

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed adoption of) NOTICE OF PUBLIC HEARING
NEW RULES I - IX pertaining to the) ON PROPOSED ADOPTION
professional assistance program)

TO: All Concerned Persons

1. On May 18, 2006, at 2:00 p.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on May 12, 2006, to advise us of the nature of the accommodation that you need. Please contact Evie Martin, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2364; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY:

The Board of Medical Examiners has determined that there is reasonable necessity to adopt New Rules I-IX in order to enable the screening panel of the board to oversee any rehabilitation program established pursuant to 37-3-203, MCA. While the board historically has been authorized to establish a program to assist and rehabilitate impaired licensees, prior to 2005 there was no mandate that the board's screening panel oversee the program. See 37-3-201, MCA, as amended by Chapter 126, L. of 2005 (House Bill 138). The New Rules identify terms relevant to impairment, specify the duties of the program, including reporting requirements, and to define the interaction between the board, the screening panel, and the program.

Because the board was cited by the Legislative Audit Division for not having rules in place defining the role of the endorsed professional assistance program, it is reasonably necessary that the board propose these rules.

4. The proposed new rules provide as follows:

NEW RULE I PROFESSIONAL ASSISTANCE PROGRAM PURPOSE

(1) The Montana Board of Medical Examiners has established a program which provides assistance, rehabilitation, and after-care monitoring to all licensed healthcare providers under the jurisdiction of the board who are suspected and/or found to be physically or mentally impaired by habitual intemperance or the

excessive use of addictive drugs, alcohol, or any other drug or substance, or by mental or chronic physical illness.

(2) The board encourages and shall permit the rehabilitation of licensees, if in the board's opinion, public health, safety, and welfare can be assured. Early intervention and referral are paramount to promoting public health, safety, and welfare.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE II RESPONSIBILITIES OF PROFESSIONAL ASSISTANCE PROGRAM (1) The professional assistance program established by the board as set forth in 37-3-203 and 37-3-401, MCA, shall fulfill the terms of its contract with the board, which will include, but not be limited to the following:

(a) providing two tracks for assistance of licensees and license applicants under the board's jurisdiction:

(i) a disciplinary track; and

(ii) a nondisciplinary track;

(b) providing recommendations to licensees and license applicants for appropriate evaluation and treatment facilities;

(c) recommending to the board terms and conditions of treatment, rehabilitation, and monitoring of licensees or license applicants known to the board; and

(d) monitoring all aftercare of participants under contract, to ensure public safety and compliance with agreed treatment recommendations propounded by one or more of the following:

(i) the board, through stipulations and/or final orders;

(ii) treatment centers; and

(iii) the professional assistance program established by the board.

(2) The professional assistance program shall consult with the board regarding professional assistance program processes and procedures to ensure program responsibilities are met, consistent with board orders, requests and contract terms.

(3) The professional assistance program shall provide information to and consult with the board upon the board's request.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE III REPORTING OF SUSPECTED IMPAIRMENT

(1) Individuals, entities, or associations may report information to the board of the suspected impairment of a licensee or new license applicant, as provided in 37-3-203 and 37-3-401, MCA.

(2) Individuals, entities, or associations may report information of suspected impairment of a licensee or new license applicant to the appropriate personnel of the professional assistance program established by the board in lieu of reporting to the board, as provided in 37-3-203 and 37-3-401, MCA.

(3) Reports received by the board of suspected impaired licensees or license applicants may be referred to the professional assistance program at the board's discretion through the nondisciplinary track without formal disciplinary action against the licensee or license applicant.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE IV PROTOCOL FOR SELF-REPORTING TO A BOARD ENDORSED PROFESSIONAL ASSISTANCE PROGRAM (1) If a licensee or license applicant chooses to self-report to the board-established professional assistance program, and the professional assistance program has determined that the licensee or license applicant needs assistance or supervision, the licensee or license applicant shall be required to:

(a) enter into a contractual agreement with the professional assistance program for the specified length of time determined by the professional assistance program; and

(b) abide by all the requirements set forth by the professional assistance program.

(2) Self-reporting by a licensee or license applicant may still result in disciplinary action by the board, if:

(a) the professional assistance program determines that the self-reporting licensee or the license applicant poses a danger to themselves or to the public;

(b) the licensee or license applicant is noncompliant with a contractual agreement with the professional assistance program;

(c) the licensee or license applicant has not completed evaluation, treatment, or after-care monitoring as recommended by the professional assistance program; or

(d) the screening panel otherwise determines that disciplinary action is warranted.

