

SB 76

AUTHORIZES ADMINISTRATIVE SUSPENSION FOR ROUTINE MATTERS AS AN ALTERNATIVE TO FORMAL DISCIPLINARY PROCEEDINGS.

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

SPONSOR – SEN. GENE VUKOVICH SD 39

EXHIBIT 1
DATE 2/11/2015
SB 76

CONTACT

Judy Bovington
DLI Chief Legal Counsel
(406) 444-3255
jbovington@mt.gov

SUMMARY OF CHANGES OR ACTUAL AMENDMENT LANGUAGE

Section 1 - New:

- “Routine matters” include the following deficiencies identified by staff:
 - failing to complete continuing education (CE) requirements;
 - failing to respond to requests during an audit for proof of CE requirements;
 - submitting a bad check to pay the fine, license renewal, or other fee;
 - failing to meet qualifications for license issued in error; and
 - failing to submit a fine or complete a sanction imposed by a board final order.
- Directs staff to notify Licensee of deficiencies and provide Licensee an additional 60 days to cure the deficiency or have the license automatically convert to non-disciplinary suspension status until the Licensee cures the deficiency.
- Authorizes department to establish administrative fee by rule that licensee must pay to reinstate administratively suspended license.
- Allows formal disciplinary process to proceed instead if warranted by the circumstances.

Section 2 - Amend § 37-1-131:

- Clarifies that routine matters will be handled administratively rather than as traditional discipline.
- Moves and clarifies continuing education language to § 37-1-306 [Section 4].

Section 3 – Amend § 37-1-141:

- Cross-references relevant requirements in § 37-1-306 Continuing Education [Section 4].

Section 4 – Amend § 37-1-306:

- Moves and clarifies continuing education-specific language from § 37-1-131 [Section 2].

Section 5 – New:

- Mirrors the new language of § 37-1-306 [Section 4] for programs without boards in Title 37, chapter 1, part 4.

Section 6 – Amend § 37-1-309:

- Clarifies that routine matters will be handled administratively rather than as traditional discipline.

Section 7 – Amend § 37-1-313:

- Provides Licensee opportunity to have board review and appeal of administrative suspension.

Section 8 – Amend § 37-1-403:

- Mirrors the new language of § 37-1-309 [Section 6] for programs without boards in Title 37, chapter 1, part 4.

Section 9 – Amend § 37-1-407:

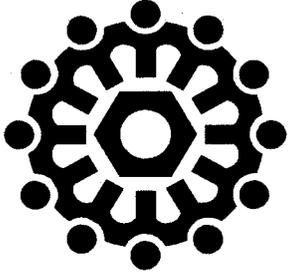
- Mirrors the Licensee opportunity to have department review and appeal of administrative suspension provided language of § 37-1-313 [Section 7] for programs without boards in Title 37, chapter 1, part 4.

Section 10 – Amend § 37-51-204:

- Reflects necessary cross-referencing changes made to § 37-1-131 and § 37-1-306 in Sections 2 and 4 above.

Sections 11 – 14:

- Codification instruction, saving clause, severability, and July 1, 2015 effective date.



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OVERVIEW OF DEPARTMENT'S POSITION

In calendar year 2014, 180 complaints were filed against licensees for non-compliance with CE requirements alone, not including the other "routine matters" mentioned. The traditional disciplinary process takes anywhere from one to four or more board meeting cycles (based on quarterly meetings), involves multiple work units, attorney and legal support staff, board meeting time, and often results in no action being taken by the board out of sympathy to the licensee. If the screening panel takes formal action, the result is a permanent, public disciplinary mark on the licensee's record and is typically settled with a stipulation to cure the deficiency and a fine which is not recoverable to the board. The average cost for processing a complaint is over \$1,800, and adjudication through the traditional process in a typical case that is settled with a stipulation averages \$3,000 per case. These costs have required some boards to increase licensing fees, with the result that the majority of licensees who are in compliance are paying for the minority of licensees who aren't in compliance.

The proposed alternative is similar to how the State Bar of Montana handles CE requirements for lawyers and is meant to address "routine matters" that are usually not in dispute and pose lesser threats to public safety. While these routine matters constitute non-compliance with board regulations and must be addressed, they may not typically warrant a permanent public disciplinary mark. The goal is to gain compliance, not to sanction. The proposed alternative will address non-compliance and will be processed by a single work unit. The administrative suspension will provide the incentive to efficiently gain compliance. In the CE audit cases, Licensees will be given ample time to cure their deficiency--approximately 150 days—because the administrative suspension process would not start until the preceding audit process is complete.