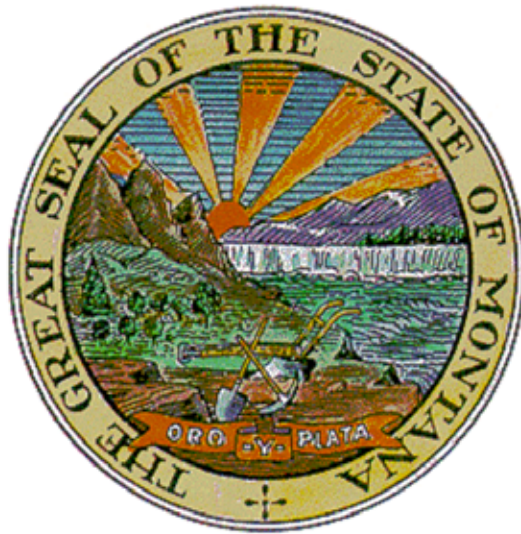


State of Montana  
Department of Labor and Industry  
Business Standards Division

DEPARTMENT AND BOARD STATUTES RELATING TO THE  
PRACTICE OF VETERINARY MEDICINE



ISSUED BY:

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UPDATED 2009

**MONTANA CODE ANNOTATED  
2009**

**TITLE 2  
GOVERNMENT STRUCTURE & ADMINISTRATION**

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**CHAPTER 15  
EXECUTIVE BRANCH OFFICERS AND AGENCIES**

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**Part 17  
Department of Labor and Industry**

**2-15-1701. Department of labor and industry -- head.** (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner must be appointed and serve as provided in 2-15-111.

(3) The commissioner must receive an annual salary in an amount equal to other department directors.

(4) Before entering on the duties of the office, the commissioner shall take and subscribe to the oath of office prescribed by the Montana constitution.

**History:** (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979; amd. Sec. 1, Ch. 116, L. 1981; amd. Sec. 85, Ch. 61, L. 2007.

**2-15-1742. Board of veterinary medicine.** (1) There is a board of veterinary medicine.

(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom must be licensed veterinarians and one of whom must be a public member who is a consumer of veterinary services and who may not be a licensee of the board or of any other board under the department of labor and industry.

(3) Each veterinarian member must be a reputable licensed veterinarian who has graduated from a college that is authorized by law to confer degrees and that has educational standards equal to those approved by the American veterinary medical association. Each veterinarian member must have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(5) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

**History:** (1) thru (4)En. Sec. 1, Ch. 82, L. 1913; re-en. Sec. 3217, R.C.M. 1921; re-en. Sec. 3217, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1955; Sec. 66-2201, R.C.M. 1947; amd. and redes. 82A-1602.24 by Sec. 204, Ch. 350, L. 1974; amd. Sec. 4, Ch. 135, L. 1975; Sec. 82A-1602.24, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602,

R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.24; amd. Sec. 7, Ch. 244, L. 1981; amd. Sec. 14, Ch. 247, L. 1981; MCA 1979, 2-15-1618; amd. and redes. 2-15-1852 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 43, L. 1985; amd. Sec. 12, Ch. 483, L. 2001; Sec. 2-15-1852, MCA 1999; redes. 2-15-1742 by Sec. 221(2), Ch. 483, L. 2001; amd. Sec. 86, Ch. 61, L. 2007.

**Compiler's Comments:**

*2007 Amendment:* Chapter 61 made minor changes in style. Amendment effective October 1, 2007.

**TITLE 37  
PROFESSIONS AND OCCUPATIONS**

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GENERAL PROVISIONS**

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- 37-1-102. Renumbered 37-1-121.
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- 37-1-104. Standardized forms.
- 37-1-105. Reporting disciplinary actions against licensees.
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- 37-1-316. Unprofessional conduct.
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- 37-1-320. Mental intent -- unprofessional conduct.
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## **CHAPTER 1 GENERAL PROVISIONS**

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### **Part 1 Duties and Authority of Department, Director, and Boards**

**37-1-101. Duties of department.** In addition to the provisions of 2-15-121, the department 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 or a program 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)(d);
- (9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;
- (b) suspend all duties under this title related to the board except for services related to renewal of licenses;
- (c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and
- (d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;
- (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;
- (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.

**History:** En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005; amd. Sec. 17, Ch. 11, L. 2007; amd. Sec. 39, Ch. 44, L. 2007; amd. Sec. 1, Ch. 225, L. 2007.

**Compiler's Comments:**

*2007 Amendments -- Composite Section:* Chapter 11 in (5) near end after "board" inserted "or a program"; in (9)(a) near beginning after "notice to the" inserted "board and to the"; inserted (9)(b) through (9)(d) outlining additional department duties regarding boards; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 44 in introductory clause after "department" deleted "of labor and industry"; and in (8) at end substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

Chapter 225 in (8) substituted "37-1-307(1)(d)" for "37-1-307(1)(e)"; inserted (12) concerning uniform rules for public notice; and made minor changes in style. Amendment effective January 1, 2009.

*Severability:* Section 6, Ch. 225, L. 2007, was a severability clause.

*2005 Amendment:* Chapter 467 at end of introductory clause substituted "shall" for "may"; in (1) at beginning inserted "establish and", after "corresponding" substituted "receiving and processing routine" for "taking", after first "licenses" inserted "as defined by a board", after "issuing and" deleted

"denying licenses granted by the boards", after "renewing" inserted "routine", after second "licenses" inserted "as defined by a board", and after "licensees" substituted "setting administrative fees, preparing agendas and meeting notices, conducting mailings" for "registering"; in (2) after "standardize" inserted "policies and procedures"; in (4) at beginning inserted "contract for" and at end after "board" deleted "or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination"; in (6) after "boards" inserted "and programs"; in (7) after "setting" inserted "administrative fees and"; in (8) near middle after "individual's" deleted "licensing"; inserted (9) requiring notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner; inserted (10) requiring monitoring of a board's cash balances; inserted (11) requiring the establishment of policies and procedures to set fees; and made minor changes in style. Amendment effective July 1, 2005.

*2001 Amendment:* Chapter 483 in introductory clause after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

*1995 Amendment:* Chapter 429 at end of introductory clause substituted "may" for "shall"; in (1), after "administrative", inserted "legal", after "issuing" inserted "and denying", and before "registering" inserted "disciplining licensees"; at beginning of (5), before "investigate", deleted "at the request of a board"; in (7), after "rules", substituted "setting expiration, renewal, and termination dates for licenses" for "establishing expiration dates of licenses for barbers, barbershops, professional engineers, professional land surveyors, nursing home administrators, optometrists, plumbers, social workers, speech-language pathologists, audiologists, and radiologic technologists"; and inserted (8) authorizing Department to issue notice and pursue action against licensed individual before licensing board pursuant to 37-1-307(1)(e). Amendment of 37-1-101(7) effective April 13, 1995, for the purpose of drafting rules that will be adopted on or after October 1, 1995.

*Severability:* Section 131, Ch. 429, L. 1995, was a severability clause.

*Saving Clause:* Section 132, Ch. 429, L. 1995, was a saving clause.

*Applicability:* Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

*1989 Amendments:* Chapter 83, in (7) inserted "professional" before "land surveyors". Chapter 413, changed reference to speech pathologist to reference to speech-language pathologist.

*1985 Amendment:* In (7) after "plumbers", inserted "social workers, speech pathologists, audiologists".

*1985 Statement of Intent:* The statement of intent attached to Ch. 307, L. 1985, provided: "A statement of intent is required for this bill because it authorizes the department of commerce to adopt rules establishing uniform expiration dates for licenses for social workers, speech pathologists, and audiologists. It is the intent of the legislature that, in establishing a standard expiration date, the rules take into account any credit a person may have in what would have been his licensure period. The rules should also take into account the expiration dates of other licenses in order to spread the workload more evenly over the year."

*1983 Amendment:* Inserted (7) requiring Department to adopt rules establishing license expiration dates.

*1983 Statement of Intent:* The statement of intent attached to Ch. 390, L. 1983, provided: "A statement of intent is required with House Bill 633 because it provides that the department of commerce may establish renewal dates for certain licenses by rule."

It is the intention of the legislature that in the promulgation of such rules, the department will consult with the affected boards, and, where possible, the professions to be regulated. It is the intention of this legislature that in attempting to meet the needs of the department in maintaining efficient licensing procedures, the needs of the board and the professions regulated are given the closest scrutiny and consideration."

*1981 Amendments:* Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in the introductory clause.

Chapter 293 deleted "a pro rata basis according to the number of man-days and the actual operating costs of the department for each board" in (6); added "an equitable basis as determined by the department" to (6).

