherwise provided by board rule.

(3) Other or additional license fees may not be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of barbering, cosmetology, electrology, esthetics, or manicuring.

History: En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815; amd. Sec. 10, Ch. 106, L. 1981; amd. Sec. 58, Ch. 345, L. 1981; amd. Sec. 18, Ch. 243, L. 2003; amd. Sec. 90, Ch. 467, L. 2005.

**37-31-324. Deposit of fees.** All fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 1, Ch. 277, L. 1983.

**37-31-325 through 37-31-330 reserved.**

**37-31-331. Refusal, revocation, or suspension of licenses -- grounds -- notice and hearing.** (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, corporation, or other legal entity operating a salon or shop or a school of barbering, cosmetology, electrology, esthetics, or manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of salons or shops or schools of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of any habit-forming drug;

(f) permitting a license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811; amd. Sec. 12, Ch. 602, L. 1985; amd. Sec. 10, Ch. 473, L. 1993; amd. Sec. 69, Ch. 418, L. 1995; amd. Sec. 99, Ch. 546, L. 1995; amd. Sec. 10, Ch. 305, L. 1997; amd. Sec. 19, Ch. 243, L. 2003; amd. Sec. 43, Ch. 44, L. 2007.

**37-31-332. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

**37-31-333. Appeal from actions of board.** An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

**37-31-334. Penalty -- injunction.** (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general, or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(C), (D).