

SENATE BILL NO. 76

INTRODUCED BY G. VUCKOVICH

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING ADMINISTRATIVE SUSPENSION BY THE DEPARTMENT OF LABOR AND INDUSTRY OF A PROFESSIONAL OR OCCUPATIONAL LICENSE IN ROUTINE MATTERS AS AN ALTERNATIVE TO DISCIPLINARY PROCEEDINGS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 37-1-131, 37-1-141, 37-1-306, 37-1-309, 37-1-313, 37-1-403, 37-1-407, AND 37-51-204, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Authority to administratively suspend license. (1) The department may

administratively suspend a license when:

(a) an audit of continuing education, certification, or other qualifications necessary for continued licensure demonstrates that the licensee is noncompliant with requirements established by the board or by the department for a program;

(b) the licensee fails to respond to a board or department audit as provided in subsection (1)(a);

(c) the department receives notice of insufficient funds in the account used by the licensee to pay for an administrative fee or a board fee or fine;

(d) the department has reasonable grounds to believe the licensee did not possess the qualifications for initial issuance of the license; or

(e) a licensee fails to comply with the terms of a final order imposed pursuant to 37-1-312 or 37-1-405.

(2) Upon identifying one or more of the deficiencies listed in subsection (1), the department shall inform the licensee in writing and provide the licensee 60 days from the date of the correspondence to cure the deficiency.

(3) If the licensee fails to cure the deficiency as provided in subsection (2), the department may administratively suspend the license without additional notice or opportunity for hearing.

(4) (a) The administrative suspension remains in effect until:

(i) the department determines the licensee has cured the deficiency; or



1 (ii) the license terminates as provided in 37-1-141.

2 (b) An administratively suspended license that is not renewed lapses, expires, or terminates as provided
3 in 37-1-141.

4 (5) A licensee may not use a protected title or practice the licensed profession or occupation while the
5 license is administratively suspended.

6 (6) To reinstate the administratively suspended license, a licensee must pay an administrative fee
7 established by the department by rule and submit information necessary to cure the deficiencies as determined
8 in the discretion of the department.

9 (7) Instead of an administrative suspension, the department may refer the deficiencies demonstrated
10 in subsection (1) for disciplinary proceedings as provided in 37-1-309 or 37-1-403, as applicable. A board or the
11 department may not proceed against a licensee for the same act or failure to act under both an administrative
12 suspension as provided in this section and a disciplinary proceeding as provided in 37-1-309 or 37-1-403.

13

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

15 **"37-1-131. Duties of boards -- quorum required.** (1) A quorum of each board within the department
16 shall:

17 (a) (i) set and enforce standards and adopt and enforce rules governing the licensing, certification,
18 registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;
19 and

20 (ii) apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate
21 against any person licensed by the board with regard to how the standards and rules are applied to other persons
22 licensed by the board and that does not restrain trade or competition unless necessary to protect public health
23 and safety;

24 (b) except as provided in [section 1], sit in judgment in hearings for the suspension, revocation, or denial
25 of a license of an actual or potential member of the particular profession or occupation within the board's
26 jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

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

30 (d) take disciplinary action against the license of a person in a medical assistance program under chapter

1 3, 4, 7, or 8 if, in the period under contract, the licensee has on three separate occasions returned to the use of
2 a prohibited or proscribed substance. The requirements of this subsection (1)(d) may not be construed as
3 affecting the rights of an employer to evaluate, discipline, or discharge an employee.

4 (e) pay to the department the board's pro rata share of the assessed costs of the department under
5 37-1-101(6);

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

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

12 (3) A board that requires continuing education or continued state, regional, or national certification for
13 licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of
14 this subsection for the renewal cycle.