**37-1-102. Renumbered 37-1-121.** Code Commissioner, 1981.

**37-1-103. Renumbered 37-1-131.** Code Commissioner, 1981.

**37-1-104. Standardized forms.** The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

**History:** En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

**Compiler's Comments:**

*2005 Amendment:* Chapter 467 at beginning of first sentence substituted "The department shall" for "It is the responsibility of the department whenever possible to", after "standardized" deleted "application, license, and other", and after "forms" inserted "and processes to be" and in second sentence after "is to" inserted "streamline processes, expedite services" and near end after "waste, and" deleted "the use of out-of-date forms and" and after "facilitate" deleted "automated printing and"; and made minor changes in style. Amendment effective July 1, 2005.

**37-1-105. Reporting disciplinary actions against licensees.** The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

**History:** En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

**Compiler's Comments:**

*2005 Amendment:* Chapter 467 in first sentence near beginning after "all" deleted "licensing" and after "boards" substituted "and department programs" for "within the department"; and made minor changes in style. Amendment effective July 1, 2005.

*2003 Amendment:* Chapter 271 near middle of second sentence after "information" inserted "except pursuant to 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

*Retroactive Applicability:* Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

**37-1-106. Biennial report.** The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

**History:** En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

**Compiler's Comments:**

*1993 Amendment:* Chapter 349 in last sentence, after "shall", substituted "submit the report to the office of budget and program planning as a part of the information required by 17-7-111" for "provide a copy of the report to the governor and, as provided in 5-11-210, to the legislature".

*1991 Amendment:* Inserted last sentence requiring Department to provide a copy of the report to the Governor and Legislature. Amendment effective March 20, 1991.

*1983 Amendment:* Near middle of section, before "The biennial report" deleted "In addition to the information prescribed by the governor under 2-7-102".

**37-1-107. Joint meetings -- department duties.** (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

- (a) have licensees with dual licensure in related professions or occupations;

(b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:

- (i) health care boards;
- (ii) mental health care boards;
- (iii) design boards;
- (iv) therapeutic boards; or
- (v) technical boards; or

(c) have issues of joint concern or related jurisdiction with each other.

(2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

**History: En. Sec. 1, Ch. 11, L. 2007.**

**Compiler's Comments:**

*Effective Date:* Section 26, Ch. 11, L. 2007, provided: "[This act] is effective July 1, 2007."

**37-1-108 through 37-1-120 reserved.**

**37-1-121. Duties of commissioner.** In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

**History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.**

**Compiler's Comments:**

*2005 Amendment:* Chapter 467 in (1) in first sentence after "hearings" deleted "before each board within the department" and after "board" inserted "or department program"; in (2) at beginning of first sentence inserted "establish the qualifications of and", in second sentence after "authority to" inserted "establish the qualifications of" and after "hire" inserted "or terminate", and inserted third sentence requiring the department to consult with the boards regarding recommendations for qualifications for executive or executive director positions; and made minor changes in style. Amendment effective July 1, 2005.

*2001 Amendment:* Chapter 483 in introductory clause substituted "commissioner of labor and industry" for "director of commerce"; at end of (3) substituted "commissioner" for "director"; and made minor changes in style. Amendment effective July 1, 2001.

*1995 Amendment:* Chapter 429 in (1), in first sentence after "impartial", substituted "hearing examiner" for "legal counsel" and in second sentence substituted "The hearing examiner shall conduct hearings" for "The legal counsel appointed shall see that hearings are conducted"; deleted former (2) that read: "(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board

having jurisdiction over the particular profession or occupation"; in (2), after "administrative", inserted "legal"; and made minor changes in style.

*Severability:* Section 131, Ch. 429, L. 1995, was a severability clause.

*Saving Clause:* Section 132, Ch. 429, L. 1995, was a saving clause.

*Applicability:* Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

*1985 Amendment:* At beginning of (1) inserted "at the request of a party" and near end of first sentence of (1), before "hearing", inserted "contested case".

*1981 Amendment:* Substituted "director of commerce" for "director of professional and occupational licensing" in the introductory clause.

### **37-1-122 through 37-1-129 reserved.**

**37-1-130. Definitions.** As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

**History:** En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005; amd. Sec. 7, Ch. 502, L. 2007.

#### **Compiler's Comments:**

*2007 Amendment:* Chapter 502 in definition of expired license after "period of" increased 45 days to 46 days; in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

*Saving Clause:* Section 52, Ch. 502, L. 2007, was a saving clause.

*2005 Amendment:* Chapter 467 in introductory clause after "part" substituted "the following definitions apply" for ""board" means each board in this title"; inserted definition of administrative fee; in definition of board at beginning inserted ""Board" means a licensing board created under Title 2, chapter 15", after "that is" substituted "administratively attached" for "allocated", and after "department" substituted "as provided in 2-15-121" for "of labor and industry"; and inserted definitions of board fee, department, department program, expired license, lapsed license, license, and terminated license. Amendment effective July 1, 2005.

*2001 Amendment:* Chapter 483 at end after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

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

(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;

(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.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (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;

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

(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.

(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.

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

(4) 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, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) 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.

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

**History:** En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005; amd. Sec. 2, Ch. 225, L. 2007; amd. Sec. 8, Ch. 502, L. 2007.

**Compiler's Comments:**

*2007 Amendments -- Composite Section:* Chapter 225 inserted (6) concerning public notice; and made minor changes in style. Amendment effective January 1, 2009.

Chapter 502 inserted (3) requiring licensees reactivating expired licenses to prove they have met continuing education or certification requirements; in (4)(d) in first sentence after "37-1-306" inserted "or require continued state, regional, or national certification for licensure", in second sentence in two places after "education" inserted "or continued state, regional, or national certification", at beginning inserted exception clause, and after "audit or" substituted "require proof of" for "verify", and in third sentence near middle after "audits" inserted "after the lapsed date" and at end after "requirement" deleted "after the renewal period closes"; and made minor changes in style. Amendment effective October 1, 2007.

*Severability:* Section 6, Ch. 225, L. 2007, was a severability clause.

*Saving Clause:* Section 52, Ch. 502, L. 2007, was a saving clause.

*2005 Amendments -- Composite Section:* Chapter 416 in (3) at end after "chapter 71" deleted "or 72". Amendment effective July 1, 2005.

Chapter 467 at beginning of introductory clause inserted "A quorum of"; inserted (7) allowing the board or the department to establish applicant qualifications, determine license examination requirements, conduct examinations, and require continuing education; inserted (8) allowing the board in its discretion to request the applicant to make a personal appearance before the board for nonroutine license applications; and made minor changes in style. Amendment effective July 1, 2005.

*Severability:* Section 42, Ch. 416, L. 2005, was a severability clause.

*Effective Date -- Applicability:* Section 43, Ch. 416, L. 2005, provided: "[This act] is effective July 1, 2005, and applies to occupational diseases that occur on or after July 1, 2005."

*2001 Amendment:* Chapter 492 inserted (6) requiring quorum to conduct business. Amendment effective October 1, 2001.

*1995 Amendment:* Chapter 429 in second sentence in (2) substituted "a hearing examiner" for "legal counsel"; and made minor changes in style.

*Severability:* Section 131, Ch. 429, L. 1995, was a severability clause.

*Saving Clause:* Section 132, Ch. 429, L. 1995, was a saving clause.

*Applicability:* Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

*1993 Amendment:* Chapter 619 inserted (3) requiring board to suspend, revoke, or deny license for fraud or abuse of workers' compensation system. Amendment effective July 1, 1993.

*Severability:* Section 29, Ch. 619, L. 1993, was a severability clause.

*1991 Amendment:* Inserted (4) requiring a professional and occupational licensing board to consult with Department prior to initiation of a program expansion.

*1985 Amendment:* Near end of (2) after "counsel", substituted "when required" for "appointed".

**37-1-132. Nominees for appointment to licensing and regulatory boards.**

Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

**History:** En. Sec. 9, Ch. 244, L. 1981.

**Compiler's Comments:**

*Preamble:* The preamble to SB 312 (Ch. 244, L. 1981) read: "WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

**37-1-133. Board members' compensation and expenses.** Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

**History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.**

**Compiler's Comments:**

*1983 Amendments:* Chapter 123 substituted, at end of second sentence, "2-18-502" for "2-18-501, for each day in which 6 or more hours are spent on official board business".

Chapter 672 increased per diem from \$25 to \$50.

*Preamble:* The preamble to SB 463 (Ch. 474, L. 1981) read: "WHEREAS, during its sunset reviews of licensing and regulatory boards the Legislative Audit Committee noted that compensation and travel expenses for the boards vary considerably from board to board; and

WHEREAS, the various boards have very similar duties and responsibilities.

THEREFORE, it is the intent of this act to provide for the payment of uniform compensation and travel expenses for members of state licensing and regulatory boards."

