

SENATE BILL 460

IN THE SENATE

February 12, 1979	Introduced and referred to Committee on Business and Industry.
February 13, 1979	Fiscal note requested.
February 14, 1979	Rereferred to Committee on State Administration.
February 20, 1979	Committee recommend bill, do not pass.
February 21, 1979	Fiscal note returned.

1 Act BILL NO. 460  
 2 INTRODUCED BY S. Brown

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR PUBLIC  
 5 MEMBERS ON VARIOUS PROFESSIONAL AND OCCUPATIONAL LICENSING  
 6 BOARDS AND CREATING A PROFESSIONAL AND OCCUPATIONAL  
 7 LICENSING APPEALS BOARD WITH EXCLUSIVE AUTHORITY TO HEAR  
 8 CONTESTED CASES ARISING FROM THE DENIAL, SUSPENSION, OR  
 9 REVOCATION OF SUCH LICENSES; AMENDING SECTIONS IN TITLE 2  
 10 AND TITLE 37, MCA; REPEALING SECTIONS 37-3-327, 37-3-328,  
 11 37-4-324, 37-4-325, 37-13-314, 37-16-412, 37-19-312,  
 12 37-31-333, 37-50-341, 37-51-322, AND 37-60-306, MCA."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. Section 1. Professional and occupational  
 16 licensing appeals board created. (1) There is a professional  
 17 and occupational licensing appeals board.

18 (2) The board consists of three members appointed by  
 19 the governor and confirmed by the senate. One member must be  
 20 an attorney licensed to practice in Montana. No appeals  
 21 board member may be a member or engaged in the practice of a  
 22 profession or occupation under the jurisdiction of a  
 23 licensing board.

24 (3) Each member shall serve for a term of 3 years.

25 (4) The board is allocated to the department of

1 administration for administrative purposes only as  
 2 prescribed in 2-15-121.

3 NEW SECTION. Section 2. Definitions. Unless the  
 4 context requires otherwise, in [sections 1 through 6] the  
 5 following definitions apply:

6 (1) "Appeals board" means the professional and  
 7 occupational licensing appeals board provided for in  
 8 [section 1].

9 (2) "Department" means the department of professional  
 10 and occupational licensing provided for in Title 2, chapter  
 11 15, part 16.

12 (3) "License" is as defined in 2-4-102(5).

13 (4) "Licensing board" means a board allocated to the  
 14 department of professional and occupational licensing for  
 15 administrative purposes or which receives administrative or  
 16 clerical services and direction from that department. The  
 17 term also includes the director of the department in  
 18 relation to his functions under Title 37, chapter 60. The  
 19 term does not include the board of athletics.

20 NEW SECTION. Section 3. Compensation and expenses.  
 21 Each member of the appeals board is entitled to receive \$25  
 22 per day, plus travel expenses as provided for in 2-18-501  
 23 through 2-18-503.

24 NEW SECTION. Section 4. Powers and duties of appeals  
 25 board. (1) The appeals board has the exclusive power and

1 duty to decide each contested case, as defined in  
2 2-4-102(4), arising from the denial, suspension, or  
3 revocation of a license by a licensing board.

4 (2) The appeals board may, in its discretion, engage  
5 the services of a qualified attorney as hearing examiner  
6 whenever it believes that the length or complexity of an  
7 impending hearing makes such services necessary or  
8 desirable.

9 NEW SECTION. Section 5. Procedure for appeal --  
10 effective date of licensing board action. (1) Whenever a  
11 licensing board denies, suspends, or revokes a license, it  
12 shall send by registered or certified mail to the applicant  
13 or licensee at his last address of record with the  
14 department a copy of its order of denial, suspension, or  
15 revocation, together with:

16 (a) a statement of the grounds upon which its action  
17 is based; and

18 (b) a statement of the applicant's or licensee's right  
19 of hearing on appeal under subsections (2) and (3).

20 (2) The applicant or licensee may appeal the action of  
21 the licensing board to the appeals board. The appeal is  
22 perfected by filing with the appeals board a petition,  
23 signed by the applicant or licensee, within 30 days of  
24 receipt by him of the licensing board's order. The petition  
25 shall seek review by the appeals board and shall include a

1 copy of all materials received by the applicant or licensee  
2 pursuant to subsection (1). The petition may include such  
3 other statements or data as the applicant or licensee  
4 desires.

5 (3) No later than 30 days after receipt of the  
6 petition, the appeals board shall hold a hearing and render  
7 its decision.

8 (4) The decision of the appeals board is final,  
9 subject to judicial review under Title 2, chapter 4, part 7.

10 (5) The suspension or revocation of a license by a  
11 licensing board is not effective until 60 days after receipt  
12 of the licensing board's order by the licensee. However, the  
13 licensing board may make a license suspension or revocation  
14 effective at an earlier date if it finds that emergency  
15 action is imperative due to an imminent danger to the public  
16 health, safety, or welfare.

17 NEW SECTION. Section 6. Licensing board to pay  
18 expenses of appeal. All expenses related to the conduct of a  
19 hearing by the appeals board shall be paid by the licensing  
20 board from which the appeal was taken.

21 Section 7. Section 2-15-1605, MCA, is amended to read:  
22 \*2-15-1605. Board of medical examiners. (1) There is a  
23 Montana state board of medical examiners.

24 (2) The board consists of seven members appointed by  
25 the governor with the consent of the senate. Appointments

1 made when the senate is not in session may be confirmed at  
2 the next senate session.

3 (3) The members are:

4 (a) ~~six~~ four members having the degree of doctor of  
5 medicine; and

6 (b) one member having the degree of doctor of  
7 osteopathy; and

8 (c) two representatives of the public who are not  
9 engaged in the practice of medicine or osteopathy.

10 (4) The members having the degree of doctor of  
11 medicine may not be from the same county. Each member ~~shall~~  
12 must be a citizen of the United States. Each member ~~shall~~  
13 except the representatives of the public, must have been  
14 licensed and ~~shall~~ must have practiced medicine or  
15 osteopathy, whichever is applicable, in this state for at  
16 least 5 years ~~and shall have been a resident of this state~~  
17 ~~for at least 5 years;~~ however, the 5-year requirement of  
18 practice and residency ~~shall~~ in this state must be waived  
19 for the initial term appointment of the member having the  
20 degree and license of doctor of osteopathy. Each member must  
21 have been a resident of this state for at least 5 years.

22 (5) Each member shall serve for a term of 7 years. A  
23 term commences on September 1 of each year of appointment.  
24 A member may, upon notice and hearing, be removed by the  
25 governor for neglect of duty, incompetence, or

1 unprofessional or dishonorable conduct.

2 (6) The board is allocated to the department for  
3 administrative purposes only as prescribed in 2-15-121."

4 Section 8. Section 2-15-1606, MCA, is amended to read:  
5 "2-15-1606. Board of dentists. (1) There is a board of  
6 dentists.

7 (2) The board consists of five members appointed by  
8 the governor. The Montana state dental association shall  
9 present to the governor, within 15 days after its regular  
10 annual meeting, a list of not less than ~~five~~ four candidates  
11 from which appointments for vacancies of dentist members on  
12 the board occurring during the ensuing year may be made. At  
13 all times at least ~~three~~ two members of the board ~~shall~~ must  
14 be appointed from the list of candidates submitted by the  
15 Montana state dental association. ~~Each member shall~~ Four  
16 members must be licensed to practice dentistry in this state  
17 and ~~shall~~ must have actively practiced dentistry in this  
18 state for at least 5 continuous years immediately before his  
19 their appointment. One member must be a representative of  
20 the public who is not engaged in the practice of dentistry.  
21 Each member ~~shall~~ must be a citizen of the United States and  
22 a resident of this state.

23 (3) Each member shall serve for a term of 5 years. The  
24 governor may remove a member only for neglect or cause.

25 (4) The board is allocated to the department for

1 administrative purposes only as prescribed in 2-15-121."

2 Section 9. Section 2-15-1607, MCA, is amended to read:

3 "2-15-1607. Board of osteopathic physicians. (1) There  
4 is a board of osteopathic physicians.

5 (2) The board consists of ~~three~~ four members appointed  
6 by the governor. ~~Each member shall~~ Three members must be a  
7 qualified practicing resident osteopath ~~osteopaths~~ and a  
8 graduate ~~graduates~~ of a legally authorized school ~~schools~~ of  
9 osteopathy. One member must be a representative of the  
10 public who is not engaged in the practice of osteopathy.

11 (3) Each member shall serve for a term of 4 years.

12 (4) The board is allocated to the department for  
13 administrative purposes only as prescribed in 2-15-121."

14 Section 10. Section 2-15-1608, MCA, is amended to  
15 read:

16 "2-15-1608. Board of podiatry examiners. (1) There is  
17 a board of podiatry examiners.

18 (2) The board consists of ~~three~~ four members ~~and~~ of  
19 ~~whom~~ Three members are licensed podiatrists appointed by the  
20 governor ~~to 3-year terms~~ having been selected from a list  
21 of six podiatrists submitted by the Montana association of  
22 podiatrists. ~~The~~ Those three members ~~shall~~ must be residents  
23 of this state who have engaged in the active practice of  
24 podiatry in this state for at least 2 years and are of high  
25 integrity and ability. The governor shall fill a vacancy of

1 a podiatrist member on the board from the same list of  
2 podiatrists. One member must be a representative of the  
3 public who is a resident of this state and who is not  
4 engaged in the practice of podiatry. Each member shall serve  
5 for a term of 3 years.

6 (3) The board is allocated to the department for  
7 administrative purposes only as prescribed in 2-15-121."