(3) The professional assistance program shall notify the board, disclose the identity of the licensee or license applicant involved, and provide all facts and documentation to the board whenever:

(a) the licensee or license applicant:

(i) has committed an act described in 37-3-323 or 37-3-401, MCA;

(ii) is noncompliant with a recommendation of the professional assistance program for evaluation, treatment, or after-care monitoring contract; or

(iii) is the subject of credible allegations that the licensee or license applicant has put a patient or the public at risk or harm; or

(b) the screening panel otherwise determines disciplinary action is warranted.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE V PROTOCOL FOR DISCIPLINARY TRACK (1) All licensees or license applicants under the jurisdiction of the board who participate in the

endorsed professional assistance program under the disciplinary track shall be reported to the board by name.

(2) A licensee or license applicant is placed in the disciplinary track by one or more of the following:

- (a) as a condition of licensure imposed by a board final order;
 - (b) as a result of a sanction imposed by a board final order;
 - (c) as a result of noncompliance with the licensee's or license applicant's contractual agreement with the program;
 - (d) pursuant to an agreement between the licensee and the screening panel;
- or
- (e) pursuant to an agreement between the license applicant and the full board.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE VI PROTOCOL FOR NONDISCIPLINARY TRACK

(1) A licensee or license applicant under the jurisdiction of the board who participates in the professional assistance program under the nondisciplinary track shall be reported to the board by participant number.

(2) The identity of the participant who is noncompliant or refuses a reasonable request by the professional assistance program shall be reported to the board.

(3) If the board determined that a participant does not abide by all terms and conditions of the professional assistance program, the participant will be referred to the screening panel of the board for appropriate action under the disciplinary track.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE VII REPORTING TO THE BOARD

(1) The screening panel of the board must receive a written compliance status report from the professional assistance program, at intervals established by the contract between the program and the board, regarding each program participant:

- (a) under a monitoring agreement;
- (b) referred to the program; or
- (c) in the process of evaluation or treatment.

(2) The full board shall receive a written compliance status report from the professional assistance program, at intervals established by contract between the program and the board, regarding each participant:

- (a) under a monitoring agreement;
- (b) referred to the program; or
- (c) in the process of evaluation or treatment.

(3) The identity of a participant in the nondisciplinary track must be reported to the full board by participant number except as required by [New Rule VI].

(4) The identity of a participant in the disciplinary track must be reported to the full board by name.

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE VIII DISCHARGE REQUIREMENTS (1) The professional assistance program shall facilitate participant discharge from the program.

(2) The discharge criteria must be determined by the board in conjunction with the recommendations of the professional assistance program.

(3) The following are required upon discharge of a participant from the endorsed professional assistance program:

- (a) report of the discharge of the participant to the board; and
- (i) verification of satisfactory completion of monitoring, program requirements, and appropriate assurance of public safety;
- (ii) completion of board final order terms and conditions with professional assistance recommendation for discharge and release;
- (iii) request by a participant to transfer assistance into an appropriate endorsed professional assistance program in another jurisdiction, such transfer to be confirmed by the program.

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE IX RELAPSE REPORTING (1) The professional assistance program shall define what constitutes "relapse" for each particular participant and determine if and when relapse has occurred.

(a) A participant who has a single episode of relapse and/or early detection of relapse with nominal substance abuse may be reported to the board by the professional assistance program.

(b) A participant who has a second or severe relapse must be reported by the professional assistance program to the board screening panel for review.

(2) Any of the following may be required by the board, upon the recommendation of the professional assistance program, when a participant suffers relapse:

- (a) the participant may be required to withdraw from practice;
- (b) the participant may undergo further recommended evaluation and/or treatment as determined by the professional assistance program;
- (c) the participant's monitoring agreement required by the professional assistance program must be reassessed and may be modified;
- (d) the participant may be required to comply with other recommendations of the professional assistance program; or
- (e) the participant may be subject to discipline as imposed by a board final order.

AUTH: 37-1-131, 37-3-203, MCA
IMP: 37-1-131, 37-3-201, 37-3-203, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., May 26, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.medicalboard.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsmed@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

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

BOARD OF MEDICAL EXAMINERS
MICHAEL D. LAPAN, DPM, PRESIDENT

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 10, 2006