**37-1-134. Fees commensurate with costs.** Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

**History: En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.**

**Compiler's Comments:**

*2005 Amendment:* Chapter 467 in first sentence after "set" inserted "board", after "fees" deleted "reasonably", after "area" inserted "that are commensurate with", and after "costs" inserted "for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs", in fourth sentence after "law" deleted "each board within", after "establish" inserted "standardized", and after "fees for" substituted "administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program" for "program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education", at beginning of sixth sentence substituted "Administrative service" for "Board", after "specific" inserted "board or", after "distributed to" inserted "board or", and at end after "determined by the" substituted "department" for "board", and at beginning of seventh sentence after "Each board" inserted "and department program"; and made minor changes in style. Amendment effective July 1, 2005.

*Preamble:* The preamble to Ch. 345, L. 1981, provided: "WHEREAS, most fees set by professional and occupational licensing boards are specified or limited in amount by law; and

WHEREAS, such limitations are not necessarily serving the purpose intended in that the fees are not related to costs incurred and board revenues are insufficient in some cases and excessive in others.

THEREFORE, it is the intent of this act to authorize and require such licensing boards to set fees reasonably related to the costs of administering the various programs under their jurisdiction."

*Statement of Intent:* The statement of intent attached to SB 412 (Ch. 345, L. 1981) provided: "A statement of intent is required for Senate Bill 412 because it grants licensing boards within the Department of Professional and Occupational Licensing the authority to set fees.

Presently fees charged by most licensing boards are set by law. Wherever changed circumstances require a change in fees legislation is required. Each session several bills are introduced to modify board fees. By allowing boards to set their own fees, flexibility is provided the boards to meet changing circumstances. At the present time, fees set by law are not based upon actual costs incurred by licensing boards in carrying out their various functions.

It is the intent of the Legislature that fees set by licensing boards be reasonably related to the costs of the respective programs. "Programs" of the licensing boards are intended to be such areas of responsibility as applications, examinations, renewals, and reciprocity. "Reasonably related" is intended to mean that the department generally breaks down the costs associated with the various programs and sets each fee at a level to cover these costs and the costs of maintaining the ongoing operations of the board. "Reasonably related" does not mean the department is required to maintain an exact system of actual costs, but rather means the department should generally allocate costs of the program equitably among the various fee categories."

**37-1-135. Licensing investigation and review -- record access.** Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

**History:** En. Sec. 1, Ch. 242, L. 1981.

**Cross References:**

Procurement of services, Title 18, ch. 8.

**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.

**History:** En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 3, Ch. 225, L. 2007.

**Compiler's Comments:**

*2007 Amendment:* Chapter 225 inserted (5) concerning public notice. Amendment effective January 1, 2009.

*Severability:* Section 6, Ch. 225, L. 2007, was a severability clause.

*2004 Amendment by Initiative:* Initiative Measure No. 148, proposed by initiative petition and approved at the general election held November 2, 2004, inserted (4) prohibiting action against a person in compliance with Title 50, chapter 46. Amendment effective November 2, 2004.

*Severability:* Section 18, I.M. No. 148, was a severability clause.

*2003 Amendment:* Chapter 271 in (1) at beginning inserted "Subject to 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

*Retroactive Applicability:* Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

*1981 Preamble:* The preamble to Ch. 246, L. 1981, provided: "WHEREAS, during its sunset review of licensing boards, the Legislative Audit Committee noted that disciplinary authority of some boards over licensees is not specified in the law and that consequently some boards are hesitant to take disciplinary action against licensees.

THEREFORE, it is the intent of this act to specify the disciplinary authority of the boards allocated to the Department of Professional and Occupational Licensing."

*Statement of Intent:* The statement of intent attached to SB 407 (Ch. 246, L. 1981) provided: "SB 407 requires a statement of intent because it grants each licensing board allocated to the Department of Professional and Occupational Licensing the authority to adopt specifying grounds for disciplinary action and the type of action that may be taken.

Each board adopting new substantive or procedural rules under SB 407 is to specify both the grounds upon which each type of disciplinary action may be taken, and the procedure to be used for each action. Each board using a disciplinary action not specified in subsections (1)(a) through (e) but considered proper under (1)(f) must also state in the rule the grounds upon which disciplinary action may be taken and the applicable procedure.

No rule shall specify disciplinary action for failure to renew any license or certificate, pay any fee or participate in any program of continuing education unless the renewal, fee or participation is required by statute.

Rules authorized by both SB 407 and by other provisions of law and previously adopted under such other provisions need not be readopted under SB 407."

**37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.** (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

**History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.**

**Compiler's Comments:**

*2001 Amendment:* Chapter 483 in (1) near middle after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

**37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.** (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board

or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

**History: En. Sec. 2, Ch. 271, L. 2003.**

**Compiler's Comments:**

*Effective Date:* Section 62, Ch. 271, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 9, 2003.

*Retroactive Applicability:* Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

**37-1-139 and 37-1-140 reserved.**

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

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

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

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

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

(a) submit the completed renewal form;

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

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

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

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

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

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

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

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

**History: En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.**

**Compiler's Comments:**

*2005 Amendment:* Chapter 467 inserted (1) through (7) regarding license renewals; in (8) near beginning of first sentence after "rule" substituted "an" for "a lapsed" and after "within" substituted "2" for "3" and in second sentence after "not be" substituted "reactivated" for "reinstated" and at end after "obtained" deleted "by passing a qualifying examination and paying the appropriate fee"; inserted (9) granting the licensing entity jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which a license lapsed; inserted (10) providing that this section may not be interpreted to conflict with 37-1-138; and made minor changes in style. Amendment effective July 1, 2005.

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## Part 2 Licensure of Criminal Offenders

**Cross References:**

Criminal justice policy -- rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling -- qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

**37-1-201. Purpose.** It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.

**History:** En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001; amd. Sec. 1, Ch. 389, L. 2007.

**Compiler's Comments:**

*2007 Amendment:* Chapter 389 inserted third sentence regarding an applicant's criminal background; and made minor changes in style. Amendment effective October 1, 2007.

*Applicability:* Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

**37-1-202. Intent and policy.** It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

**History:** En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

**37-1-203. Conviction not a sole basis for denial.** Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

**History:** En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

**37-1-204. Statement of reasons for denial.** When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

**History:** En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

**37-1-205. Licensure on completion of supervision.** Completion of probation or parole supervision without any subsequent criminal conviction is evidence of rehabilitation. However, the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought, and this chapter may not be construed to prohibit licensure of a person while the person is under state supervision if the licensing agency finds insufficient evidence to preclude licensure.

**History:** En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005; amd. Sec. 1349, Ch. 56, L. 2009.

**Compiler's Comments:**

### Part 3

#### Uniform Professional Licensing and Regulation Procedures

**37-1-301. Purpose.** The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

**History: En. Sec. 1, Ch. 429, L. 1995.**

**37-1-302. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

**History: En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005; amd. Sec. 9, Ch. 502, L. 2007.**

**Compiler's Comments:**

*2007 Amendment:* Chapter 502 in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

*Saving Clause:* Section 52, Ch. 502, L. 2007, was a saving clause.

*2005 Amendment:* Chapter 467 in definition of license at end after "occupation" deleted "regardless of the specific term, such as permit, certificate, recognition, or registration, used for the permission"; and made minor changes in style. Amendment effective July 1, 2005.

*2001 Amendment:* Chapter 483 in definition of department after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

**37-1-303. Scope.** This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals.

**History:** En. Sec. 3, Ch. 429, L. 1995; amd. Sec. 40, Ch. 44, L. 2007.

**Compiler's Comments:**

*2007 Amendment:* Chapter 44 in third sentence after "specified in" substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

**37-1-304. Licensure of out-of-state applicants -- reciprocity.** (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

**History:** En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

**Compiler's Comments:**

*1997 Amendment:* Chapter 210 in (1)(a), after "equivalent to", inserted "or greater than"; inserted (3) regarding reciprocity agreements with other states; and made minor changes in style.

**37-1-305. Temporary practice permits.** (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

**History:** En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

**Compiler's Comments:**

*1999 Amendment:* Chapter 203 in (2) at beginning of second sentence inserted exception clause; and made minor changes in style. Amendment effective October 1, 1999.

**37-1-306. Continuing education.** A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

**History:** En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

**Compiler's Comments:**

*2005 Amendment:* Chapter 467 at beginning after "board" inserted "or, for programs without a board, the department". Amendment effective July 1, 2005.

**37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;  
(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] *(Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)*

**History:** En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005; amd. Sec. 2, Ch. 389, L. 2007.

**Compiler's Comments:**

*Contingent Termination -- Request for Federal Exemptions:* Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 95] [61-5-107];

(e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

*2007 Amendment:* Chapter 389 in (2) near middle after "information" inserted "as defined in 44-5-103" and at end after "practice" inserted "but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5"; inserted (3) allowing a board to obtain criminal history record information; inserted (4) regarding fingerprinting, background check information, and payment of fees; and made minor changes in style. Amendment effective October 1, 2007.

*Applicability:* Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

*2005 Amendment:* Chapter 467 in (1)(b) at beginning of first sentence after "subpoenas" inserted "requiring the attendance of witnesses or the production of documents" and in second sentence after "complaint" substituted "and must be signed by a member" for "issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer"; deleted former (1)(d) that read: "(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104"; and made minor changes in style. Amendment effective July 1, 2005.