8 Section 11. Section 2-15-1609, MCA, is amended to  
9 read:

10 "2-15-1609. Board of pharmacists. (1) There is a board  
11 of pharmacists.

12 (2) The board consists of ~~three~~ four members appointed  
13 by the governor.

14 ~~(3) Three members must be licensed pharmacists.~~ The  
15 governor shall appoint ~~the~~ those three members from a list  
16 submitted annually by the Montana state pharmaceutical  
17 association. The list shall contain the names of five  
18 qualified persons for each such appointment. Each such  
19 member ~~shall~~ must be a graduate of the college of pharmacy  
20 of the university of Montana or of a college or school of  
21 pharmacy recognized and approved by or a member of the  
22 American association of colleges of pharmacy. Each such  
23 member ~~shall~~ must have at least 5 consecutive years of  
24 practical experience as a pharmacist immediately before his  
25 appointment. However, one member may be a registered



1 pharmacist of 15 years' practical experience and actually  
 2 engaged in the practice of pharmacy. A ~~pharmacist~~ member  
 3 who, during his term of office, ceases to be actively  
 4 engaged in the practice of pharmacy in this state--~~shall~~--be  
 5 is automatically disqualified from membership on the board.

6 (4) One member must be a representative of the public  
 7 who is not engaged in the practice of pharmacy.

8 ~~(3)(5)~~ Each member shall serve for a term of 3 years.  
 9 A member ~~shall~~ must be removed from office by the governor  
 10 on proof of malfeasance or misfeasance in office, after  
 11 reasonable notice of charges against him and after a  
 12 hearing.

13 ~~(4)(6)~~ The board is allocated to the department for  
 14 administrative purposes only as prescribed in 2-15-121."

15 Section 12. Section 2-15-1610, MCA, is amended to  
 16 read:

17 "2-15-1610. Board of nursing. (1) There is a board of  
 18 nursing.

19 (2) The board consists of eight members appointed by  
 20 the governor. The members are:

21 (a) ~~five~~ four registered professional nurses who  
 22 constitute the board--professional nursing administration.  
 23 At least three two such members shall have had at least 3  
 24 years in administrative, teaching, or supervisory experience  
 25 in schools of nursing. Each member shall:

1 (i) be a graduate of an approved school of nursing;  
 2 (ii) be a licensed nurse in this state;  
 3 (iii) have had at least 5 years' experience in nursing  
 4 following graduation; and

5 (iv) have been actively engaged in nursing for at least  
 6 3 years immediately before appointment.

7 (b) ~~three~~ two practical nurses who constitute the  
 8 board--practical nursing administration. Each member shall:

9 (i) be a graduate of a school of practical nursing;  
 10 (ii) be a licensed practical nurse in this state;  
 11 (iii) have had at least 3 years' experience as a  
 12 practical nurse; and

13 (iv) have been actively engaged in the practice of  
 14 practical nursing for at least 2 years immediately before  
 15 appointment.

16 (c) two representatives of the public who are not  
 17 engaged in the practice of professional or practical  
 18 nursing. These members may participate and vote regarding  
 19 matters coming before the board--professional nursing  
 20 administration and the board--practical nursing  
 21 administration.

22 (3) All members shall have been residents of this  
 23 state for at least 1 year before appointment and be citizens  
 24 of the United States.

25 (4) All members shall serve for a term of 5 years, and

1 a member may not be appointed for more than two consecutive  
2 terms. The governor may remove a member from the board for  
3 neglect of a duty required by law or for incompetency or  
4 unprofessional or dishonorable conduct.

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

7 Section 13. Section 2-15-1611, MCA, is amended to  
8 read:

9 "2-15-1611. Board of nursing home administrators. (1)  
10 There is a board of nursing home administrators.

11 (2) The board consists of five voting members  
12 appointed by the governor. No more than two members shall  
13 ~~may~~ be nursing home administrators. ~~The--other--three~~ ~~two~~  
14 ~~members shall~~ must be representatives of professions or  
15 institutions concerned with the care of chronically ill and  
16 infirm aged patients. ~~No--two-of-the~~ ~~the~~ ~~latter~~ ~~shall~~ ~~two~~  
17 ~~members may not~~ be from the same profession and none may not  
18 have a financial interest in a nursing home. One member must  
19 be a representative of the public who is not in either of  
20 the above two categories.

21 (3) The director of the department of health and  
22 environmental sciences or his designee and the director of  
23 the department of social and rehabilitation services or his  
24 designee are ex officio, nonvoting members of the board.

25 (4) ~~The~~ Except for the representative of the public,

1 ~~the~~ appointees shall must be selected from a list of three  
2 nominees submitted for each appointee by the board of  
3 directors of the Montana nursing home association, inc.

4 (5) Each appointed member shall serve for a term of 5  
5 years. Any vacancy occurring in the position of an  
6 appointive member shall must be filled by the governor for  
7 the unexpired term. Except for the representative of the  
8 public, such vacancy must be filled from a list of three  
9 names submitted by the board of directors of the Montana  
10 nursing home association, inc.

11 (6) Appointive members may be removed by the governor  
12 only for cause.

13 (7) The board is allocated to the department for  
14 administrative purposes only as prescribed in 2-15-121."

15 Section 14. Section 2-15-1612, MCA, is amended to  
16 read:

17 "2-15-1612. Board of optometrists. (1) There is a  
18 board of optometrists.

19 (2) The board consists of ~~three~~ four members appointed  
20 by the governor. ~~Each member shall~~ Three members must be a  
21 registered optometrist optometrists of this state and  
22 actually engaged in the exclusive practice of optometry in  
23 this state during his-term their terms of office. One member  
24 must be a representative of the public who is not engaged in  
25 the practice of optometry.

1 (3) Each member shall serve for a term of 6 years.

2 (4) The board is allocated to the department for  
3 administrative purposes only as prescribed in 2-15-121."

4 Section 15. Section 2-15-1613, MCA, is amended to  
5 read:

6 "2-15-1613. Board of chiropractors. (1) There is a  
7 board of chiropractors.

8 (2) The board consists of ~~three~~ four members appointed  
9 by the governor. ~~The three~~ members shall ~~be~~ must be practicing  
10 chiropractors of integrity and ability ~~who shall be~~ are  
11 residents of this state and who have practiced chiropractic  
12 continuously in this state for at least 1 year. No two  
13 chiropractor members ~~shall~~ may be graduates of the same  
14 school or college of chiropractic. One member must be a  
15 representative of the public who is not engaged in the  
16 practice of chiropractic.

17 (3) Each member shall serve for a term of 3 years. No  
18 member may be appointed for more than two consecutive terms.  
19 A member may be removed from office by the governor on  
20 sufficient proof of the member's inability or misconduct.

21 (4) The board is allocated to the department for  
22 administrative purposes only as prescribed in 2-15-121."

23 Section 16. Section 2-15-1614, MCA, is amended to  
24 read:

25 "2-15-1614. Board of radiologic technologists. (1)

1 There is a board of radiologic technologists.

2 (2) The board consists of seven members appointed by  
3 the governor:

4 (a) ~~two--members--shall~~ one member must be radiologists  
5 a radiologist licensed to practice medicine in Montana;

6 (b) ~~one member shall~~ must be a physician licensed to  
7 practice medicine in Montana;

8 (c) one member ~~shall~~ must be a chiropractor licensed  
9 to practice in Montana; and

10 (d) ~~three~~ two members ~~shall~~ must be radiologic  
11 technologists registered with the American registry of  
12 radiologic technologists (ARRT) who, with the exception of  
13 the first appointed members, are licensed radiologic  
14 technologists; and

15 (e) two members must be representatives of the public  
16 who are not engaged in the practice of medicine,  
17 chiropractic, or radiologic technology.

18 (3) Vacancies in unexpired terms ~~shall~~ must be filled  
19 for the remainder of the term.

20 (4) Each member shall serve for a term of 3 years."

21 Section 17. Section 2-15-1616, MCA, is amended to  
22 read:

23 "2-15-1616. Board of hearing aid dispensers. (1) There  
24 is a board of hearing aid dispensers.

25 (2) The board consists of five members appointed by



1 the governor. The members are:

2 (a) one member appointed from a list submitted by the  
3 Montana academy of oto-ophthalmology. This member shall hold  
4 or be eligible for a certificate of qualification from the  
5 American board of otolaryngology.

6 (b) one member appointed from a list submitted by the  
7 Montana speech and hearing association. This member shall  
8 hold or be eligible for a certificate of clinical competence  
9 in audiology from the American speech and hearing  
10 association.

11 (c) ~~three~~ two members appointed from a list submitted  
12 by the Montana hearing aid dealers' society. These members  
13 ~~shall~~ must have been qualified dispensers and fitters of  
14 hearing aids for at least 5 years before their appointment  
15 to the board.

16 ~~(d) one member to represent the public who is not~~  
17 ~~engaged in the practice of dispensing or fitting hearing~~  
18 ~~aids.~~

19 ~~(4)(3) one~~ one alternate member ~~shall~~ must be  
20 appointed from for each of ~~the three lists to~~ regular  
21 member. Each alternate member must be appointed in the same  
22 manner and must possess the same minimum qualifications as  
23 the corresponding regular member and shall serve when ~~a~~ the  
24 regular member cannot attend a scheduled meeting.

25 ~~(4)(4) Each member shall serve for a term of 3 years.~~

1 A member may not be reappointed within 1 year after the  
2 expiration of his second consecutive full term. If a vacancy  
3 occurs on the board, the governor shall appoint a person  
4 ~~from the same list in the same manner and with the same~~  
5 qualifications as the member whose term was not completed.

