



Memorandum

To: Jolene Rieck, ASLA

From: Julia Lent, State Government Affairs Manager

Date: September 8, 2005

Subject: Montana Practice Act – Exemptions

Licensure and the Law

The first state to enact a licensing law for landscape architecture was California in 1953. Since then, 46 additional states have enacted licensing requirements for landscape architecture. Nationally, 38 states (including Montana) regulate the practice of the profession and 9 states do not regulate the practice of the profession and instead only restrict the use of the title 'landscape architect' to licensees (all practice laws also restrict the use of the title).

Licensing of landscape architecture has withstood both political and legal challenges. In the landmark court case, *Paterson v. New York*¹, the court upheld regulation of the profession as a proper protection of the public:

The Legislature deems the practice of landscape architecture a matter of public concern and enacted the challenged legislation "in order to safeguard life, health and property"...The testimony at the trial established that the regulation of the practice of landscape architecture was clearly related to the public health and welfare and, as such, constituted a valid exercise of the police power...

Since that landmark decision thirty years ago, many states have reviewed landscape architecture licensing laws through sunset procedures or other legislative forums. The clear trend is to enact more rigorous licensing standards to better protect the public. In just the past four years, six sunset reviews have recommended extending licensure and seven states have upgraded their title acts to also regulate the practice of landscape architecture.

Practice Act Exemptions

Exemptions do not directly relate to weak licensure laws. In fact, title acts usually have **fewer** exemptions than practice acts because there is less need for an exemption when it only applies to the use of the title 'landscape architect'. Exemptions are more important to clarify and protect allied professions with actual and perceived overlap with the **practice of landscape architecture**. Even states that have been regulating landscape architectural practice for decades provide exemptions to allied professions. It is impossible for a practice

¹ *Paterson, v. University of the State of New York*, 252

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Exhibit #11

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landscape architecture, but instead performing the legitimate practice of their exempted profession. It should also be noted that many licensed landscape architects also practice in many of the exempted professions (planning, landscape design, horticulture), but this work is not the basis for their landscape architecture license.

Montana exempts two general activities: The average practice act for landscape architecture contains three exemptions based upon a person's status or for general activities. Montana includes two activities that are commonly exempted from practice acts for the design professions:

- **Montana exempts employees of landscape architects acting under the instruction, control, or supervision of their employers:** 19 other states have this exemption; all of them are practice act states. This does not weaken the licensure law because the control for the project remains under a licensee.
- **Montana exempts any person performing services on his or her own property:** 16 other states have this exemption; all but one are practice act states. This common exemption ensures that property owners are not restricted from doing work on their own property.

Exemptions and the Practice of Other Professions

The diversity of the landscape architecture profession contributes to the need for clarifying exemptions in its practice acts. However, there are many other professions that have exemptions provided by law. The chart that follows outlines the exemptions for some of Montana's licensed professions. The engineering law actually exempts "any legally recognized profession or trade" in addition to specifically listing architects and contractors. Architects have similar general exemptions (property owners/preparers of drawings) plus an exemption for engineers.

The health care professions show an even greater propensity for exemptions. The pharmacy law includes exemptions for physicians, veterinarians, dentists, nurses, euthanasia technicians and various distributors of controlled substances. Nurses must be licensed, but in order to ensure clarity in the practice of the licensed profession, the law specifically exempts personal assistants, foster parents, executions, religious activities and others. Also, the exemptions for the psychology law include social workers, lawyers, pastoral counselors, educators, and social psychologists. Certainly the public would expect the state to ensure that only licensed individuals practice nursing, pharmacy, and psychology. This is also true for landscape architecture. All of the professions listed in the following chart provide evidence that exemptions do not release the state from the responsibility for protecting the public from unlicensed practice of a regulated profession.

Montana: Licensed Professions - Exemptions

Chapter: Profession	#	Examples
65: Architecture	8	Engineers, employees, preparation of details/shop drawings, property owners, federal employees

67: Engineering	4+	Any legally recognized profession or trade, contractors, employees, architects
10: Pharmacy	10	Physicians, veterinarians, dentists, registered nurses, euthanasia technicians, various distributors of controlled substances
12: Nursing	12	Personal assistants, nursing w/o compensation in connection with religious observance, executions, students, foster parents, emergency nursing care
10: Optometry	6	Physicians, surgeons, opticians, military personnel, sellers of eyeglasses who do not fit them to the buyer
11: Physical Therapy	4	Osteopathy, chiropractic, chiropractic physiotherapy, or massage therapists, to the extent they do massage
17: Psychologists	12	Physicians, social workers, lawyers, pastoral counselors, educators, lecturers, social psychologists
18: Veterinarians	13	Government or military employees, laboratory technicians, veterinary researchers, castrations, euthanasia technicians
25: Nutritionists	10	Students, paraprofessionals, physicians, nurses, educators, person furnishing certain information
28: Respiratory Care Therapists	8+	Student, self-care by friend/family, emergency care, any licensed health care provider
34: Clinical Laboratory Science Practitioners	8+	Any profession under title 37 that includes performance of such tests, physicians, pathologists, federal employees, teaching/research, perfusionists, cardiopulmonary technicians, rural health clinics
35: Addiction Counselors	18+	Physician, lawyer, professional counselor, social worker, psychiatrist, psychologist, nurse, probation officer, court employee, pastoral counselor, school counselor, government employee, educational/ charitable institutional employee, health care provider
51: Real Estate Brokers & Salespersons	10	Homeowners, attorneys, public officials, appraisers, managers of housing complexes, newspapers

Conclusion

Montana's licensure laws are similar to those in most states. The practice act is not a rigid exclusive right to practice, but instead a framework through which the state is obligated to regulate a profession that, through malpractice, has the potential to harm the public. There are exemptions provided even in the health professions, where there is little doubt that the state has a stake in restricting access to only qualified individuals. The State of Montana has the obligation to enforce its practice act both by defending its licensees' right to practice landscape architecture and by taking action against any unlicensed individuals practicing landscape architecture.