*2001 Amendment:* Chapter 492 in (1)(e) in first sentence after "a licensee has violated" substituted "a particular statute, rule, or standard" for "a statute or rule" and inserted second and third sentences regarding screening panel; and made minor changes in style. Amendment effective October 1, 2001.

*1999 Amendment:* Chapter 230 at end of (2) inserted "and regarding possible unlicensed practice". Amendment effective October 1, 1999.

*1997 Amendment:* Chapter 552 inserted (3) requiring each board to require a license applicant to provide the applicant's Social Security number and requiring the board to keep the number confidential except for Title IV-D purposes. Amendment effective July 1, 1997.

*Contingent Termination -- Request for Federal Exemptions:* Section 104, Ch. 552, L. 1997, contained the following contingent termination provisions and order that the Department of Public Health and Human Services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 93] [50-15-403];

(e) [section 95] [61-5-107];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 93] [50-15-403, certification filed April 24, 1998];

(e) [section 95] [61-5-107];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(5) (a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a). [This exemption was received on December 8, 1997.]

(6) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate July 1, 1999.

(7) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement."

**37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.** (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

**History:** En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

**Compiler's Comments:**

*2001 Amendment:* Chapter 492 in (1) in exception clause after "provided in" substituted "subsections (4) and (5)" for "subsection (3)"; inserted (5) regarding board member who believes statute, rule, or standard to have been violated; and made minor changes in style. Amendment effective October 1, 2001.

*1999 Amendment:* Chapter 375 substituted present (3) precluding certain complaints by incarcerated persons for former (3) that read: "(3) A person may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while incarcerated under the legal custody of the department of corrections. If the department of corrections has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person incarcerated under the legal custody of the department of corrections, the department of corrections shall report the possible violation to the department for appropriate action under subsection (2)". Amendment effective July 1, 1999.

*1997 Amendment:* Chapter 475 at beginning of (1) inserted exception clause; inserted (3) prohibiting person incarcerated from filing complaint against licensed or certified health care provider; and made minor changes in style. Amendment effective May 1, 1997.

*Severability:* Section 6, Ch. 475, L. 1997, was a severability clause.

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

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

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

**History:** En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

**Compiler's Comments:**

*2001 Amendment:* Chapter 492 in (1) inserted third sentence regarding prerequisite for notice alleging violation. Amendment effective October 1, 2001.

**37-1-310. Hearing -- adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

**History:** En. Sec. 10, Ch. 429, L. 1995.

**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) (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) 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.

**History:** En. Sec. 11, Ch. 429, L. 1995; amd. Sec. 4, Ch. 225, L. 2007.

**Compiler's Comments:**

*2007 Amendment:* Chapter 225 substituted (2) concerning report of suspension for former text that read: "(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." Amendment effective January 1, 2009.

*Severability:* Section 6, Ch. 225, L. 2007, was a severability clause.

**37-1-312. Sanctions -- stay -- costs -- stipulations.** (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;  
(g) compliance with conditions of probation for a designated period of time;  
(h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

**History: En. Sec. 12, Ch. 429, L. 1995.**

**37-1-313. Appeal.** A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

**History: En. Sec. 13, Ch. 429, L. 1995.**

**37-1-314. Reinstatement.** A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

**History: En. Sec. 14, Ch. 429, L. 1995.**

**37-1-315. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

**History: En. Sec. 15, Ch. 429, L. 1995.**

**37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license

applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

**History:** En. Sec. 16, Ch. 429, L. 1995; amd. Sec. 12, Ch. 109, L. 2009; amd. Sec. 2, Ch. 158, L. 2009.

**Compiler's Comments:**

*2009 Amendments -- Composite Section:* Chapter 109 at end of introductory clause substituted "part" for "chapter"; deleted former (10) that read: "addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance"; in (10) at beginning after "use of" inserted "alcohol" and at end after "mentally" inserted "in the performance of licensed professional duties"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 158 inserted (17) to provide that failure of a health care provider to require that independent professional service providers are appropriately insured constitutes unprofessional conduct; and made minor changes in style. Amendment effective April 3, 2009.

**37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.** (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

**History:** En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

**Compiler's Comments:**

*1999 Amendments -- Composite Section:* Chapter 230 in middle of (1) after "complaints" inserted "or other information received"; at beginning of (2)(a) inserted "Unless otherwise provided by statute" and inserted second sentence allowing person violating injunction to be held in contempt of court in addition to penalty; inserted (2)(b) providing that person subject to injunction for practicing without license is subject to criminal prosecution; inserted (3) providing that person practicing licensed profession without license is guilty of misdemeanor, authorizing fines, imprisonment, or both, and providing that each violation constitutes separate offense; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 402 inserted (4) authorizing department to issue citation and collect fine; and made minor changes in style. Amendment effective July 1, 1999.

**37-1-318. Violation of injunction -- penalty.** A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

**History:** En. Sec. 18, Ch. 429, L. 1995.

**37-1-319. Rules.** A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

**History:** En. Sec. 19, Ch. 429, L. 1995.

**Compiler's Comments:**

*Applicability:* Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Section 133 effective October 1, 1995.

*Effective Date:* Section 134, Ch. 429, L. 1995, provided in part that this section is effective on passage and approval for the purpose of drafting rules that will be adopted on or after October 1, 1995. Approved April 13, 1995.

**37-1-320. Mental intent -- unprofessional conduct.** A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

**History:** En. Sec. 7, Ch. 492, L. 2001.

**Compiler's Comments:**

*Effective Date:* Section 77(2), Ch. 492, L. 2001, provided that this section is effective October 1, 2001.

**37-1-321 through 37-1-330 reserved.**

**37-1-331. Correctional health care review team.** (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

**History: En. Sec. 2, Ch. 375, L. 1999.**

**Compiler's Comments:**

*Effective Date:* Section 4, Ch. 375, L. 1999, provided that this section is effective July 1, 1999.

**CHAPTER 2**

**GENERAL PROVISIONS RELATING  
TO HEALTH CARE PRACTITIONERS**

**Part 1 -- Dispensing of Drugs**

- 37-2-101. Definitions.
- 37-2-102. Practices declared unlawful between drug companies and medical practitioners.
- 37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
- 37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.
- 37-2-105. Duty of county attorneys.
- 37-2-106. Existing ownership of pharmacy.
- 37-2-107. Civil penalty for unreadable prescription.
- 37-2-108 through 37-2-110 reserved.
- 37-2-111. Repealed.

**Part 2 -- Nonliability for Peer Review**

- 37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations.

**Part 3 -- Miscellaneous Provisions**

- 37-2-301. Duty to report cases of communicable disease.
- 37-2-302. Gunshot or stab wounds to be reported.
- 37-2-303. Immunity from liability.
- 37-2-304 through 37-2-310 reserved.
- 37-2-311. Report to department of justice by physician.
- 37-2-312. Physician's immunity from liability.
- 37-2-313 and 37-2-314 reserved.
- 37-2-315. Direct billing for anatomic pathology services.

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**CHAPTER 2  
GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS**

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**Part 1**

## Dispensing of Drugs

### Cross References:

Pharmacy, Title 37, ch. 7.  
Dangerous drugs, Title 45, ch. 9.  
Model Drug Paraphernalia Act, Title 45, ch. 10.  
Controlled substances, Title 50, ch. 32.

**37-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(3) "Drug" has the same meaning as provided in 37-7-101.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" has the same meaning as provided in 37-7-101.

(8) "State" means the state of Montana or any political subdivision of the state.

**History:** En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989; amd. Sec. 2, Ch. 388, L. 2001; amd. Sec. 17, Ch. 467, L. 2005.

### Compiler's Comments:

*2005 Amendment:* Chapter 467 in definition of medical practitioner near end after "37-8-202" deleted "(5)"; and made minor changes in style. Amendment effective July 1, 2005.

*2001 Amendment:* Chapter 388 in definition of drug substituted "has the same meaning as provided in 37-7-101" for "means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to the pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (3), but the term does not include any device or any components of a device"; in definition of pharmacy substituted "has the same meaning as provided in 37-7-101" for "means an establishment which engages in the sale of drugs requiring a prescription"; and made minor changes in style.

Amendment effective October 1, 2001.

*1989 Amendments:* Chapter 83, in (1) deleted "chiropody" and deleted parentheses around "podiatry".

Chapter 444, in definition of medical practitioner inserted "or a nursing specialty as described in 37-8-202(5)"; and made minor changes in phraseology. Amendment effective July 1, 1989.

*1987 Amendment:* In (1) inserted "or optometry".

*1981 Amendment:* Deleted "the official" after "Pharmacopoeia" in subsection (2)(a); deleted "office, pharmacy, drugstore, or other" from the definition of pharmacy in subsection (4); substituted "requiring a prescription" for "at retail" in subsection (4).