6 ~~(4)(5) The board is allocated to the department for~~  
7 ~~administrative purposes only as prescribed in 2-15-121."~~

8 Section 18. Section 2-15-1617, MCA, is amended to  
9 read:

10 "2-15-1617. Board of psychologists. (1) There is a  
11 board of psychologists.

12 (2) The board consists of three ~~four~~ members appointed  
13 by the governor. The governor shall appoint ~~at~~ three  
14 members, including a member filling a vacancy for ~~an~~ the  
15 unexpired term ~~of one of those three members~~, from the list  
16 of licensed psychologists in this state. The governor shall  
17 appoint one member to represent the public who is not  
18 engaged in the practice of psychology. A member may not  
19 succeed himself but may be reappointed after 3 years  
20 following the termination of his previous appointment. Each  
21 member shall be a citizen of the United States and a  
22 resident of this state.

23 (3) Each member shall serve for a term of 3 years."

24 Section 19. Section 2-15-1618, MCA, is amended to  
25 read:

1 barbers.

2 (2) The board consists of three four members appointed  
3 by the governor. ~~Each member shall~~ Three members must be a  
4 practicing barber ~~barbers~~ who has ~~have~~ been a barber ~~barbers~~  
5 in this state for at least 5 years immediately before his  
6 their appointment. One member must be a representative of  
7 the public who is not a barber.

8 (3) Each member shall serve for a term of 3 years. The  
9 governor may remove a member for cause.

10 (4) The board is allocated to the department for  
11 administrative purposes only as prescribed in 2-15-121."

12 Section 22. Section 2-15-1626, MCA, is amended to  
13 read:

14 "2-15-1626. Board of cosmetologists. (1) There is a  
15 board of cosmetologists.

16 (2) The board consists of three four members, ~~who may~~  
17 Three members must be appointed by the governor from a list  
18 of six persons recommended by the Montana state  
19 hairdressers' association. One member must be a  
20 representative of the public who is not engaged in the  
21 practice of cosmetology. Each cosmetologist member appointed  
22 shall must have actively engaged in the profession of  
23 cosmetology for at least 5 years before his appointment, and  
24 Each member must have been a resident of this state for at  
25 least 5 years immediately before his appointment. Each

1 member shall must be at least 18 years old and a graduate of  
2 a high school or its equivalent. No two members of the board  
3 may be members of or affiliated with a school of  
4 cosmetology.

5 (3) Each member shall serve for a term of 4 years.

6 (4) The board is allocated to the department for  
7 administrative purposes only as prescribed in 2-15-121."

8 Section 23. Section 2-15-1627, MCA, is amended to  
9 read:

10 "2-15-1627. Board of massage therapists. (1) There is  
11 a board of massage therapists.

12 (2) The board consists of three four members appointed  
13 by the governor. ~~Each member shall be a resident of this~~  
14 ~~state and shall have been a masseur~~ Three members must be  
15 massage therapists who have practiced continuously in this  
16 state for at least 1 year. One member must be a  
17 representative of the public who is not engaged in the  
18 practice of massage therapy. Each massage therapist member  
19 shall must have integrity and ability as a masseur massage  
20 therapist. Each member must be a resident of this state.

21 (3) Each member shall serve for a term of 3 years.

22 (4) The board is allocated to the department for  
23 administrative purposes only as prescribed in 2-15-121."

24 Section 24. Section 2-15-1631, MCA, is amended to  
25 read:

1 Section 26. Section 2-15-1643, MCA, is amended to  
2 read:

3 "2-15-1643. Board of abstracters. (1) There is a board  
4 of abstracters.

5 (2) The board consists of three ~~four~~ members appointed  
6 by the governor. ~~Each member shall~~ Three members must be a  
7 registered ~~abstracter~~ abstracters during his ~~term~~ their  
8 terms. One member must be a representative of the public who  
9 is not an abstracter. Members ~~shall~~ must be from different  
10 counties.

11 (3) Each member shall serve for a term of 3 years.

12 (4) The board is allocated to the department for  
13 administrative purposes only as prescribed in 2-15-121."

14 Section 27. Section 2-15-1651, MCA, is amended to  
15 read:

16 "2-15-1651. Board of architects. (1) There is a board  
17 of architects.

18 (2) The board consists of three ~~four~~ members appointed  
19 by the governor ~~with the consent of the senate.~~ ~~Each member~~  
20 ~~shall~~ Three members must be a skilled and capable architect  
21 architects who ~~has~~ have been in continuous practice for 3  
22 years before his ~~their~~ their appointment. One member must be a  
23 representative of the public who is not engaged in the  
24 practice of architecture. ~~Not~~ No more than two members ~~shall~~  
25 may be residents of the same county.

1 (3) Each member shall serve for a term of 3 years.

2 (4) The board is allocated to the department for  
3 administrative purposes only as prescribed in 2-15-121."

4 Section 28. Section 2-15-1652, MCA, is amended to  
5 read:

6 "2-15-1652. Board of landscape architects. (1) There  
7 is a board of landscape architects.

8 (2) The board consists of five members of which at  
9 least three must be landscape architects. Members of the  
10 board ~~shall~~ must be appointed by the governor and must be  
11 residents of this state. At least three ~~shall~~ must have the  
12 qualifications of landscape architects required by Title 37,  
13 chapter 66, and three members must be licensed landscape  
14 architects. At least one member must be a representative of  
15 the public who is not a landscape architect.

16 (3) The board is allocated to the department of  
17 professional and occupational licensing for administrative  
18 purposes only as prescribed in 2-15-121.

19 (4) Terms are for 4 years. Each member shall hold  
20 office until the appointment and qualification of his  
21 successor. Vacancies occurring prior to the expiration of  
22 the term ~~shall~~ must be filled in the same manner as original  
23 appointments. No member may serve more than 8 consecutive  
24 years."

25 Section 29. Section 2-15-1653, MCA, is amended to

1 read:

2 "2-15-1653. Board of professional engineers and land  
3 surveyors. (1) There is a board of professional engineers  
4 and land surveyors.

5 (2) The board consists of seven members appointed by  
6 the governor. The members are:

7 (a) ~~five~~ four professional engineers who have been  
8 engaged in the practice of engineering for at least 12 years  
9 and who have been in responsible charge of engineering  
10 teaching or important engineering work for at least 5 years  
11 and registered in Montana for at least 5 years. No more  
12 than two of these members may be from the same branch of  
13 engineering.

14 (b) ~~two~~ one registered and practicing land ~~surveyors~~  
15 ~~surveyor~~ who have ~~has~~ been engaged in the practice of land  
16 surveying for at least 12 years and who have ~~has~~ been in  
17 responsible charge of land surveying or important land  
18 surveying work for at least 5 years and registered in  
19 Montana for at least 5 years.

20 (c) two representatives of the public who are not  
21 engaged in the practice of engineering or land surveying.

22 (3) Each member shall be a citizen of the United  
23 States and a resident of this state. A member, after  
24 serving two consecutive terms, shall not be reappointed for  
25 a period of 2 years.

1 (4) Each member shall serve for a term of 5 years. The  
2 governor may remove a member for misconduct, incompetency,  
3 neglect of duty, or for any other sufficient cause.

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

6 Section 30. Section 2-15-1656, MCA, is amended to  
7 read:

8 "2-15-1656. Board of warm air heating, ventilation,  
9 and air conditioning. (1) There is a state board of warm  
10 air heating, ventilation, and air conditioning.

11 (2) The board consists of seven members appointed by  
12 the governor. The members are:

13 (a) two master and two journeyman mechanics, who shall  
14 be over the age of majority and residents of Montana for at  
15 least 1 year. Each mechanic shall have been licensed  
16 pursuant to Title 37, chapter 70, at least 2 years  
17 immediately preceding his appointment.

18 (b) one representative of the department of  
19 administration responsible for the administration of parts 1  
20 through 4 of Title 50, chapter 60, who shall act as  
21 secretary;

22 (c) ~~one attorney from the department~~ representative of  
23 the public who is not engaged in warm air heating,  
24 ventilation, or air conditioning work; and

25 (d) one representative of the fire marshal bureau.



1 (3) Each member shall serve for a period of 4 years."

2 Section 31. Transition. Sections 7 through 30 do not  
3 affect the term of office of any person who is a board  
4 member on July 1, 1979, and any such person may serve out  
5 the remainder of his unexpired term. All vacancies filled  
6 and appointments made after that date must be in accordance  
7 with sections 7 through 30.

8 Section 32. Section 37-1-102, MCA, is amended to read:

9 "37-1-102. Duties of director. In addition to his  
10 powers and duties under 2-15-112 and 2-15-121, the director  
11 of professional and occupational licensing shall:

12 (1) appoint impartial legal counsel to conduct  
13 hearings any rulemaking hearing before each a board within  
14 the department ~~whenever any board holds a hearing~~. The legal  
15 counsel appointed shall see that ~~hearings are~~ the hearing is  
16 conducted in a proper and legal manner.

17 (2) whenever the department conducts an investigation  
18 of a complaint of illegal or unethical conduct of a member  
19 of a particular profession or occupation as prescribed in  
20 37-1-101(5) and if requested by the appropriate board,  
21 appoint an impartial member of that profession or occupation  
22 to assist the department in its investigation. The member so  
23 appointed may not be a member of the board having  
24 jurisdiction over the particular profession or occupation.

25 (3) hire all personnel to perform the administrative

1 and clerical functions of the department for the boards.  
2 Boards within the department have no authority to hire  
3 personnel.

4 (4) approve all contracts and expenditures by boards  
5 within the department. No board within the department may  
6 enter into a contract or expend funds without the approval  
7 of the director."