15 (4) The board or the department program may:

16 (a) establish the qualifications of applicants to take the licensure examination;

17 (b) determine the standards, content, type, and method of examination required for licensure or
18 reinstatement of a license, the acceptable level of performance for each examination, and the standards and
19 limitations for reexamination if an applicant fails an examination; and

20 (c) examine applicants for licensure at reasonable places and times as determined by the board or enter
21 into contracts with third-party testing agencies to administer examinations; ~~and~~

22 ~~— (d) require continuing education for licensure, as provided in 37-1-306, or require continued state,~~
23 ~~regional, or national certification for licensure. Except as provided in subsection (3), if the board or department~~
24 ~~requires continuing education or continued state, regional, or national certification for continued licensure, the~~
25 ~~board or department may not audit or require proof of continuing education or continued state, regional, or~~
26 ~~national certification requirements as a precondition for renewing the license, certification, or registration. The~~
27 ~~board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed~~
28 ~~licenses for documentary verification of the continuing education requirement.~~

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

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

2

3 **Section 3.** Section 37-1-141, MCA, is amended to read:

4 **"37-1-141. License renewal -- lapse -- expiration -- termination.** (1) The renewal date for a license
5 must be set by department rule. The department shall provide notice prior to the renewal date.

6 (2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification
7 and continuing education requirements as provided by 37-1-306 or [section 5], and remit renewal fees before the
8 end of the renewal period.

9 (3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the
10 process in subsection (5) and complying with all certification and educational requirements.

11 (4) A licensee may reactivate an expired license within 2 years after the renewal date by following the
12 process in subsection (5) and complying with all certification and education requirements that have accrued since
13 the license was last granted or renewed as prescribed by board or department rule.

14 (5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in
15 subsections (3) and (4), a licensee shall:

16 (a) submit the completed renewal form;

17 (b) pay the late penalty fee provided for in subsection (7); and

18 (c) pay the current renewal fee as prescribed by the department or the board.

19 (6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

20 (b) A licensee who practices after a license has expired is considered to be practicing without a license.

21 (7) The department may assess a late penalty fee for each renewal period in which a license is not
22 renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

23 (8) Unless otherwise provided by statute or rule, an occupational or professional license that is not
24 renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may
25 not be reactivated, and a new original license must be obtained.

26 (9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary
27 purposes over the licensee for a period of 2 years after the date on which the license lapsed.

28 (10) This section may not be interpreted to conflict with 37-1-138."

29

30 **Section 4.** Section 37-1-306, MCA, is amended to read:

1 **"37-1-306. Continuing education -- certification -- other qualifications for continued licensure --**

2 **audit.** (1) A board or, for programs without a board, the department may require licensees to participate in
3 flexible, cost-efficient, effective, and geographically accessible continuing education.

4 (2) A board that requires continuing education or state, regional, or national certification may not audit
5 or require proof of continuing education or certification as a precondition for license renewal. However, a licensee
6 who reactivates a license after the license has expired, as provided in 37-1-141, is subject to a mandatory
7 continuing education audit.

8 (3) After the lapsed date provided for in 37-1-141, the department may conduct a random audit of up to
9 50% of all licensees who have renewed their licenses to determine compliance with board or program continuing
10 education requirements.

11 (4) The department may audit licensees for compliance with state, regional, or national certification or
12 other board or department requirements.

13 (5) The department shall provide a licensee not in compliance with continuing education or certification
14 requirements with an opportunity to cure the noncompliance as provided in [section 1]."

15
16 **NEW SECTION. Section 5. Continuing education -- certification -- other qualifications for**
17 **continued licensure -- audit.** (1) The department on behalf of a program without a board may require licensees
18 to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

19 (2) As a precondition of license renewal the department may not audit or require proof of continuing
20 education or certification of a program that requires continuing education or state, regional, or national
21 certification. However, a licensee who reactivates a license after the license has expired, as provided in 37-1-141,
22 is subject to a mandatory continuing education audit.

23 (3) After the lapsed date provided for in 37-1-141, the department may conduct a random audit of up to
24 50% of all licensees who have renewed their licenses to determine compliance with a program's continuing
25 education requirements.