**37-2-102. Practices declared unlawful between drug companies and medical practitioners.** It is unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income of the company with the intent or for the purpose of inducing the medical practitioner to prescribe to patients the drugs of the company. The giving or selling of an interest by the company to a medical practitioner without the interest first having been publicly offered to the general public is prima facie evidence of the intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it is not unlawful for a medical practitioner to acquire or own an interest solely for investment, and the acquisition of an interest that is publicly offered to the general public is prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

**History:** En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902; amd. Sec. 1350, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

**37-2-103. Practices declared unlawful between medical practitioners and pharmacies.** (1) It is unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. This subsection does not prohibit a medical practitioner from dispensing a drug that the medical practitioner is permitted to dispense under 37-2-104.

(2) It is unlawful for a medical practitioner, directly or indirectly, to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by the community pharmacy of drugs to patients of a medical practitioner.

**History:** En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904; amd. Sec. 1351, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

**37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.** (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

(h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (2)(h) must meet the labeling requirements of the board of pharmacy.

**History:** En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989; amd. Sec. 1, Ch. 445, L. 1991; amd. Sec. 57, Ch. 418, L. 1995; amd. Sec. 86, Ch. 546, L. 1995; amd. Sec. 1, Ch. 125, L. 2007; amd. Sec. 1, Ch. 166, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 166 inserted (2)(h) providing that a medical practitioner is not prohibited from dispensing a drug the practitioner has prescribed if drug is not available from a community pharmacy and drug meets labeling requirements. Amendment effective October 1, 2009.

*2007 Amendment:* Chapter 125 in (2)(f) near beginning substituted "contraceptives, other than mifepristone" for "oral contraceptives"; and made minor changes in style. Amendment effective October 1, 2007.

*1995 Amendments:* Chapter 418 in (2)(f) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2)(f) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

*Transition:* Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

*Saving Clauses:* Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

*1991 Amendment:* Inserted (2)(g) concerning contract physician dispensing drugs at urban Indian clinic.

*1989 Amendment:* Inserted (2)(f) allowing dispensing of oral contraceptives under certain circumstances; and made minor change in phraseology. Amendment effective April 8, 1989.

**37-2-105. Duty of county attorneys.** It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

**History:** En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

**37-2-106. Existing ownership of pharmacy.** The provisions of 37-2-103(1) do not apply to a medical practitioner with respect to any interest that the medical practitioner owns on July 1, 1971. However, transfer of this interest to another person results in immediate termination of the exemption.

**History:** En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906; amd. Sec. 1352, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

**37-2-107. Civil penalty for unreadable prescription.** (1) A medical practitioner may not issue a written prescription, to be delivered to a patient or pharmacy, in such a manner that the name of the drug, the dosage, the instructions for use, the printed name or other identifying letters or numbers unique to the medical practitioner, and, if required, the federal drug enforcement agency identifying number cannot be read by a registered pharmacist licensed to practice in this state.

(2) Any person may file a complaint alleging a violation of subsection (1) with the board that licensed the medical practitioner who issued the prescription. The board may investigate the complaint and take any action and impose any sanction allowed by the statutes relating to the board and rules adopted by the board. Each board licensing a medical practitioner shall adopt rules to implement this section.

(3) The board may refer the complaint to the county attorney of the county in which the prescription was issued, whether or not the board itself has taken any action or imposed any sanction. A county attorney may not file an action alleging a violation of subsection (1) unless a complaint has been referred to the county attorney by the medical practitioner's licensing board.

(4) A medical practitioner who violates subsection (1) is guilty of a civil offense and may be punished by a civil penalty of not more than \$500 for each prescription.

**History: En. Sec. 1, Ch. 436, L. 2005.**

**Compiler's Comments:**

*Deadline for Adoption of Initial Rules:* Section 2, Ch. 436, L. 2005, provided that rules required by this section must be adopted by July 1, 2006.

*Effective Date:* This section is effective October 1, 2005.

*Applicability:* Section 4, Ch. 436, L. 2005, provided: "[This act] applies to a prescription written after [the effective date of this act]." Effective October 1, 2005.

**37-2-108 through 37-2-110 reserved.**

**37-2-111. Repealed.** Sec. 75, Ch. 492, L. 2001.

**History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.**

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## Part 2 Nonliability for Peer Review

**Cross References:**

Libel and slander, Title 27, ch. 1, part 8.

Montana Medical Legal Panel created, 27-6-104.

Licensing investigation and review -- record access, 37-1-135.

Reporting obligations of physicians, Title 37, ch. 3, part 4.

Health care information, Title 50, ch. 16.

**37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations.** (1) A member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within the individual's knowledge, but the individual may not be questioned about the individual's testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

**History:** En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989; amd. Sec. 1353, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

*1989 Amendment:* In four places inserted reference to medical ethics review.

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### Part 3 Miscellaneous Provisions

**Cross References:**

Doctor-patient privilege, 26-1-805.

Libel and slander, Title 27, ch. 1, part 8.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Communicable disease defined, 50-1-101.

Powers of Department relating to communicable diseases, 50-1-202.

Report of exposure to infectious disease, Title 50, ch. 16, part 7.

Report of exposure to infectious disease -- immunity from liability, 50-16-704.

Revocation, suspension, or cancellation of driver's license, Title 61, ch. 5, part 2.

**37-2-301. Duty to report cases of communicable disease.** (1) If a physician or other practitioner of the healing arts examines or treats a person who the physician or other practitioner believes has a communicable disease or a disease declared reportable by the department of public health and human services, the physician or other practitioner shall immediately report the case to the local health officer. The report must be in the form and contain the information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500,

imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, must be paid to the county treasurer of the county in which the violation occurs.

**History:** (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987; amd. Sec. 58, Ch. 418, L. 1995; amd. Sec. 87, Ch. 546, L. 1995.

**Compiler's Comments:**

*1995 Amendments:* Chapter 418 in (1), in first sentence, substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1), in first sentence, substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

*Transition:* Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

*Saving Clauses:* Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

*1987 Amendment:* In last sentence of (2), after "Fines", inserted "except those collected by a justice's court".

**37-2-302. Gunshot or stab wounds to be reported.** The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

**History:** En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

**37-2-303. Immunity from liability.** A physician or other person reporting pursuant to 37-2-302 is presumed to be acting in good faith and in reporting is immune from any liability, civil or criminal, unless the individual acted in bad faith or with malicious purpose.

**History:** En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051; amd. Sec. 1354, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

**37-2-304. Failure of health care provider to obtain insurance as unprofessional conduct.** In addition to the conduct described in 37-1-316, failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a) requiring insurance constitutes unprofessional conduct.

**History:** En. Sec. 3, Ch. 158, L. 2009.

**Compiler's Comments:**

*Effective Date:* Section 5, Ch. 158, L. 2009, provided: "[This act] is effective on passage and approval." Approved April 3, 2009.

**37-2-305 through 37-2-310 reserved.**

**37-2-311. Report to department of justice by physician.** (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to the person's condition to the department of justice. The department, upon receiving the report, shall require the person reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection (2), without the consent of the patient.

**History:** En. Sec. 1, Ch. 126, L. 1983; amd. Sec. 1, Ch. 419, L. 1991; amd. Sec. 1355, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

*Code Commissioner Correction:* In (2)(a) the Code Commissioner substituted "commercial driver's license" for "commercial motor vehicle operator's endorsement". Chapter 195 changed references in statutes from commercial motor vehicle operator's endorsement to commercial driver's license. The Code Commissioner has made the change in this section pursuant to the authority provided in sec. 84, Ch. 10, L. 1993.

*1991 Amendment:* In (1), near end of second sentence after "examined", substituted "or investigated as" for "in the manner" and deleted reference to 61-5-110; and in (2)(a), after "license", inserted "driving privilege, or commercial motor vehicle operator's endorsement".

*Code Commissioner Correction:* The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

*Source:* This section is based on section 171.131 Minnesota Statutes Annotated.

**37-2-312. Physician's immunity from liability.** A physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of the physician's actions pursuant to 37-2-311 except for damages occasioned by gross negligence. An action may not be brought against a physician for not making a report pursuant to 37-2-311.

**History:** En. Sec. 2, Ch. 126, L. 1983; amd. Sec. 1356, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

*Source:* This section is based on section 171.131 Minnesota Statutes Annotated.

**37-2-313 and 37-2-314 reserved.**

**37-2-315. Direct billing for anatomic pathology services.** (1) A clinical laboratory or physician providing anatomic pathology services for a patient may present a bill or demand for payment for services furnished by the laboratory or physician only to the following entities:

- (a) the patient;
- (b) the patient's insurer or other third-party payor;
- (c) the health care facility ordering the services;

(d) a referring laboratory, other than a laboratory in which the patient's physician or other practitioner of the healing arts has a financial interest; or

(e) a state or federal agency or the agent of that agency, on behalf of the patient.