8 Section 33. Section 37-1-103, MCA, is amended to read:

9 "37-1-103. Duties of boards. Each board within the  
10 department shall:

11 (1) set and enforce standards and rules governing the  
12 licensing, certification, registration, and conduct of the  
13 members of the particular profession or occupation within  
14 its jurisdiction;

15 ~~(2) sit in judgment in hearings for the suspension,~~  
16 ~~revocation, or denial of a license of an actual or potential~~  
17 ~~member of the particular profession or occupation within its~~  
16 ~~jurisdiction. The hearings shall be conducted by the legal~~  
19 ~~counsel appointed under 37-1-102(1).~~

20 ~~(3) pay to the department its pro rata share of the~~  
21 ~~assessed costs of the department under 37-1-101(6)."~~

22 Section 34. Section 37-3-203, MCA, is amended to read:

23 "37-3-203. Powers and duties. (1) The board may:

24 (a) adopt rules necessary or proper to carry out parts  
25 1 through 3 of this chapter; the rules shall be fair,



1 impartial, and nondiscriminatory;

2 ~~(b) hold hearings and take evidence in matters~~  
3 ~~relating to the exercise and performance of the powers and~~  
4 ~~duties vested in the board;~~

5 (c) aid the county attorneys of this state in the  
6 enforcement of parts 1 through 3 of this chapter and the  
7 prosecution of persons, firms, associations, or corporations  
8 charged with violations of parts 1 through 3 of this  
9 chapter.

10 (2) A person hired by the department to assist it and  
11 the board in investigations, the authorization of temporary  
12 certificates, professional correspondence, and related  
13 matters shall be approved by the board."

14 Section 35. Section 37-3-321, MCA, is amended to read:

15 "37-3-321. Refusal of license. If the board determines  
16 that an applicant for a license to practice medicine does  
17 not possess the qualifications or character required by this  
18 chapter or that he has committed unprofessional conduct, it  
19 shall refrain from authorizing the department to issue a  
20 license. ~~The department shall mail to the applicant, at his~~  
21 ~~last address of record with the department, written~~  
22 ~~notification of the board's decision, together with notice~~  
23 ~~of a time and place of a hearing before the board, if the~~  
24 ~~applicant without cause fails to appear at the hearing or if~~  
25 ~~after hearing the board determines he is not entitled to a~~

1 ~~license the board shall refuse to grant the license."~~

2 Section 36. Section 37-3-323, MCA, is amended to read:

3 "37-3-323. Revocation or suspension of license --  
4 probation. (1) The board may make an investigation whenever  
5 it is brought to its attention that there is reason to  
6 suspect that a person having a license or certificate to  
7 practice medicine in this state:

8 (a) is mentally or physically unable to safely engage  
9 in the practice of medicine, has procured his license to  
10 practice medicine by fraud or misrepresentation or through  
11 mistake, has been declared incompetent by a court of  
12 competent jurisdiction and thereafter has not been lawfully  
13 declared competent, or has a condition which impairs his  
14 intellect or judgment to the extent that it incapacitates  
15 him for the safe performance of professional duties;

16 (b) has been guilty of unprofessional conduct;

17 (c) has practiced medicine while his license was  
18 suspended or revoked;

19 (d) has had his license suspended or revoked by any  
20 licensing authority for reasons other than nonpayment of  
21 fees; or

22 (e) while under probation has violated its terms.

23 (2) The investigation shall be for the purpose of  
24 determining the probability of the existence of whether  
25 these conditions exist or the commission of these offenses

1 have been committed and may include requiring the person to  
 2 submit to a physical examination or a mental examination, or  
 3 both, by a physician or physicians selected by the board if  
 4 it appears to be in the best interests of the public that  
 5 this evaluation be secured. The board may examine and  
 6 scrutinize the hospital records and reports of a licensee as  
 7 part of the examination, and copies of these shall be  
 8 released to the board on written request. ~~if the board has~~  
 9 ~~reasonable cause to believe that this probability exists,~~  
 10 ~~the department shall mail to the person at his last address~~  
 11 ~~of record with the department a specification of the charges~~  
 12 ~~against him, together with a written notice of the time and~~  
 13 ~~place of the hearing on such charges, advising him that he~~  
 14 ~~may be present in person and by counsel if he so desires to~~  
 15 ~~offer evidence and be heard in his defense. The time fixed~~  
 16 ~~for the hearing may not be less than 30 days from the date~~  
 17 ~~of mailing the notice.~~

18 (3) A person, including a member of the board, may  
 19 file a sworn complaint with the department against a person  
 20 having a license to practice medicine in this state charging  
 21 him with the commission of any of the offenses set forth in  
 22 37-3-322 or with any of the offenses or conditions set forth  
 23 in subsection (1) of this section, which complaint shall set  
 24 forth a specification of the charges. ~~When the complaint is~~  
 25 ~~filed, the department shall mail a copy to the person~~

1 ~~accused at his last address of record with the department,~~  
 2 ~~together with a written citation of the time and place of~~  
 3 ~~the hearing on it.~~

4 (4) ~~At the hearing the board shall adopt a resolution~~  
 5 ~~finding him guilty or not guilty of the matters charged.~~ If  
 6 the board finds that the offenses or conditions referred to  
 7 in 37-3-322 or subsection (1) of this section were not  
 8 committed or do not exist with respect to the person or ~~if~~  
 9 ~~he is found not guilty,~~ the board shall dismiss the charges  
 10 or complaint. If the board finds that the offenses or  
 11 conditions referred to in 37-3-322 or in subsection (1) of  
 12 this section were committed or do exist ~~and the person is~~  
 13 ~~found guilty,~~ the board shall:

- 14 (a) revoke his license;  
 15 (b) suspend his right to practice for a period not  
 16 exceeding 1 year;  
 17 (c) suspend its judgment of revocation on the terms  
 18 and conditions to be determined by the board;  
 19 (d) place him on probation; or  
 20 (e) take any other action in relation to disciplining  
 21 him as the board in its discretion considers proper.

22 (5) In a case of revocation, suspension, or probation,  
 23 the department shall enter in its records the facts of the  
 24 action and of subsequent action of the board with respect to  
 25 it.

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1 (6) On the expiration of the term of suspension, the  
 2 licensee shall be reinstated by the board if he furnishes  
 3 the board with evidence that he is then of good moral  
 4 character and conduct and restored to good health and that  
 5 he has not practiced medicine in this state during the term  
 6 of suspension. If the evidence fails to establish to the  
 7 satisfaction of the board that the holder is then of good  
 8 moral character and conduct or restored to good health or if  
 9 the evidence shows he has practiced medicine in this state  
 10 during the term of suspension, the board shall revoke the  
 11 license ~~at a hearing with notice and the procedure provided~~  
 12 ~~in subsection (1) of this section. The revocation is final~~  
 13 ~~and absolute.~~

14 (7) If a person holding a license to practice medicine  
 15 under this chapter is by a final order or adjudication of a  
 16 court of competent jurisdiction adjudged to be mentally  
 17 incompetent or seriously mentally ill or addicted to the use  
 18 of narcotics, his license may be suspended by the board. The  
 19 suspension continues until the licensee is found or adjudged  
 20 by the court to be restored to reason or cured or until he  
 21 is discharged as restored to reason or cured and his  
 22 professional competence has been proven to the satisfaction  
 23 of the board."

24 Section 37. Section 37-3-324, MCA, is amended to read:  
 25 "37-3-324. Reconsideration and review of actions of

1 board. The board may, on its own motion or upon application  
 2 at any time after refusal, suspension, or the revocation of  
 3 a license or of probation or of other action as in this  
 4 chapter provided, reconsider its prior action and grant,  
 5 reinstate, or restore such license or terminate the  
 6 suspension thereof or terminate probation or reduce the  
 7 severity of its prior disciplinary action, provided that the  
 8 taking of any such further action ~~or the holding of a~~  
 9 ~~hearing with respect thereto~~ shall rest in the sole  
 10 discretion of the board."

11 Section 38. Section 37-4-201, MCA, is amended to read:  
 12 "37-4-201. Official seal -- organization -- subpoena  
 13 power. Said board shall have an official seal of its own  
 14 design and shall employ the same to authenticate its acts  
 15 and records as may be required. The board shall, at its  
 16 annual meeting, choose from its members a president,  
 17 vice-president, and secretary-treasurer, who shall serve at  
 18 the pleasure of the board. ~~Any member of the board shall~~  
 19 ~~have the power to administer oaths and affirmations and said~~  
 20 ~~board shall have the power to hear testimony and subpoena~~  
 21 ~~witnesses as to all matters relating to the duties imposed~~  
 22 ~~upon it by law."~~

23 Section 39. Section 37-4-307, MCA, is amended to read:  
 24 "37-4-307. Annual license fee -- absent registered  
 25 dentist -- default. (1) A licensed dentist practicing within

1 this state shall annually pay to the department before March  
 2 1, as a license fee for the year, the sum of \$10. The board  
 3 may increase or decrease the annual license fee to maintain  
 4 in the earmarked revenue fund at all times an amount, to be  
 5 known as the emergency fund, to be used for the purpose of  
 6 administering, policing, and enforcing this chapter. The  
 7 emergency fund shall be maintained at an approximate level  
 8 of \$2,500. Notice of the change in the amount of license  
 9 fees shall be given to each dentist registered in this state  
 10 by the department.

