

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.165.401 fees, and the proposed) ON PROPOSED AMENDMENT AND
adoption of NEW RULE I fee abatement) ADOPTION

TO: All Concerned Persons

1. On March 16, 2006, at 9:00 a.m., a public hearing will be held in room 439, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment and 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 Occupational Therapy Practice no later than 5:00 p.m. on March 10, 2006, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Occupational Therapy Practice, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdotp@mt.gov.

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

24.165.401 FEES (1) Fees adopted by the board under 37-24-310, MCA, are as follows:

(a) Applications for licensure	\$ 80
<u>(i) registered occupational therapist</u>	<u>\$110</u>
<u>(ii) certified occupational therapist assistant</u>	<u>110</u>
(b) Initial license issuance	80
<u>(i) registered occupational therapist</u>	<u>80</u>
<u>(ii) certified occupational therapist assistant</u>	<u>80</u>
(c) License renewal	80
<u>(i) registered occupational therapist</u>	<u>110</u>
<u>(ii) certified occupational therapist assistant</u>	<u>110</u>
(d) remains the same.	
(e) Temporary practice permit	60 <u>120</u>
(f) Inactive fee renewal	30 <u>50</u>
(g) and (h) remain the same.	
<u>(i) Modality applications</u>	
<u>(i) superficial</u>	<u>20</u>
<u>(ii) sound and electrical (deep)</u>	<u>35</u>
<u>(iii) iontophoresis</u>	<u>20</u>
(2) remains the same.	

AUTH: 37-1-131, ~~37-1-134~~, 37-24-201, ~~37-24-202~~, MCA
IMP: 37-1-134, 37-24-310, MCA

REASON: The Board of Occupational Therapy Practice has determined that there is reasonable necessity to amend ARM 24.165.401 in order to set the Board's fees at a level commensurate with program costs, as required by 37-1-134, MCA. The Board estimates that approximately 314 persons will be affected by the increased renewal fee, 26 persons will be affected by the inactive fee and 26 new applicants will be affected by the proposed application and temporary license fee changes.

In 2003, the Legislature specified qualification requirements for use of sound electrical physical agent modalities, the use of occupational therapy techniques involving topical medications, application and administration of topical medications and protocols. The Board has implemented rules that outline the required documentation for authorization to use superficial and sound and electrical (deep) physical agent modalities. Three professional members of the Board review each superficial modality application, sound and electrical modality application and iontophoresis modality application. The Board believes that the proposed fees for the three modality applications are commensurate with costs. Twenty-six applicants for the superficial modality will be affected by the \$20.00 proposed fee. Five applicants for the sound and electrical (deep) modality will be affected by the \$35.00 proposed fee. Five applicants for the iontophoresis modality will be affected by the \$20.00 proposed fee.

The Board estimates that approximately 366 persons will be affected annually by the proposed fee increases. The total estimated annual increase in revenue is approximately \$12,435. With the proposed fee increase, the Board's projected annual revenue is \$44,825. The Board's appropriation for fiscal year 2006 is \$49,213. The Board has agreed to reduce their budget \$10,000 by eliminating the CE Caravan in FY 2007. FY 2007 budget will be \$40,418. The Board believes that the proposed fee structure, along with the abatement of renewal fees proposed in NEW RULE I below, will address the Board's maintaining fees set at a level commensurate with costs.

The Board has also determined there is reasonable necessity to clarify that application, new license issuance, and annual renewal fees are charged to both occupational therapists (OTRs) and to certified occupational therapy assistants (COTAs). Historically, both categories have been charged the same fees, and thus the fees provided for in the rule are not new. However, in order to provide greater clarity and accountability, the Board believes that it is appropriate to separately identify the two license classifications in its fee rule.

There is also reasonable necessity to amend the AUTH and IMP citations to the rule, while the rule is otherwise being amended, in order to correctly reflect the Board's rulemaking authority and the statutes being implemented by the rule.

4. The proposed New Rule provides as follows:

NEW RULE I ABATEMENT OF RENEWAL FEES (1) The Board of Occupational Therapy Practice adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other non-typical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

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 Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdotp@mt.gov, and must be received no later than 5:00 p.m., March 24, 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 <http://www.otp.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 Occupational Therapy Practice 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 Occupational Therapy Practice administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdotp@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, do not apply.

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
ELSPETH RICHARDS, CHAIRPERSON

/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 February 13, 2006