(2) Except as provided in subsection (5), a physician or other practitioner of the healing arts licensed pursuant to Title 37 may not directly or indirectly bill or charge for or solicit payment for anatomic pathology services unless those services were provided personally by the physician or other practitioner or under the direct supervision of a physician providing that supervision for the purposes of 42 U.S.C. 263a.

(3) The following entities are not required to reimburse a physician for a bill or charge made in violation of this section:

(a) a patient;

(b) an insurer;

(c) a health care facility; or

(d) another third-party payor.

(4) This section does not require an assignment of benefits for anatomic pathology services.

(5) This section does not prohibit billing between laboratories, other than laboratories in which the patient's physician or other practitioner of the healing arts has a financial interest, for anatomic pathology services in instances requiring that a sample be sent to a specialist at another laboratory.

(6) This section does not prohibit a clinical laboratory or physician providing anatomic pathology services for a patient from presenting a bill or demand for payment for those services or presenting separate bills or demands for payment to a payor when allowed by this section.

(7) The licensing entity for a physician or other practitioner of the healing arts licensed pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section.

(8) As used in this section, the following definitions apply:

(a) "Anatomic pathology services" means:

(i) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;

(ii) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;

(iii) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;

(iv) subcellular pathology and molecular pathology; or

(v) blood bank services performed by a pathologist.

(b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in 50-5-101.

(d) "Insurer" includes a disability insurer, a health services corporation, a health maintenance organization, and a fraternal benefit society.

(e) "Patient" has the meaning provided in 50-16-504.

(f) "Physician" has the meaning provided in 37-3-102.

**History: En. Sec. 1, Ch. 266, L. 2005.**

**Compiler's Comments:**

*Effective Date:* This section is effective October 1, 2005.

*Applicability:* Section 3, Ch. 266, L. 2005, provided: "[This act] applies to anatomic pathology services furnished after October 1, 2005."

## **CHAPTER 18**

### **VETERINARY MEDICINE**

#### **Part 1 -- General**

- 37-18-101. Definitions.
- 37-18-102. Veterinary medicine defined.
- 37-18-103. Repealed.
- 37-18-104. Exemptions -- rules.

#### **Part 2 -- Board of Veterinary Medicine**

- 37-18-201. Organization -- meetings.
- 37-18-202. Rulemaking.
- 37-18-203. Repealed.

#### **Part 3 -- Licensing--Veterinary Medicine**

- 37-18-301. License required.
- 37-18-302. Application -- qualification -- fee.
- 37-18-303. Repealed.
- 37-18-304. Repealed.
- 37-18-305. License -- issuance and contents.
- 37-18-306. Display of license and certificate.
- 37-18-307. Repealed.
- 37-18-308. Deposit of money.
- 37-18-309 and 37-18-310 reserved.
- 37-18-311. Repealed.
- 37-18-312 reserved.
- 37-18-313. Municipal license fee prohibited.

#### **Part 4 -- Licensing--Veterinary Technology (Repealed)**

## Part 5 -- Remedies for Violation

- 37-18-501. Penalty.
- 37-18-502. Injunction.

## Part 6 -- Euthanasia Technicians and Agencies--Certification

- 37-18-601. Purpose.
- 37-18-602. Definitions.
- 37-18-603. Powers of board -- euthanasia certification.
- 37-18-604. Certified agency -- duties.
- 37-18-605. Certified euthanasia technician.
- 37-18-606. Disposition of fees.

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# CHAPTER 18 VETERINARY MEDICINE

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## Part 1 General

**37-18-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1742.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

**History:** En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974; R.C.M. 1947, 66-2201.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 43, L. 1985; amd. Sec. 127, Ch. 483, L. 2001.

**Compiler's Comments:**

*2001 Amendment:* Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

*1985 Amendment:* In (1) substituted "board of veterinary medicine" for "board of veterinarians".

*1981 Amendment:* Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

**37-18-102. Veterinary medicine defined.** (1) A person is considered practicing veterinary medicine when the person does any of the following:

(a) represents to the public that the person is a veterinarian or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie

evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(4), for compensation, in any manner how to perform any acts that constitute the practice of veterinary medicine.

(2) Subsection (1)(e) may not in any way be construed to prohibit the pregnancy testing by any person of the person's own farm animals or by the person's employees regularly employed in the conduct of the person's business or by other persons whose services are rendered gratuitously.

(3) This section may not be construed as modifying, amending, altering, or repealing any part of 37-18-104.

**History:** (1)En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; Sec. 66-2209, R.C.M. 1947; (2)En. Sec. 2, Ch. 191, L. 1965; Sec. 66-2209.1, R.C.M. 1947; (3)En. Sec. 3, Ch. 191, L. 1965; Sec. 66-2209.2, R.C.M. 1947; R.C.M. 1947, 66-2209(1), 66-2209.1, 66-2209.2; amd. Sec. 3, Ch. 43, L. 1985; amd. Sec. 1, Ch. 650, L. 1989; amd. Sec. 1382, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

*1989 Amendment:* In (1)(g) substituted reference to 37-18-104(4) for reference to 37-18-104(3). Amendment effective May 11, 1989.

*1985 Amendment:* In (1)(f) inserted "or dentistry".

**37-18-103. Repealed.** Sec. 7, Ch. 96, L. 1981.

**History:** En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(2).

**37-18-104. Exemptions -- rules.** (1) This chapter does not apply to:

(a) a veterinarian in the performance of the veterinarian's official duties, either civil or military, in the service of the United States unless the veterinarian is engaged in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

(c) a veterinarian practicing in another state or country and authorized under the laws of that state or country to practice veterinary medicine, whose practice in this state is limited to an occasional case as that term is defined in board rule;

(d) the employment of a veterinary medical student who has successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary

medical association, if the student is employed by and works under the immediate supervision of a veterinarian licensed and registered under this chapter; or

(e) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

(a) minimum education requirements;

(b) minimum requirements of practical experience;

(c) continuing education requirements;

(d) limitations on practices and procedures that may be performed by certified individuals;

(e) the use of specific drugs necessary for safe and proper practice of certified procedures;

(f) content and administration of the certification test, including written and practical testing;

(g) application and reexamination procedures; and

(h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

(8) This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance authorized by the board for the purpose of euthanasia pursuant to part 6 of this chapter.

**History:** En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R.C.M. 1921; re-en. Sec. 3227, R.C.M. 1935; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975; R.C.M. 1947, 66-2211; amd. Sec. 4, Ch. 43, L. 1985; amd. Sec. 2, Ch. 650, L. 1989; amd. Sec. 1, Ch. 21, L. 1991; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 75, L. 1997; amd. Sec. 8, Ch. 60, L. 2003; amd. Sec. 39, Ch. 126, L. 2005.

**Compiler's Comments:**

*Termination Provision Repealed:* Section 1, Ch. 153, L. 2007, repealed sec. 11, Ch. 60, L. 2003, which terminated the 2003 amendments to this section January 1, 2008.

*2005 Amendment:* Chapter 126 deleted former (1)(c) that read: "(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation"; in (1)(c) near beginning after "veterinarian" substituted "practicing in another state or country" for "residing on a border of a neighboring state", after "that state" inserted "or country", and at end after "medicine" substituted "whose practice in this state is limited to an occasional case as that term is defined in board rule" for "who is actually called to attend cases in this

state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state"; and made minor changes in style. Amendment effective July 1, 2005.

*2003 Amendment:* Chapter 60 inserted (8) providing that nothing in Title 37, chapter 18, prohibits a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance authorized by the board for the purpose of euthanasia. Amendment effective January 1, 2004, and terminates January 1, 2008.

*1997 Amendment:* Chapter 75 in (1)(e), at beginning after "employment", deleted "as assistants to veterinarians licensed and registered under this chapter" and at end substituted "if the students are employed by and work under the immediate supervision of a veterinarian licensed and registered under this chapter" for "and authorized by law to confer degrees"; in (3), at end of first sentence, deleted "by individuals who attest to the board that they possess a combination of 3 years' education, experience, and training in that procedure", deleted first sentence of former (3)(b) that read: "Exemption under subsection (3)(a) remains in effect until testing and certification procedures, as determined by board rule, are implemented on or before July 1, 1991", and at end, after "rules", inserted "regarding nonsurgical embryo transfers in bovines"; deleted former (3)(b)(ix) that read: "(ix) establishment of an advisory committee. The committee:

(A) must consist of:

(I) one member of the board who is a veterinarian;

(II) one member of the Montana state university-Bozeman reproductive physiology department;

(III) one member representing the Montana stockgrowers association animal health committee;

(IV) one member representing the Montana woolgrowers association;

(V) one reproductive specialist with practical experience in embryo transfers; and

(VI) a veterinarian who is a member of the American college of theriogenologists;

(B) shall make recommendations regarding the testing and certification procedures. The committee may not adopt rules.