11 (2) If a registered dentist absents himself from the  
 12 state for a period of 1 or more years or does not engage in  
 13 active practice within this state, he may continue his  
 14 license in good standing by the payment of \$10 each year, or  
 15 at the discretion of the board, he may be reinstated on the  
 16 payment of a fee of \$10 for each year's absence. The annual  
 17 payments shall be made prior to March 1 of each year, and a  
 18 receipt or certificate shall be issued by the department.

19 (3) In case of default in payment of the annual  
 20 license fee by a dentist, his license shall be revoked by  
 21 the board on after 30 days' notice given to the delinquent  
 22 of the ~~time--and--place--of--considering--the~~ revocation. A  
 23 registered or certified letter addressed to the last-known  
 24 address of the party failing to comply with this  
 25 requirement, as the address appears on the records of the

1 department, constitutes sufficient notice of revocation of  
 2 license, but no license may be revoked for nonpayment if the  
 3 dentist notified pays the license fee plus a late payment  
 4 penalty of \$3 before or at the time fixed for consideration  
 5 of revocation. The department may maintain in the name of  
 6 this state a suit to collect license fees and penalties  
 7 applicable and to recover from the delinquent dentist the  
 8 cost of the action, including reasonable attorneys' fees.

9 (4) No license fee or tax may be imposed on dentists  
 10 by a municipality or any other subdivision of the state."

11 Section 40. Section 37-4-323, MCA, is amended to read:

12 "37-4-323. Revocation or suspension of license --  
 13 procedure. (1) Proceedings Action under 37-4-321 may be  
 14 taken by the board on its initial motion for matters in its  
 15 knowledge or may be taken on the information of another.  
 16 However, if the informant is a member of the board, the  
 17 other members of the board constitute the board for the  
 18 purpose of determining the truth of the charge or  
 19 accusation. Accusations must be in writing, verified by some  
 20 party familiar with the facts charged, and three copies must  
 21 be filed with the department. ~~On-receiving-the-accusation~~  
 22 ~~the-board-shall,--if-it-considers-the-accusation--sufficiently~~  
 23 ~~make--an-order--setting--it--for--hearing--and--requiring--the~~  
 24 ~~accused-to-appear--and-answer-the-charge-or-accusation-at-the~~  
 25 ~~hearing.~~



~~{2} The accused must appear at the time appointed in the order and answer the charges and make his defense unless for sufficient cause on the accused's application or the board's order, the board assigns another day for that purpose.~~

~~{3}{12} If the accused does not appear, the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge or if on hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period. The board and the accused may have the benefit of counsel and the board shall have the power to administer oaths, take depositions of witnesses in the manner provided by law in civil cases, and issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in this state. The subpoenas shall be issued over the signature of the secretary of the board and the seal and in the name of this state.~~

~~{4}{31} On revocation or suspension of a license, the fact shall be noted on the records of the department and the license shall be marked "canceled" (on the date of its revocation) or "suspended", as the case may be. The department shall, on when an order of suspension or~~

1 revocation being entered becomes effective, transmit to the  
2 county clerk and recorder of the county in which the license  
3 of the licensee affected by the judgment is registered and  
4 recorded a copy of the order, certified by the secretary of  
5 the board, for record, and it shall be registered in the  
6 same manner and in the same book in which the registration  
7 of the certificate to practice dentistry is kept."

8 Section 41. Section 37-4-406, MCA, is amended to read:

9 "37-4-406. Annual license fee -- revocation of  
10 license. (1) Before March 1 of each year, a licensed dental  
11 hygienist shall pay to the department a license fee of \$3.  
12 In default of payment, the board may, after hearing and on  
13 30 days' notice, revoke the license of the hygienist in  
14 default; but the payment of the fee on or before the time of  
15 hearing revocation, with an additional sum fixed by the  
16 board not exceeding \$3, excuses the default. The department  
17 may collect the fee by suit.

18 (2) The board may likewise revoke or suspend the  
19 license of a dental hygienist for violating this chapter."

20 Section 42. Section 37-5-311, MCA, is amended to read:

21 "37-5-311. Revocation of certificate. Any such  
22 certificate may be revoked by said board, upon satisfactory  
23 proof of

24 {1} if it is satisfied that the holder has committed  
25 fraud or misrepresentation in procuring the same; or



1       (2) for any violation of the provisions of this  
2 chapter; or

3       (3) for any gross immorality by the holder of such  
4 certificate."

5       Section 43. Section 37-6-311, MCA, is amended to read:

6       "37-6-311. Refusal or revocation of license. The board  
7 ~~may, after notice and opportunity for a hearing,~~ refuse to  
8 grant, renew, or it may revoke a license under this chapter  
9 to a person otherwise qualified who obtained the license by  
10 fraudulent representation, for incompetency in practice, for  
11 use of untruthful or improbable statements to patients or in  
12 his advertisements, for habitual intoxication, for  
13 unprofessional and immoral conduct, or for selling or giving  
14 away alcohol or drugs for an illegal purpose; but the board  
15 may authorize the department to reissue a license after 6  
16 months if in its judgment the act, acts, or conditions of  
17 disqualification have been remedied."

18       Section 44. Section 37-7-321, MCA, is amended to read:

19       "37-7-321. Store license -- certified pharmacy license  
20 -- suspension or revocation. (1) The department shall, on  
21 application on forms prescribed by the board and on the  
22 payment of an annual fee of \$10, license stores other than  
23 pharmacies in which are sold ordinary household or medicinal  
24 drugs prepared in sealed packages or bottles by a  
25 manufacturer qualified under the laws of the state in which

1 the manufacturer resides. The name and address of the  
2 manufacturer shall appear conspicuously on each package sold  
3 by the licensee. It is unlawful for a store to sell,  
4 deliver, or give away household medicinal drugs without  
5 first having secured a license and thereafter keeping it in  
6 force by proper renewal. This subsection does not prevent a  
7 vendor from selling a patent or proprietary medicine in the  
8 original package when plainly labeled or nonmedical articles  
9 usually sold by vendors.

10       (2) The board shall provide for the original  
11 certification and annual renewal by the department of every  
12 pharmacy doing business in this state. On presentation of  
13 evidence satisfactory to the board and on application on a  
14 form prescribed by the board and on the payment of an  
15 original certification fee of \$100, the department shall  
16 issue a license to a pharmacy as a certified pharmacy.  
17 However, the license may be granted only to pharmacies  
18 operated by registered pharmacists or registered interns  
19 qualified under this chapter. The annual renewal fee for a  
20 pharmacy shall be set by the board in an amount not to  
21 exceed \$50. Any default in the payment of such renewal fee  
22 for a period of 30 days after the date the same is due shall  
23 increase the renewal fee to the sum of \$100. The license  
24 must be displayed in a conspicuous place in the pharmacy for  
25 which it is issued and expires on June 30 following the date

1 of issue. It is unlawful for a person to conduct a pharmacy,  
2 use the word "pharmacy" to identify his business, or use the  
3 word "pharmacy" in advertising unless a license has been  
4 issued and is in effect.

5 (3) The board may suspend, revoke, or refuse to renew  
6 a store or pharmacy license:

7 (a) obtained by false representation or fraud;

8 (b) when the pharmacy for which the license is issued  
9 is kept open for the transaction of business without a  
10 pharmacist in charge;

11 (c) when the person to whom the license is granted has  
12 been convicted of:

13 (i) a violation of parts 1 through 3 of this chapter;

14 (ii) a felony; or

15 (iii) a violation of the Federal Food, Drug, and  
16 Cosmetic Act of June 25, 1938, (52 Stats. 1040 through  
17 1059);

18 (d) when the person to whom the license is granted is  
19 a natural person whose pharmacist or intern license has been  
20 revoked; or

21 (e) when the store or pharmacy is conducted in  
22 violation of parts 1 through 3 of this chapter.

23 ~~{4}--Before--a--license--can--be--revoked--the--holder--is~~  
24 ~~entitled--to--a--hearing--by--the--boards"~~

25 Section 45. Section 37-8-202, MCA, is amended to read:

1 "37-8-202. Organization -- meetings -- powers and  
2 duties -- dual administration. (1) The board--practical  
3 nursing administration shall meet annually in the month of  
4 July and shall elect from among the eight members a  
5 president and a secretary, each of whom is a professional  
6 nurse. The board--practical nursing administration shall  
7 hold other meetings when necessary to transact its business.  
8 The board--professional nursing administration shall meet  
9 annually in July and shall hold other meetings when  
10 necessary to transact its business. A majority of the board  
11 as separately constituted for each administration, including  
12 in the majority at least one officer of the board,  
13 constitutes a quorum at any meeting; however, when sitting  
14 as the practical nursing administration, a quorum consists  
15 of a minimum of two practical nurse members and three  
16 professional nurse members, including one board officer. The  
17 department shall keep separate and complete minutes and  
18 records of the respective administration meetings and rules  
19 and orders promulgated by each administration of the board,  
20 and each administration shall exercise its functions,  
21 powers, and duties exclusive of the other, except for the  
22 identity and membership provided in this chapter and  
23 2-15-1610.

24 (2) The board under each administration may make rules  
25 necessary to enable the respective administrations to

1 administer this chapter. The board under each administration  
 2 shall prescribe curricula and standards for schools and  
 3 courses preparing persons for registration and licensure  
 4 under this chapter. It shall provide for surveys of schools  
 5 and courses at times it considers necessary. It shall  
 6 approve schools and courses that meet the requirements of  
 7 this chapter and of the board. The department shall, subject  
 8 to 37-1-101, examine and issue to and renew licenses of  
 9 qualified applicants. ~~The board shall conduct hearings on~~  
 10 ~~charges--entitling for discipline of a licensee, revocation of~~  
 11 ~~a license, or removal of schools of nursing from the~~  
 12 ~~approved lists.~~ It shall cause the prosecution of persons  
 13 violating this chapter and may incur necessary expenses for  
 14 this.