26 (4) The department may audit licensees for compliance with state, regional, or national certification or
27 other department requirements.

28 (5) The department shall provide a licensee not in compliance with continuing education or certification
29 requirements with an opportunity to cure the noncompliance as provided in [section 1].

30

1 **Section 6.** Section 37-1-309, MCA, is amended to read:

2 **"37-1-309. Notice -- request for hearing.** (1) If a reasonable cause determination is made pursuant to
3 37-1-307 that a violation of this part has occurred and the provisions of [section 1] do not apply, a notice must
4 be prepared by department legal staff and served on the alleged violator. The notice may be served by certified
5 mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil
6 Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the
7 board's screening panel, if one has been established, has made a written determination that there are reasonable
8 grounds to believe that the particular statute, rule, or standard has been violated.

9 (2) A licensee or license applicant shall give the board the licensee's or applicant's current address and
10 any change of address within 30 days of the change.

11 (3) The notice must state that the licensee or license applicant may request a hearing to contest the
12 charge or charges. A request for a hearing must be in writing and received in the offices of the department within
13 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge
14 or charges, and the board may enter a decision on the basis of the facts available to it."
15

16 **Section 7.** Section 37-1-313, MCA, is amended to read:

17 **"37-1-313. Appeal.** (1) A person who is disciplined by a board under 37-1-308 through 37-1-312 or
18 denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

19 (2) A person who disputes the department's deficiency determination made pursuant to [section 1] may
20 appeal the decision to the board. Consideration of the dispute is not an adversarial or a contested case hearing.
21 The board's decision may be appealed as provided in subsection (1)."
22

23 **Section 8.** Section 37-1-403, MCA, is amended to read:

24 **"37-1-403. Notice -- request for hearing.** (1) If the department determines that reasonable cause exists
25 supporting the allegation made in a complaint and the provisions of [section 1] do not apply, the department legal
26 staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the
27 current address on file with the department or by other means authorized by the Montana Rules of Civil
28 Procedure.

29 (2) A licensee or license applicant shall give the department the licensee's or applicant's current address
30 and any change of address within 30 days of the change.

1 (3) The notice must state that the licensee or license applicant may request a hearing to contest the
2 charge or charges. A request for a hearing must be in writing and must be received in the offices of the
3 department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a
4 default on the charge or charges, and the department may enter a decision on the basis of the facts available to
5 it."

6

7 **Section 9.** Section 37-1-407, MCA, is amended to read:

8 **"37-1-407. Appeal.** (1) A person who is disciplined by the department under 37-1-402 through 37-1-406
9 or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

10 (2) A person who disputes the department's deficiency determination made pursuant to [section 1] may
11 appeal the decision to the commissioner of labor and industry. Consideration of the dispute is not an adversarial
12 or a contested case hearing. The commissioner's decision may be appealed as provided in subsection (1)."

13

14 **Section 10.** Section 37-51-204, MCA, is amended to read:

15 **"37-51-204. Educational programs.** (1) The board may, subject to 37-1-101, conduct, hold, or assist
16 in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this
17 connection.

18 (2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require
19 examinations of licensees.

20 (3) The board may require specified performance levels of a licensee with respect to the subject matter
21 of a continuing education course required by the board when the licensee and the instructor of the course are
22 not physically present in the same facility at the time the licensee receives the instruction.

23 (4) Education information obtained electronically by the board or stored in the board's databases may
24 be used to determine compliance with education requirements established by the board. The use of the
25 information may not be considered an audit for purposes of compliance with ~~37-4-134~~ 37-1-306."

26

27 **NEW SECTION. Section 11. Codification instruction.** (1) [Section 1] is intended to be codified as
28 an integral part of Title 37, chapter 1, part 3, and the provisions of Title 37, chapter 1, part 3, apply to [section 1].

29 (2) [Section 5] is intended to be codified as an integral part of Title 37, chapter 1, part 4, and the
30 provisions of Title 37, chapter 1, part 4, apply to [section 5].

