

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of ARM 8.35.407, ) PROPOSED AMENDMENT AND  
pertaining to fees, and the ) ADOPTION  
proposed adoption of NEW )  
RULE I, pertaining to the )  
abatement of renewal fees )

TO: All Concerned Persons

1. On June 2, 2004, at 10:00 a.m., a public hearing will be held in room 438, 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 May 27, 2004, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Occupational Therapy Practice, 301 South Park Avenue, 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@state.mt.us.

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

<u>8.35.407 FEES</u> (1) Fees adopted by the board under 37-	
24-310, MCA, are as follows:	
(a) Applications for licensure	<del>\$80</del>
(i) <u>registered occupational therapist</u>	<u>\$60</u>
(ii) <u>certified occupational therapist</u>	
<u>assistant</u>	<u>60</u>
(b) Initial licensure issuance	<del>80</del>
(i) <u>registered occupational therapist</u>	<u>60</u>
(ii) <u>certified occupational therapist</u>	
<u>assistant</u>	<u>60</u>
(c) License renewal	<del>80</del>
(i) <u>registered occupational therapist</u>	<u>60</u>
(ii) <u>certified occupational therapist</u>	
<u>assistant</u>	<u>60</u>
(d) remains the same.	
(e) Temporary practice permit	<del>60</del> <u>50</u>
(f) Inactive renewal fee	<del>30</del> <u>15</u>
(g) remains the same.	
(h) License verification fee	<del>30</del> <u>15</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 8.35.407 in order to set the Board's fees at a level commensurate with program costs, as required by 37-1-134, MCA. The Board's current fund balance is \$51,731.27. The Board estimates that approximately 382 persons (310 active licensees, 28 inactive licensees, 4 temporary licensees and 40 new applicants) will be affected by the proposed fee changes. The estimated annual decrease in revenue is approximately \$16,300. With the proposed fee decrease the Board's projected annual revenue will be \$9,370. The Board's appropriation for fiscal year 2004 is \$23,960 and for fiscal year 2005 \$19,195. 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 excess cash balance while maintaining fees set at a level commensurate with costs.

The Board also has determined there is reasonable necessity to clarify that application, new license issuance, and annual renewal fees are charged both to registered 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.

4. The proposed new rule provides as follows:

NEW RULE I ABATEMENT OF RENEWAL FEES (1) This rule provides for an abatement of certain fees when the board's cash balance is excessive.

(2) Except as provided by (3), when the board has an excessive cash balance, the department may abate the renewal fees for its licensees or registrants for one or more renewal cycles until the board's cash balance does not exceed allowable maximums.

(a) The abatement of renewal fees may be the total amount of the renewal fee or a specified portion of that fee.

(b) If the board has more than one category of renewals, the abatement must be made on a roughly proportional basis to fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The department may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal for all classes is disproportionately high. In such case, the department must attempt in any future

abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that a renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling renewal requirements, including submission of a renewal application and any continuing education documentation. The board, to the extent it provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule will not apply when an exception to 17-2-302, MCA, exists and is applicable to the board's cash balance. (As an example, if the board adopts a three-year renewal cycle, the board will have an apparent excess cash balance during the first year of the renewal cycle, based upon a collection of three years' worth of fees for operational expenses.)

(4) This rule does not relieve the board from the duty of establishing fees at a level commensurate with costs.

AUTH: 37-1-131, 37-24-201, MCA

IMP: 17-2-302, 17-2-303, 37-1-131, 37-1-134, 37-24-310, MCA

REASON: The Board has determined that it is reasonably necessary to adopt NEW RULE I to ensure that the Board of Occupational Therapy Practice and the Department have a methodology in place to promptly address excess cash accumulations that have been generated by the Board's licensing programs. The Board intends to apply the abatement to the June 15, 2004, license renewals. Excess cash accumulations are generally prohibited in 17-2-302, MCA, and a reduction in fees is required pursuant to 17-2-303, MCA. As noted in the statement of reasonable necessity for the proposed amendment to ARM 8.35.407, the Board currently has an excess cash balance. The Board believes that because the existing licensees are the individuals who have historically paid the renewal fees that led to the excess cash balance, it is fair to target those individuals for the fee abatement. The Board has considered and rejected the alternative strategy of providing a larger percentage fee reduction applicable to all of its fees, on that basis and on the additional grounds that with a high enough percentage reduction to "spend down" the cash balance, those lower fees would understate the actual cost of operating the program. As noted above, the proposed fee modifications provide revenue that reasonably approximates, and is commensurate with, the program's operating costs.

The Department notes that at least one other of the administratively attached boards has an excessive cash balance, and has had to propose and adopt a similar rule in order to address the issue. The Department has prepared a model rule for fee abatements, which it is urging that the various boards adopt in advance, so that each board can

promptly remedy any such excess cash accumulation that might arise.

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@state.mt.us](mailto:dlibsdotp@state.mt.us) and must be received no later than 5:00 p.m., June 4, 2004.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Occupational Therapy Practice's rule notice section. The Department strives to make the electronic copy of this notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version, 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 comment forum 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@state.mt.us](mailto:dlibsdotp@state.mt.us) or may be made by completing a request form at any rules hearing held by the agency.

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

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE  
ELSPETH RICHARDS, CHAIR

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Alternate Rule Reviewer

Certified to the Secretary of State April 26, 2004