15 (3) The board under each administration may adopt and  
 16 the department shall publish forms for use by applicants and  
 17 others, including license, certificate, and identity forms  
 18 and other appropriate forms and publications convenient for  
 19 the proper administration of this chapter, and the board may  
 20 fix reasonable fees for incidental services, all within the  
 21 subject matter delegated to each administration by this  
 22 chapter. Forms shall make clear reference to the  
 23 administration for which the form is intended.

24 (4) Unless the context requires otherwise, the powers  
 25 and duties enumerated in this chapter shall be exercised and

1 performed by the board--professional nursing administration  
 2 in all matters relating to professional nurses or  
 3 professional nursing education and shall be exercised and  
 4 performed by the board inclusive of the practical nursing  
 5 administration in all matters relating to practical nurses  
 6 and practical nursing education. The officers of the board  
 7 shall also be the officers of the board inclusive of the  
 8 practical nursing administration."

9 Section 46. Section 37-8-441, MCA, is amended to read:  
 10 "37-8-441. Denial, revocation, or suspension of  
 11 license -- grounds. ~~Only after compliance with 37-8-442, the~~  
 12 ~~the~~ board, acting under the appropriate administration, may  
 13 deny, revoke, or suspend a license to practice nursing or  
 14 discipline a licensee on proof if it finds that the person:  
 15 (1) is guilty of fraud or deceit in procuring or  
 16 attempting to procure a license to practice nursing;  
 17 (2) is guilty of a crime or gross immorality;  
 18 (3) is unfit or incompetent by reason of negligence,  
 19 habit, or other causes;  
 20 (4) is habitually intemperate or is addicted to the  
 21 use of habit-forming drugs;  
 22 (5) is mentally or physically incompetent;  
 23 (6) is guilty of unprofessional conduct;  
 24 (7) has willfully or repeatedly violated this  
 25 chapter."

1 Section 47. Section 37-8-442, MCA, is amended to read:

2 "37-8-442. ~~Penalty---revocation,---or---suspension--of~~  
 3 ~~license---procedure~~ Reissuance of license. ~~{1} On filing--a~~  
 4 ~~sworn--complaint-in-writing-with-the-board-charging-a-person~~  
 5 ~~with-violation-of-37-8-441--as--a--ground--for--disciplinary~~  
 6 ~~action,--the--board--shall--fix--a--time--and--place--for--a--public~~  
 7 ~~hearing--before--the--board,--to--be--convened--in--membership--as~~  
 8 ~~the--five-member--board--for--professional--nurses--or--as--the~~  
 9 ~~eight-member-board-for-practiced--nurses,--depending--on--the~~  
 10 ~~professional--or--practiced--status--of--the--licensee,--nurse,--or~~  
 11 ~~person--against--whom--complaint--is--made.~~

12 ~~{2} If the person--charged--is--found--guilty--of--the~~  
 13 ~~charges,--the--board--may--refuse--to--grant--a--license--to--the~~  
 14 ~~applicant--or--may--revoke--or--suspend--a--license--issued--to--a~~  
 15 ~~licensee.~~

16 ~~{3} A revoked or suspended license may be reissued~~  
 17 ~~after 1 year, in the discretion of the board."~~

18 Section 48. Section 37-9-202, MCA, is amended to read:

19 "37-9-202. Exclusive jurisdiction of board. ~~The~~  
 20 Subject to [section 1 through 6], the board shall have  
 21 exclusive authority to determine the qualifications, skill,  
 22 and fitness of any person to serve as an administrator of a  
 23 nursing home under the provisions of this chapter, and the  
 24 holder of a license under the provisions of this chapter  
 25 shall be deemed qualified to serve as the administrator of a

1 nursing home for all purposes."

2 Section 49. Section 37-9-305, MCA, is amended to read:

3 "37-9-305. Renewal of registration and license. Every  
 4 holder of a nursing home administrator's registration and  
 5 license shall renew it annually by payment of the required  
 6 fee for the next subsequent year prior to the expiration of  
 7 his currently valid registration and license on December 31.  
 8 Renewals of registrations or licenses shall be granted as a  
 9 matter of course, providing the holder has completed a  
 10 continuing education course prescribed or approved by the  
 11 board; however, if the board finds, after due notice and  
 12 hearing, that the applicant has acted or failed to act in  
 13 such a manner or under circumstances as would constitute  
 14 grounds for suspension or revocation of a registration and  
 15 license, it shall not issue the renewal."

16 Section 50. Section 37-9-311, MCA, is amended to read:

17 "37-9-311. Revocation and suspension. ~~{1} The board~~  
 18 ~~shall, on receipt of a written and signed complaint,~~  
 19 ~~initiate an investigation of the matter contained in the~~  
 20 ~~complaint, subject to 37-1-101 and 37-1-102. At its next~~  
 21 ~~meeting, the complaint shall be presented to the board,~~  
 22 ~~together with the report of investigation and~~  
 23 ~~recommendations, and--on--on this basis the board shall~~  
 24 ~~determine whether to--bring--charges--and--provide--for--a~~  
 25 ~~hearing.~~

1 ~~(2) The board shall, for cause, after notice and~~  
 2 ~~hearings, revoke or suspend licenses previously issued if the~~  
 3 individual holding the license ~~is determined~~ has  
 4 substantially to have failed to conform to the requirements  
 5 of the standards set pursuant to 37-9-203(1). ~~If the board~~  
 6 ~~determines that he has so failed to conform, it shall~~  
 7 suspend or revoke the license. The board may in its  
 8 discretion defer execution of its order of revocation or  
 9 suspension for the purpose of permitting continuity of care  
 10 for patients when the need for this continuity of care  
 11 outweighs any harm or danger which might result from the  
 12 failure of the nursing home administrator to be registered  
 13 and licensed resulting in the closure of a long-term care  
 14 facility.

15 ~~(3) Denial of issuance or renewal, suspension or~~  
 16 ~~revocation under this chapter is subject to review by the~~  
 17 ~~board on the timely written request for review within 30~~  
 18 ~~days"~~

19 Section 51, Section 37-10-311, MCA, is amended to  
 20 read:

21 "37-10-311. Revocation -- unprofessional conduct. (1)

22 The board may revoke a certificate of registration for:

- 23 (a) conviction of crime;  
 24 (b) habitual drunkenness;  
 25 (c) contagious or infectious disease;

- 1 (d) gross immorality;  
 2 (e) gross ignorance or inefficiency in his profession;  
 3 or  
 4 (f) unprofessional conduct.  
 5 (2) Unprofessional conduct includes:  
 6 (a) obtaining a fee by fraud or misrepresentation;  
 7 (b) employing, directly or indirectly, a suspended or  
 8 unlicensed optometrist to perform work covered by this  
 9 chapter;  
 10 (c) directly or indirectly accepting employment to  
 11 practice optometry from a person not having a valid  
 12 certificate of registration as an optometrist or accepting  
 13 employment to practice optometry for or from a company or  
 14 corporation;  
 15 (d) permitting another to use his certificate of  
 16 registration;  
 17 (e) soliciting or sending a solicitor from house to  
 18 house;  
 19 (f) treatment or advice in which untruthful or  
 20 improbable statements are made;  
 21 (g) professing to cure disease;  
 22 (h) advertising in which ambiguous or misleading  
 23 statements are made; or  
 24 (i) the use in advertising of the expression "eye  
 25 specialist" or "specialist on eyes" in connection with the



1 name of an optometrist. This chapter does not prohibit  
2 legitimate or truthful advertising by a registered  
3 optometrist.

4 ~~{3}--Before-a-certificate-is-revoked-the-holder--shall~~  
5 ~~be-given-a-notice-and-an-opportunity-for-a-hearing.~~

6 {4}{3} Any optometrist convicted a second time for  
7 violation of the provisions of this chapter or whose  
8 certificate of registration or examination has been revoked  
9 a second time shall not be permitted to practice optometry  
10 in this state."

11 Section 52. Section 37-11-321, MCA, is amended to  
12 read:

13 "37-11-321. Refusal to issue or renew license. The  
14 board--after--due-notice-and-hearing--may refuse to license  
15 any applicant and may refuse to renew the license of any  
16 licensed person who:

17 (1) is habitually intoxicated or is addicted to the  
18 use of narcotic drugs;

19 (2) has been convicted of violating any state or  
20 federal narcotic law, subject to chapter 1, part 2 of this  
21 title;

22 (3) is, in the judgment of the board, guilty of  
23 immoral or unprofessional conduct;

24 (4) has been convicted of any crime involving moral  
25 turpitude, subject to chapter 1, part 2 of this title;

1 (5) is guilty, in the judgment of the board, of gross  
2 negligence in his practice as a physical therapist;

3 (6) has obtained or attempted to obtain registration  
4 by fraud or material misrepresentation;

5 (7) has been declared to be seriously mentally ill by  
6 a court of competent jurisdiction and has not thereafter  
7 been released from treatment;

8 (8) has treated or undertaken to treat ailments of  
9 human beings otherwise than by physical therapy; or

10 (9) has undertaken to practice physical therapy  
11 independent of prescription from a person who holds an  
12 unlimited license to practice medicine and surgery in  
13 Montana and other states and territories."