(C) in cooperation with the board, shall conduct a study of the practice of bovine pregnancy testing and ovine pregnancy testing with the use of ultrasound equipment. The study must include but is not limited to:

(I) federal laws governing the practice of pregnancy testing;

(II) education and experience requirements for the practice of pregnancy testing; and

(III) pregnancy testing by nonveterinarians.

(D) terminates July 1, 1991"; inserted (6) concerning employee performing functions under supervision of veterinarian; inserted (7) concerning emergency care by employee; and made minor changes in style.

*1997 Statement of Intent:* The statement of intent attached to Ch. 75, L. 1997, provided: "A statement of intent is required for this bill because 37-18-104(6) and (7) and 37-18-202(1)(c) grant authority to the board of veterinary medicine to adopt rules regarding the limited exemption of certain veterinary support personnel from the practice of veterinary medicine. It is intended that the board be allowed to define by rule the scope of treatments that support personnel may render when working under the supervision of a veterinarian. It is also intended that, in its discretion, the board be allowed to further define situations that constitute emergencies during which support personnel may provide limited care to a veterinarian's animal patients."

*Name Change -- Directions to Code Commissioner:* Pursuant to sec. 36, Ch. 308, L. 1995, in this section the Code Commissioner changed "Montana state university" to "Montana state university-Bozeman".

*1991 Amendment:* In beginning of (3)(a) inserted "Nonsurgical", after "transfers" inserted "in bovines", and substituted "veterinarian licensed and residing in Montana" for "licensed veterinarian". Amendment effective February 12, 1991.

*1989 Amendment:* Inserted (1)(f) relating to livestock management practices; inserted (3) regarding performance of embryo transfers and Board rules; and in (4), before "treating", inserted "caring for and", before "employees" inserted "full-time", and after "employees" inserted "as defined in 2-18-601". Amendment effective May 11, 1989.

*1989 Statement of Intent:* The statement of intent attached to Ch. 650, L. 1989, provided: "A statement of intent is required for this bill because 37-18-104, 37-18-202, and 37-18-311 [now repealed] grant to the board of veterinary medicine the authority to adopt rules to implement the provisions of the bill. At a minimum, it is intended that the rules address:

(1) a definition of accepted livestock management practices in order to determine whether a person who advises on the subject is exempt from Title 37, chapter 18;

(2) development of standards for continuing education requirements, which may be supplemental to present board rules on the subject;

(3) a definition of unprofessional conduct to be used in determining whether a license may be refused, suspended, or revoked;

(4) certification of individuals seeking to practice embryo transfers, to be implemented on or before July 1, 1991; and

(5) formation of an advisory committee to make recommendations regarding the certification of individuals seeking to practice embryo transfers."

*Applicability:* Section 9, Ch. 650, L. 1989, provided: "The provisions of [this act] clarify existing authority of the board of veterinary medicine to regulate veterinary practices. The provisions of Title 2, chapter 8, part 2 [now repealed], and 5-4-207 [now repealed] do not apply to [this act]."

*1985 Amendment:* In (1)(e) deleted former last two sentences that read: "However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of 6 months from the date of completion of the third year of study".

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## Part 2

### Board of Veterinary Medicine

**37-18-201. Organization -- meetings.** (1) A board member must receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice president, and secretary-treasurer and shall hold at least two regular meetings each year. If a member of the board, without cause, is absent from two consecutive regular meetings, that member's position on the board is vacated.

*History:* En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(1), (2); amd. Sec. 26, Ch. 492, L. 2001.

**Compiler's Comments:**

*2001 Amendment:* Chapter 492 in (2) substituted second sentence regarding absence from meetings for "At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant"; and made minor changes in style. Amendment effective October 1, 2001.

**37-18-202. Rulemaking.** The board may adopt rules necessary to carry out the purposes of this chapter.

*History:* En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(3), (4); amd. Sec. 3, Ch. 96, L. 1981; amd. Sec. 3, Ch. 650, L. 1989; amd. Sec. 65, Ch. 429, L. 1995; amd. Sec. 2, Ch. 75, L. 1997; amd. Sec. 58, Ch. 467, L. 2005.

**Compiler's Comments:**

*2005 Amendment:* Chapter 467 at beginning after "rules" deleted "and orders" and after "necessary" substituted "to carry out the purposes of this chapter" for "for the performance of its duties, including but not limited to:

- (a) prescribing of forms for application for examination and license;
- (b) preparation of examinations; and
- (c) clarifying the use of support personnel and the provision of emergency services.

(2) The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses"; and made minor changes in style. Amendment effective July 1, 2005.

*1997 Amendment:* Chapter 75 inserted (1)(c) concerning support personnel and emergency services.

*1997 Statement of Intent:* The statement of intent attached to Ch. 75, L. 1997, provided: "A statement of intent is required for this bill because 37-18-104(6) and (7) and 37-18-202(1)(c) grant authority to the board of veterinary medicine to adopt rules regarding the limited exemption of certain veterinary support personnel from the practice of veterinary medicine. It is intended that the board be allowed to define by rule the scope of treatments that support personnel may render when working under the supervision of a veterinarian. It is also intended that, in its discretion, the board be allowed to further define situations that constitute emergencies during which support personnel may provide limited care to a veterinarian's animal patients."

*1995 Amendment:* Chapter 429 deleted (1)(a) authorizing Board to adopt rules for development of continuing professional education requirements and exceptions from requirements; deleted (3) that read: "(3) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court"; and made minor changes in style.

*Severability:* Section 131, Ch. 429, L. 1995, was a severability clause.

*Saving Clause:* Section 132, Ch. 429, L. 1995, was a saving clause.

*Applicability:* Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

*1989 Amendment:* In introductory clause of (1), after "duties", inserted "including but not limited to"; inserted (1)(a) regarding continuing education; and made minor changes in phraseology, form, and punctuation. Amendment effective May 11, 1989.

*1989 Statement of Intent:* The statement of intent attached to Ch. 650, L. 1989, provided: "A statement of intent is required for this bill because 37-18-104, 37-18-202, and 37-18-311 [now repealed] grant to the board of veterinary medicine the authority to adopt rules to implement the provisions of the bill. At a minimum, it is intended that the rules address:

(1) a definition of accepted livestock management practices in order to determine whether a person who advises on the subject is exempt from Title 37, chapter 18;

(2) development of standards for continuing education requirements, which may be supplemental to present board rules on the subject;

(3) a definition of unprofessional conduct to be used in determining whether a license may be refused, suspended, or revoked;

(4) certification of individuals seeking to practice embryo transfers, to be implemented on or before July 1, 1991; and

(5) formation of an advisory committee to make recommendations regarding the certification of individuals seeking to practice embryo transfers."

*1981 Amendment:* Deleted former subsection (2), relating to issuance of veterinary technicians' licenses.

### **37-18-203. Repealed.** Sec. 127, Ch. 467, L. 2005.

**History:** En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(1), (2); amd. Sec. 22, Ch. 474, L. 1981.

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## **Part 3**

### **Licensing -- Veterinary Medicine**

**37-18-301. License required.** A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

**History:** En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; R.C.M. 1947, 66-2209(2).

**37-18-302. Application -- qualification.** A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold out to the public that the person is a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall apply to the department for a license to do so. The application must be on a form furnished by the department, must be accompanied by satisfactory evidence of the good moral character of the applicant, and must contain evidence of the applicant's having received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a certified transcript of the applicant must be submitted to the department for inspection and verification. The certified transcript remains the property of the department.

**History:** En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 1, Ch. 431, L. 1979; amd. Sec. 5, Ch. 341, L. 1981; amd. Sec. 2, Ch. 21, L. 1991; amd. Sec. 12, Ch. 230, L. 1999; amd. Sec. 33, Ch. 109, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 109 deleted former last sentence that read: "A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set by the board". Amendment effective October 1, 2009.

*1999 Amendment:* Chapter 230 in third sentence substituted "certified transcript" for "photostatic copy of the diploma"; in fourth sentence substituted "certified transcript" for "photostatic copy"; and made minor changes in style. Amendment effective October 1, 1999.

*1991 Amendment:* In last sentence, after "set", deleted "annually". Amendment effective February 12, 1991.

*1981 Amendment:* Substituted "person" for "citizen of the United States" at the beginning of the section.

*Citizenship Qualification -- Preamble:* The preamble to Ch. 341, L. 1981, provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

**37-18-303. Repealed. Sec. 127, Ch. 467, L. 2005.**

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 2, Ch. 431, L. 1979; amd. Sec. 4, Ch. 96, L. 1981; amd. Sec. 3, Ch. 21, L. 1991; amd. Sec. 66, Ch. 429, L. 1995; amd. Sec. 13, Ch. 230, L. 1999.

**37-18-304. Repealed. Sec. 128, Ch. 429, L. 1995.**

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(2).

