



MONTANA
ADMINISTRATIVE
REGISTER



**BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY**

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-137.1

Summary

House Bill 218 (2025) allows for optometrists to perform laser surgical procedures and requires the board to set qualifications for a laser surgery certificate in rule.

Hearing Date and Time

Tuesday, June 3, 2025, at 11:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the rules listed in this notice. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: <https://mt-gov.zoom.us/j/84542886415>

Meeting ID: 845 4288 6415; Password: 519347

Dial by Telephone: +1 646 558 8656

Meeting ID: 845 4288 6415; Password: 519347

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received by Friday, June 6, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Tuesday, May 27, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

General Reasonable Necessity Statement

House Bill 218 (2025) establishes the ability of licensed optometrists to perform laser surgical procedures. Section 1 of the bill requires the board set qualifications for obtaining the certificate, including establishing required trainings. In NEW RULE 1, the board is proposing each licensee seeking certification complete a 32-hour course taught by an individual qualified to perform the laser surgical procedures. The board considered existing education programs and regulations in other states with similar scopes of practice in proposing this rule. Additionally, the board is amending its fee schedule, continuing education requirements, and unprofessional conduct rules to implement the bill and address the expanded scope of practice.

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.168.401 FEE SCHEDULE

- (1) Application fee \$175
- (2) Annual renewal 175
- (3) Endorsement fee 125
- (4) TPA or laser surgical certificate application fee 75

- (5) Additional standardized fees are specified in ARM 24.101.403.

Authorizing statute(s): 37-1-131, 37-1-134, 37-10-202, MCA

Implementing statute(s): 37-1-134, 37-1-141, 37-1-304, 37-10-302, MCA

24.168.2101 CONTINUING EDUCATION REQUIREMENTS – AUDIT

- (1) Licensed optometrists shall complete 36 hours of approved continuing education (CE) every two years:
 - (a) Up to 12 hours of asynchronous approved CE courses may be counted toward the CE requirement.
 - (b) Up to 4 hours of practice management approved CE may be counted toward the CE requirement.
 - (c) The board does not limit or restrict online approved synchronous CE courses.
- (2) Licensees holding a laser surgical certificate must complete 8 hours of CE relating to lasers or surgery during each CE cycle.
- (3) Licensees holding a laser surgical certificate or a TPA certificate must complete 2 hours of CE related to pain management during each CE cycle.
- ~~(2)~~(4) The following are exceptions to CE requirements:
 - (a) A person who graduates from an accredited school of optometry and becomes a licensee within one year of graduation is excused from the CE requirement during the first applicable CE cycle.
 - (b) A licensee who is enrolled in a residency program accredited by the ACOE is excused from the CE requirement while the licensee is in the residency program and during the first applicable CE cycle.
- ~~(3)~~(5) The department is authorized to audit CE requirements and shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits. Audits will be conducted in odd-numbered years.

Authorizing statute(s): 37-1-131, 37-1-319, MCA

Implementing statute(s): 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

24.168.2301 UNPROFESSIONAL CONDUCT

- (1) It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing their scope of practice, or exceeding the scope of practice for which they are licensed, trained, and educated to perform. The following additionally constitutes unprofessional conduct by licensees or license applicants:
 - (a) commission of any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice of optometry;
 - (b) allowing one's professional conduct or judgment in the practice of optometry to be directed, managed, or controlled by a person who is not an optometrist or a medical doctor in Montana;
 - (c) prescribing, selling, administering, distributing, or giving any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes or to oneself or a family member;
 - (d) violating any state or federal law or regulation relating to a drug legally classified as a controlled substance;
 - (e) obtaining any fee by fraud, deceit, or misrepresentation;
 - (f) sanctions or disciplinary actions taken by a peer review body, a hospital or other health care institution, or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;
 - (g) surrender of a license or authorization to practice optometry in another state or jurisdiction, or surrender of membership on any staff or in any professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;
 - (h) failure to respond to board inquiry or furnish information requested by the board, department investigators, or board representatives;
 - (i) violation of any provision(s) of Title 37, chapter 10, MCA, or the rules and regulations of the board or of an action, stipulation, or agreement of the board;

- (j) the designation of any person licensed under Title 37, chapter 10, MCA, other than by the terms "Optometrist," "Doctor of Optometry," or "O.D.";
- (k) selling or offering to sell any eyeglasses or lenses for the correction of refractive error, except for over-the-counter readers between the powers of +.75 dioptors to +5.50 dioptors, except on prescription of a licensed optometrist or licensed physician;
- (l) providing ophthalmic lenses and materials that do not meet federally established impact resistance standards;
- (m) persistently maintaining, in the practice of optometry, unsanitary offices, practices, or techniques;~~or~~
- (n) failing to maintain or permit patient access to accurate patient records for at least five years from the last time the patient was treated~~;~~ or
- (o) performing laser surgery without a certificate issued under [NEW RULE 1 (ARM 24.168.801)].

Authorizing statute(s): 37-1-131, 37-1-319, 37-10-202, MCA

Implementing statute(s): 37-1-131, 37-1-316, 37-1-319, 37-10-301, MCA

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 (24.168.801) EXPANDED SCOPE OF PRACTICE – SURGICAL CERTIFICATE REQUIREMENTS

- (1) Before a licensee may perform surgery, as set forth in 37-10-101, MCA, the licensee must complete an approved course that:
 - (a) is at least 32 hours in duration;
 - (b) includes content related to each laser surgical procedure set forth in 37-10-101, MCA; and
 - (c) is taught by an instructor who is qualified to perform each of the surgical procedures set forth in 37-10-101, MCA.
- (2) Licensees shall apply for the laser surgical certification on forms provided by the board.

Authorizing statute(s): 37-1-131, 37-10-202, 37-10-302, MCA

Implementing statute(s): 37-10-301, 37-10-302, MCA

Small Business Impact

The board proposes the fee for the laser surgery certification be set equivalent to the current board fee for a therapeutic pharmaceutical agent certificate. Because this is an optional certification, the exact number of licensees and small businesses impacted by this fee is unknown. However, if every licensed optometrist chose to obtain the certification, it is estimated that approximately 335 licensees will be subject to the fee, for an annual cumulative cost to licensees of \$25,125.

Bill Sponsor Notification

The primary bill sponsor was contacted on April 25, 2025, by electronic mail. The bill sponsor had no concerns.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Jennifer Stallkamp

Approval

Sarah Swanson, Commissioner

Approval

Dr. Ron Benner, President, Board of Optometry