14 Section 53. Section 37-12-322, MCA, is amended to  
15 read:

16 "37-12-322. Revocation or suspension of license. (1)  
17 The board may make an investigation whenever it is brought  
18 to its attention that there is reason to suspect that a  
19 person licensed to practice chiropractic:

20 (a) has a mental or physical condition such that he is  
21 unable to safely engage in the practice of chiropractic;

22 (b) has been declared incompetent or seriously  
23 mentally ill by a court of competent jurisdiction and  
24 thereafter has not been declared competent or released from  
25 supervision;

1 (c) has procured his license through mistake;  
 2 (d) has been guilty of unprofessional conduct;  
 3 (e) has practiced chiropractic while his license was  
 4 suspended or revoked;  
 5 (f) has while under probation violated its terms.  
 6 (2) The investigation shall be for the purpose of  
 7 determining ~~the probability of the existence of whether~~  
 8 these conditions ~~exist~~ or the ~~commission of~~ these offenses  
 9 have been committed and may include requiring the person to  
 10 submit to a physical or mental examination, or both, by a  
 11 physician or physicians selected by the board if it appears  
 12 to be in the best interests of the public that this  
 13 evaluation be secured. The board may examine the hospital  
 14 records and reports of the licensee as part of the  
 15 examination, and copies of these shall be released to the  
 16 board on written request. ~~If the board has reasonable cause~~  
 17 ~~to believe that this probability exists, the department~~  
 18 ~~shall mail to the person at his last address of record with~~  
 19 ~~the department, a specification of the charges against him~~  
 20 ~~together with a written notice of the time and place of the~~  
 21 ~~hearing on such charges, advising him that he may be present~~  
 22 ~~in person and with counsel if he so desires to offer~~  
 23 ~~evidence and be heard in his defense. The time fixed for~~  
 24 ~~hearing may not be less than 30 days from the date of~~  
 25 ~~mailing the notice.~~

1 (3) Any person, including a member of the board, may  
 2 file a sworn complaint with the department against a  
 3 licensed chiropractor charging him with any of the offenses  
 4 or conditions set forth in 37-12-321 or subsection (1) of  
 5 this section, which complaint shall set forth a  
 6 specification of the charges. ~~When the complaint has been~~  
 7 ~~filed, the board may make an investigation as provided by~~  
 8 ~~this section or may proceed to hearing. The department shall~~  
 9 ~~mail a copy of the complaint to the person charged, together~~  
 10 ~~with notice of hearing as provided in subsection (2) of this~~  
 11 ~~section.~~  
 12 (4) ~~After the hearing, the~~ The board shall adopt ~~a~~  
 13 ~~resolution finding that~~ determine whether the offenses  
 14 ~~charged have or have not been committed or that whether~~ the  
 15 ~~conditions charged do or do not exist. If the finding is in~~  
 16 ~~the negative, the board shall dismiss the charges. If the~~  
 17 ~~finding is in the affirmative, the board shall:~~  
 18 (a) revoke the license;  
 19 (b) suspend the licensee's right to practice for a  
 20 period not to exceed 1 year;  
 21 (c) suspend its judgment of revocation on terms and  
 22 conditions determined by the board;  
 23 (d) place the licensee on probation; or  
 24 (e) take any other disciplinary action which the board  
 25 in its discretion considers proper.

1 (5) In cases of revocation, suspension, or probation,  
2 the department shall record the facts of the case and all  
3 actions of the board in relation thereto.

4 (6) On the expiration of a term of suspension, the  
5 licensee shall be reinstated by the board if he furnishes  
6 evidence, satisfactory to the board, that he is then of good  
7 moral character and conduct or restored to good health and  
8 that he has not practiced chiropractic during the term of  
9 suspension. If the evidence fails to establish such facts to  
10 the satisfaction of the board, the board shall proceed to  
11 hearing on revocation with notice as provided in subsection  
12 ~~(2) of this section~~ revoke the license."

13 Section 54. Section 37-13-201, MCA, is amended to  
14 read:

15 "37-13-201. Powers and duties. In addition to all  
16 other powers and duties conferred and imposed upon the board  
17 by this chapter, the board shall have and exercise the  
18 following powers and duties:

19 (1) to promulgate, under the applicable provisions of  
20 the Montana Administrative Procedure Act, rules which it  
21 determines to be necessary to carry out the provisions of  
22 this chapter;

23 (2) to adopt a schedule of minimum educational  
24 requirements, not inconsistent with the provisions of this  
25 chapter;

1 (3) to prescribe forms for application for examination  
2 and license;

3 (4) to prepare and supervise examination of applicants  
4 for license to practice acupuncture;

5 (5) to obtain the services of professional examination  
6 agencies in lieu of its own preparation of the examinations;

7 (6) to issue, revoke, and suspend licenses as  
8 hereinafter provided;

9 ~~(7) to hold hearings, issue subpoenas, administer~~  
10 ~~oaths, and take testimony and proofs concerning all matters~~  
11 ~~within its jurisdiction;~~

12 ~~(8) to issue commissions to take depositions of~~  
13 ~~witnesses who are sick or absent from the state; and~~

14 ~~(9) to~~ (11) to adopt a seal, which shall be affixed to all  
15 licenses issued by the board and other official papers."

16 Section 55. Section 37-13-312, MCA, is amended to  
17 read:

18 "37-13-312. Denial, suspension, or revocation of  
19 license -- procedure. (1) Any person, including any member  
20 of the board, may file a sworn complaint with the secretary  
21 of the board against any person having a license to practice  
22 acupuncture in this state charging him with the commission  
23 of any of the offenses or with having any of the conditions  
24 set forth in 37-13-311, which complaint shall set forth a  
25 specification of the charges. When the complaint is filed,

1 the secretary shall mail a copy to the person so accused at  
 2 his last address of record with the board together with a  
 3 written notice of the time and place of a hearing thereon  
 4 advising him that he may be present in person and by counsel  
 5 if he so desires to offer evidence and be heard in his  
 6 defense. The time fixed for hearing may not be less than 30  
 7 days from the date of mailing the notice.

8 (2) At the time and place fixed for a hearing before  
 9 the board as provided in subsection (1) of this section or  
 10 at any time and place to which the matter may be continued,  
 11 the ~~the~~ board shall receive evidence upon the subject under  
 12 consideration and shall accord the person against whom  
 13 charges are preferred a full and fair opportunity to be  
 14 heard in his defense and shall, after consideration of  
 15 whether the offense was committed or the condition exists,  
 16 adopt a resolution finding him guilty or not guilty of the  
 17 matters charged. If the board finds that the conditions  
 18 referred to in 37-13-311 do not exist with reference to the  
 19 person or if he is found not guilty, the board shall either  
 20 dismiss the charges or complaint, but if the board finds  
 21 that the conditions referred to in 37-13-311 do exist and  
 22 the person is found guilty, the board shall or:

23 (a) revoke his license;

24 (b) suspend his right to practice for a period not  
 25 exceeding 1 year;

1 (c) suspend its judgment of revocation upon the terms  
 2 and conditions to be determined by the board;

3 (d) place him on probation; or

4 (e) take such other action in relation to disciplining  
 5 him as the board in its discretion considers proper.

6 (3) The secretary of the board in all cases of  
 7 revocation, suspension, or probation shall enter in its  
 8 records the facts of the action and of any subsequent action  
 9 of the board with respect thereto."

10 Section 56. Section 37-13-313, MCA, is amended to  
 11 read:

12 "37-13-313. Reinstatement after period of suspension.  
 13 Upon the expiration of the term of suspension, the licensee  
 14 shall be reinstated by the board provided the licensee  
 15 furnishes the board with evidence that he is then of good  
 16 moral character and conduct and restored to good health and  
 17 that he has not practiced acupuncture in this state during  
 18 the term of suspension. If the evidence fails to establish  
 19 to the satisfaction of the board that the licensee is then  
 20 of good moral character and conduct or restored to good  
 21 health or if the evidence shows he has practiced acupuncture  
 22 in this state during the term of suspension, the board shall  
 23 revoke the license at a hearing, the notice and procedure of  
 24 which shall be as herein provided, which revocation is final  
 25 and absolute."

1 Section 57. Section 37-14-202, MCA, is amended to  
2 read:

3 "37-14-202. Rulemaking power. The board may promulgate  
4 rules necessary to carry out the provisions of this chapter  
5 ~~and adjudicate contested cases under it.~~"

6 Section 58. Section 37-14-321, MCA, is amended to  
7 read:

8 "37-14-321. Revocation or suspension of license. A  
9 license or permit may be suspended for a fixed period or may  
10 be revoked, or such technologist may be censured,  
11 reprimanded, or otherwise disciplined as determined by the  
12 board ~~if, after a hearing before the board,~~ it is determined  
13 that the radiologic technologist:

14 (1) is guilty of fraud or deceit in activities as a  
15 radiologic technologist or has been guilty of any fraud or  
16 deceit in procuring the license or permit;

17 (2) has been convicted in a court of competent  
18 jurisdiction of a crime involving moral turpitude;

19 (3) is an habitual drunkard or is addicted to the use  
20 of narcotics or other drugs having a similar effect or is  
21 not mentally competent;

22 (4) is guilty of unethical conduct, as defined by  
23 rules promulgated by the board, or has been guilty of  
24 incompetence or negligence in his activities as a radiologic  
25 technologist;

1 (5) has continued to perform as a radiologic  
2 technologist without obtaining a license or license renewal  
3 as required by this chapter."

4 Section 59. Section 37-15-202, MCA, is amended to  
5 read:

6 "37-15-202. Powers and duties of board and department.