**37-18-305. License -- issuance and contents.** (1) The board shall, at the conclusion of a regular examination or after investigation, if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted must be issued under seal and must be signed by the president and secretary-treasurer of the board and must state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, the licensee has been found qualified to practice.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(1), (2); amd. Sec. 67, Ch. 429, L. 1995.

**Compiler's Comments:**

*1995 Amendment:* Chapter 429 in (1), after "investigation", deleted "under the reciprocity arrangements of 37-18-304"; in (2), after "examination", deleted "or investigation under reciprocity arrangements"; and made minor changes in style.

*Severability:* Section 131, Ch. 429, L. 1995, was a severability clause.

*Saving Clause:* Section 132, Ch. 429, L. 1995, was a saving clause.

*Applicability:* Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

**37-18-306. Display of license and certificate.** A person may not practice veterinary medicine in this state without possessing and displaying prominently in the person's principal office a current and valid license issued under this part.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(1); amd. Sec. 18, Ch. 502, L. 2007.

**Compiler's Comments:**

*2007 Amendment:* Chapter 502 near middle after "office" deleted "a license and" and after "valid" substituted "license" for "certificate of registration"; and made minor changes in style. Amendment effective October 1, 2007.

*Saving Clause:* Section 52, Ch. 502, L. 2007, was a saving clause.

**37-18-307. Repealed. Sec. 127, Ch. 467, L. 2005.**

**History:** En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(3) thru (5); amd. Sec. 44, Ch. 345, L. 1981; amd. Sec. 5, Ch. 43, L. 1985; amd. Sec. 4, Ch. 650, L. 1989; amd. Sec. 68, Ch. 429, L. 1995; amd. Sec. 23, Ch. 492, L. 1997; amd. Sec. 26, Ch. 271, L. 2003.

**37-18-308. Deposit of money.** Money received under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

**History:** En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(3); amd. Sec. 1, Ch. 277, L. 1983.

**Compiler's Comments:**

*1983 Amendment:* Substituted reference to state special revenue fund for reference to earmarked revenue fund.

**37-18-309 and 37-18-310 reserved.**

**37-18-311. Repealed. Sec. 128, Ch. 429, L. 1995.** **History:** En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R.C.M. 1921; re-en. Sec. 3226, R.C.M. 1935; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977; R.C.M. 1947, 66-2210; amd. Sec. 5, Ch. 650, L. 1989.

**37-18-312 reserved.**

**37-18-313. Municipal license fee prohibited.** A license fee or license tax may not be imposed upon a person who practices veterinary medicine, as a condition to the practice of the profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers.

**History:** En. Sec. 7, Ch. 650, L. 1989; amd. Sec. 1383, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

*Effective Date:* Section 10, Ch. 650, L. 1989, provided that this section is effective May 11, 1989.

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**Part 4**  
**Licensing -- Veterinary Technology (Repealed)**

**37-18-401. Repealed. Sec. 7, Ch. 96, L. 1981.**  
**History:** En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(3); amd. Sec. 3, Ch. 431, L. 1979.

**37-18-402. Repealed. Sec. 7, Ch. 96, L. 1981.**  
**History:** En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(4), (6).

**37-18-403. Repealed. Sec. 7, Ch. 96, L. 1981.**

**History:** En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(5); amd. Sec. 45, Ch. 345, L. 1981.

**37-18-404. Repealed. Sec. 7, Ch. 96, L. 1981.**

**History:** En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(7).

**37-18-405. Repealed. Sec. 7, Ch. 96, L. 1981.**

**History:** En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(8), (9); amd. Sec. 46, Ch. 345, L. 1981.

**37-18-406 through 37-18-410 reserved.**

**37-18-411. Repealed. Sec. 7, Ch. 96, L. 1981.**

**History:** En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977; R.C.M. 1947, 66-2214.

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## Part 5 Remedies for Violation

**37-18-501. Penalty.** A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after the person's license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state. Upon conviction, the person shall be punished by a fine of not less than \$200 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or both. A person convicted a second time for any violation of this chapter shall be punished by both fine and imprisonment. The district court has jurisdiction of all prosecutions brought under this section.

**History:** En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; re-en. Sec. 3228, R.C.M. 1935; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977; R.C.M. 1947, 66-2212; amd. Sec. 5, Ch. 96, L. 1981; amd. Sec. 1384, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

*1981 Amendment:* Deleted "or veterinary technology" after "veterinary medicine" in two places.

**37-18-502. Injunction.** The board or any person may bring an action in the district court to enjoin a person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(4). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining the defendant from the violation, without regard to any criminal provisions of Title 37, chapter 18.

**History:** En. 66-2215 by Sec. 3, Ch. 135, L. 1975; R.C.M. 1947, 66-2215; amd. Sec. 6, Ch. 96, L. 1981; amd. Sec. 6, Ch. 650, L. 1989; amd. Sec. 1385, Ch. 56, L. 2009.

**Compiler's Comments:**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

*1989 Amendment:* Substituted reference to 37-18-104(4) for reference to 37-18-104(3). Amendment effective May 11, 1989.

*1981 Amendment:* Deleted "or veterinary technology" after "veterinary medicine".

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## Part 6

## Euthanasia Technicians and Agencies -- Certification

### Part Compiler's Comments:

*Termination Provision Repealed:* Section 1, Ch. 153, L. 2007, repealed sec. 11, Ch. 60, L. 2003, which terminated this part January 1, 2008.

*Effective Date:* Section 10, Ch. 60, L. 2003, provided: "[This act] is effective January 1, 2004."

*Termination:* Section 11, Ch. 60, L. 2003, provided: "[This act] terminates January 1, 2008."

**37-18-601. Purpose.** The purpose of this part is to provide the most humane disposition possible of unwanted, stray, abandoned, discarded, or dangerous animals by providing for the certification of agencies and euthanasia technicians.

**History: En. Sec. 1, Ch. 60, L. 2003.**

**37-18-602. Definitions.** As used in this part, the following definitions apply:

(1) "Certified agency" means a law enforcement agency, a public or private animal control agency, or a humane society organized for the prevention of cruelty to animals that has certification from the board to possess controlled substances approved for the purpose of euthanasia.

(2) "Certified euthanasia technician" means an employee of a certified agency or a person who is working under the supervision of a licensed veterinarian and who has been certified by the board to administer a controlled substance approved by the board for the purpose of euthanasia.

(3) "Controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

(4) "Euthanasia" means the act or practice of ending the life of an animal in order to end suffering or for some other humane purpose.

(5) "Person" means an individual, corporation, partnership, government or governmental subdivision or agency, trust, or other legal entity.

**History: En. Sec. 2, Ch. 60, L. 2003.**

**37-18-603. Powers of board -- euthanasia certification.** The board may:

(1) establish qualifications and prescribe the application format for certification as a certified agency or as a certified euthanasia technician and review each application for compliance with certification requirements;

(2) examine and determine the qualifications and fitness of applicants to operate as a certified agency or as a certified euthanasia technician;

(3) issue, renew, reinstate, deny, suspend, require voluntary surrender of, or revoke any certifications or temporary permits or impose other forms of discipline and enter into consent agreements and negotiated settlements with certified agencies or certified euthanasia technicians consistent with the provisions of this chapter and rules adopted pursuant to Title 37, chapter 1, and this chapter;

(4) establish a schedule of fees for certifying agencies and euthanasia technicians, ensuring that the fees are commensurate with the costs of the certification program;

(5) establish a list of controlled substances approved for the purpose of euthanasia;

(6) adopt other rules that the board or department considers necessary for the implementation of this part; and

(7) inspect any certified agency's controlled substance storage, inventory, administration procedures, and recordkeeping.

**History: En. Sec. 3, Ch. 60, L. 2003.**

**37-18-604. Certified agency -- duties.** (1) A person may not possess controlled substances for the purpose of euthanasia without first becoming a licensed veterinarian or a certified agency under rules adopted by the board.

(2) Certified agencies shall apply for registration with the applicable state or federal agency to possess controlled substances approved by the board for purposes of euthanasia.

(3) Certified agencies shall comply with all state and federal laws regarding the storage, care, and administration of controlled substances. Failure to comply with these laws may result in the immediate revocation of the certification in addition to any other civil or criminal penalties provided under any other statute.

**History: En. Sec. 4, Ch. 60, L. 2003.**

**37-18-605. Certified euthanasia technician.** (1) A person may not administer controlled substances for euthanasia purposes unless the person is a licensed veterinarian, a certified euthanasia technician, or support personnel as defined by rules adopted by the board.

(2) A certified euthanasia technician may use controlled substances only for euthanasia purposes unless the certified euthanasia technician is under the direct supervision of a licensed veterinarian.

**History: En. Sec. 5, Ch. 60, L. 2003.**

**37-18-606. Disposition of fees.** Any fees collected under this part must be deposited in a state special revenue account to offset costs incurred by the board or department in carrying out this part.

**History: En. Sec. 6, Ch. 60, L. 2003.**