

SENATE BILL NO. 453
INTRODUCED BY J. ESSMANN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A UNIFORM FRAMEWORK TO INFORM THE PUBLIC OF MATTERS BEFORE THE BOARDS AND PROGRAMS OF THE DEPARTMENT OF LABOR AND INDUSTRY WITH RESPECT TO DISCIPLINARY PROCEEDINGS; AMENDING SECTIONS 37-1-101, 37-1-131, 37-1-136, 37-1-311, AND 37-1-405, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307~~(1)(e)~~(1)(d);

(9) provide notice to the appropriate legislative interim committee when a board cannot operate in a

cost-effective manner;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; ~~and~~

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. THE RULES MAY REQUIRE THE POSTING OF ONLY THE LICENSEE'S NAME AND THE FACT THAT A HEARING IS BEING HELD WHEN THE INFORMATION IS BEING POSTED ON A PUBLICLY AVAILABLE WEBSITE PRIOR TO A DECISION LEADING TO A SUSPENSION OR REVOCATION OF A LICENSE OR OTHER FINAL DECISION OF A BOARD OR THE DEPARTMENT."

Section 2. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

~~(1)~~(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

~~(2)~~(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

~~(3)~~(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection ~~(2)~~ (1)~~(b)~~, is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

~~(4)~~(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

~~(5)~~(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

~~(6)~~(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

~~(7)~~(3) The board or the department program may:

- (a) establish the qualifications of applicants to take the licensure examination;
- (b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;
- (c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and
- (d) require continuing education for licensure as provided in 37-1-306. If the board or department requires continuing education for continued licensure, the board or department may not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes.

~~(8)~~(4) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(5) A board shall adopt rules governing the provision of public notice as required by 37-1-311."

Section 3. Section 37-1-136, MCA, is amended to read:

"37-1-136. Disciplinary authority of boards -- injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is

procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311."

Section 4. Section 37-1-311, MCA, is amended to read:

"37-1-311. Findings of fact -- order -- report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

~~(2) The department may report the issuance of a notice and final order to:~~

~~—— (a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;~~

~~—— (b) appropriate public and private organizations that serve the profession or occupation; and~~

~~—— (c) the public.~~

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

~~(b) The requirements of subsection (2)(a) for public notice may be met by the creation of a publicly available website that posts the required information.~~

~~—— (c) This subsection (2) may not be construed to require that records that are reviewed or discussed in a meeting that has been closed under 2-3-203 be reported to the public or to require the identification of victims, patients, or clients in the public notice.~~

(B) IN ADDITION TO ANY OTHER MEANS OF NOTICE, THE DEPARTMENT SHALL POST THE REQUIRED INFORMATION ON A PUBLICLY AVAILABLE WEBSITE.

(C) THIS SUBSECTION (2) MAY NOT BE CONSTRUED TO REQUIRE A MEETING TO BE OPEN OR RECORDS TO BE DISSEMINATED WHEN THE DEMANDS OF INDIVIDUAL PRIVACY CLEARLY EXCEED THE MERITS OF PUBLIC DISCLOSURE."

Section 5. Section 37-1-405, MCA, is amended to read:

"37-1-405. Findings of fact -- order -- report. (1) If the department finds by a preponderance of the

evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

~~(2) The department may report the issuance of a notice and final order to:~~

~~—— (a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;~~

~~—— (b) appropriate public and private organizations that serve the profession or occupation; and~~

~~—— (c) the public.~~

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-403, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) The requirements of subsection (2)(a) for public notice may be met by the creation of a publicly available website that posts the required information.

(c) This subsection (2) may not be construed to require that records that are reviewed or discussed in a meeting that has been closed under 2-3-203 be reported to the public or to require the identification of victims, patients, or clients in the public notice.

(B) IN ADDITION TO ANY OTHER MEANS OF NOTICE, THE DEPARTMENT SHALL POST THE REQUIRED INFORMATION ON A PUBLICLY AVAILABLE WEBSITE.

(C) THIS SUBSECTION (2) MAY NOT BE CONSTRUED TO REQUIRE A MEETING TO BE OPEN OR RECORDS TO BE DISSEMINATED WHEN THE DEMANDS OF INDIVIDUAL PRIVACY CLEARLY EXCEED THE MERITS OF PUBLIC DISCLOSURE."

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Effective date. [This act] is effective January 1, 2009.

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