7 (1) The board shall:

8 (a) administer, coordinate, and enforce the provisions  
9 of this chapter;

10 (b) evaluate the qualifications of each applicant for  
11 a license as issued under this chapter and supervise the  
12 examination of such applicants;

13 (c) investigate persons engaging in practices which  
14 allegedly violate the provisions of this chapter;

15 (d) ~~conduct hearings and~~ keep records and minutes as  
16 the board considers necessary to an orderly dispatch of  
17 business;

18 (e) adopt rules, including but not limited to those  
19 governing ethical standards of practice under this chapter;

20 (f) make recommendations to the governor and other  
21 state officials regarding new and revised programs and  
22 legislation related to speech pathology or audiology which  
23 could be beneficial to the citizens of the state of Montana;

24 (g) cause the prosecution and enjoinder of all persons  
25 violating this chapter, by the complaints of its secretary



1 filed with the county attorney in the county where the  
2 violation took place, and incur necessary expenses therefor;

3 (h) adopt a seal by which the board shall authenticate  
4 its proceedings.

5 (2) Copies of the proceedings, records, and acts of  
6 the board, signed by the chairman or secretary of the board  
7 and stamped with the seal, shall be prima facie evidence of  
8 the validity of such documents.

9 (3) The board may make rules which are reasonable or  
10 necessary for the proper performance of its duties and--for  
11 the-regulation-of-proceedings-before-it.

12 (4) The department may employ persons it considers  
13 necessary to carry out the provisions of this chapter.

14 (5) The department shall prepare a report to the  
15 governor as required by law."

16 Section 60. Section 37-15-321, MCA, is amended to  
17 read:

18 "37-15-321. Denial, suspension, or revocation of  
19 license -- reinstatement. (1) The board may refuse to issue  
20 or renew a license or may suspend or revoke the license of  
21 any licensee if he has been guilty of unprofessional conduct  
22 which has endangered or is likely to endanger the health,  
23 welfare, or safety of the public. Such unprofessional  
24 conduct includes but is not limited to:

25 (a) obtaining a license by means of fraud;

1 misrepresentation, or concealment of material facts;

2 (b) being found guilty of unprofessional conduct or  
3 having violated ethical standards of practice established  
4 pursuant to this chapter;

5 (c) violating any lawful order or rule of the board;

6 (d) violating any provision of this chapter.

7 (2) Where an applicant or licensee has been convicted  
8 of a felony or a crime involving moral turpitude, the board  
9 may suspend or revoke his license or may decline to issue a  
10 license when:

11 (a) the time for appeal has elapsed;

12 (b) the judgment of conviction has been affirmed on  
13 appeal;

14 (c) an order granting probation is made suspending the  
15 imposition of sentence.

16 ~~(3) Denial, suspension, or revocation of a license is~~  
17 ~~permissible only after a hearing and procedures which comply~~  
18 ~~with all applicable requirements of the Montana~~  
19 ~~Administrative Procedure Act.~~

20 ~~(4)(3)~~ One year after denial, suspension, or  
21 revocation of a license, a person may reapply for a license.  
22 The board may in its discretion require an examination for  
23 reinstatement."

24 Section 61. Section 37-17-202, MCA, is amended to  
25 read:

1       "37-17-202. Powers. (1) The board may make reasonable  
2 and necessary rules for the proper performance of its duties  
3 ~~and for the regulation of proceedings before it.~~

4       (2) In addition to the other powers and duties set  
5 forth, the board may:

6       (a) revoke and suspend licenses;

7       ~~(b) conduct hearings upon complaints concerning~~  
8 ~~persons licensed under this chapter;~~

9       ~~(c) (b) cause the prosecution and enjoinder of all~~  
10 ~~persons violating this chapter, by the complaint of its~~  
11 ~~secretary signed with the county attorney, in the county~~  
12 ~~where the violation took place and incur necessary expenses~~  
13 ~~therefor;~~

14       ~~(d) (c) study and review new developments in research,~~  
15 ~~training, and the practice of psychology and make~~  
16 ~~recommendations to the governor and other state officials~~  
17 ~~regarding new and revised programs and legislation related~~  
18 ~~to psychology which could be beneficial to the citizens of~~  
19 ~~the state of Montana."~~

20       Section 62. Section 37-17-311, MCA, is amended to  
21 read:

22       "37-17-311. Denial or revocation of license — grounds  
23 ~~----notice-and-hearing. (1) A license applied for or issued~~  
24 ~~under this chapter may be refused or revoked by the board on~~  
25 ~~proof if it is satisfied that the person to whom the license~~

1 was issued:

2       ~~(1) (1) has been convicted of a felony;~~

3       ~~(2) (2) has been guilty of fraud or deceit in securing~~  
4 ~~the license or a renewal;~~

5       ~~(3) (3) is using a narcotic or an alcoholic beverage to~~  
6 ~~an extent that the use impairs his ability to perform the~~  
7 ~~work of a professional psychologist with safety to the~~  
8 ~~public; or~~

9       ~~(4) (4) has been guilty of unprofessional conduct as~~  
10 ~~defined by the code of ethics published by the American~~  
11 ~~psychological association.~~

12       ~~(2) "The board may not revoke or refuse to issue or~~  
13 ~~renew a license for any cause other than failure to pay fees~~  
14 ~~unless the person is given notice and opportunity for a~~  
15 ~~hearing before the board."~~

16       Section 63. Section 37-18-311, MCA, is amended to  
17 read:

18       "37-18-311. Refusal, suspension, or revocation of  
19 license ~~----right-to-notice-and-hearing. (1) The board may,~~  
20 ~~with respect to the practice of veterinary medicine, either~~  
21 ~~refuse to grant a license or a certificate of registration~~  
22 ~~or suspend or revoke a license and certificate of~~  
23 ~~registration on any of the following grounds:~~

24       ~~(1) (1) fraud or deception in procuring the license;~~

25       ~~(2) (2) publication or use of an untruthful or improper~~

1 statement or representation with the view of deceiving the  
2 public or a client or customer in connection with the  
3 practice of veterinary medicine;

4 ~~(e)~~(1) conviction of a felony as shown by a certified  
5 copy of the record of the court of conviction, subject to  
6 chapter 1, part 2, of this title;

7 ~~(d)~~(4) habitual intemperance in the use of  
8 intoxicating liquors or habitual addiction to the use of  
9 morphine, cocaine, or other habit-forming drugs or, subject  
10 to chapter 1, part 2, of this title, conviction of a  
11 violation of a federal or state law relating to narcotic  
12 drugs;

13 ~~(e)~~(2) immoral, unprofessional, or dishonorable  
14 conduct manifestly disqualifying the licensee from  
15 practicing veterinary medicine;

16 ~~(f)~~(6) gross malpractice, including failure to furnish  
17 to the board on written application by it a report or  
18 information relating thereto;

19 ~~(g)~~(7) employment of unlicensed persons to perform  
20 work which under this chapter can lawfully be done only by  
21 persons licensed to practice veterinary medicine;

22 ~~(h)~~(8) fraud or dishonest conduct in applying or  
23 reporting diagnostic biological tests or in issuing health  
24 certificates;

25 ~~(i)~~(9) failure to keep one's premises in a clean and

1 sanitary condition;

2 ~~(j)~~(10) violation of this part or of the rules or  
3 orders of the board;

4 ~~(k)~~(11) revocation by proper authorities for any of the  
5 above reasons of a license issued by another state.

6 ~~(2) The board may not refuse to issue a license or~~  
7 ~~certificate of registration or suspend or revoke a license~~  
8 ~~and certificate of registration for any cause unless the~~  
9 ~~person accused has been given notice and a public hearing by~~  
10 ~~the board."~~

11 Section 64. Section 37-30-402, MCA, is amended to  
12 read:

13 "37-30-402. Application procedure -- investigation and  
14 inspection ---hearing -- grant or refusal of license. An  
15 application for a barbershop, school, or college license  
16 shall be in writing and verified on a form prescribed by the  
17 board. On receipt by the department of an application for a  
18 license and on payment to the department of the initial  
19 inspection fee, the board shall have an investigation and  
20 inspection made as to the character of the applicant and on  
21 notice and after hearing, shall report its findings to the  
22 department, which shall grant a license if the board finds  
23 that the applicant is of good character and that the  
24 proposed barbershop, school, or college is equipped and will  
25 be conducted as required under this chapter. The application

1 must be granted or refused within 30 days from the date of  
 2 filing of the application ~~or within 15 days after the~~  
 3 ~~hearing on the application if a hearing is held.~~"

4 Section 65. Section 37-30-425, MCA, is amended to  
 5 read:

6 "37-30-425. Refusal, suspension, or revocation of  
 7 license. The board ~~may, after notice and opportunity for a~~  
 8 ~~hearing,~~ either refuse to issue or renew or may suspend or  
 9 revoke a barbershop or barber school or college license for  
 10 any one or combination of the following causes:

11 (1) the violation of any of the provisions of  
 12 37-30-308; 37-30-403, except subsection (1)(f); 37-30-412;  
 13 37-30-413; and 37-30-421;

14 (2) conviction of a felony, shown by a certified copy  
 15 of the record of the court of conviction;

16 (3) gross malpractice or gross incompetency;

17 (4) continued practice by a person knowingly having an  
 18 infectious or contagious disease;

19 (5) advertising by means of knowingly false or  
 20 deceptive statements;

21 (6) advertising, practicing, or attempting to practice  
 22 under a trade name other than one's own;

23 (7) habitual drunkenness or addiction to the use of  
 24 morphine, cocaine, or other habit-forming drugs;

25 (8) the commission of any of the offenses described in

1 37-30-203."

2 Section 66. Section 37-30-501, MCA, is amended to  
 3 read:

4 "37-30-501. Penalty. A person practicing the  
 5 occupation of a barber without first having obtained a  
 6 license under this chapter or a person knowingly employing a  
 7 barber who has not obtained a license or a person who  
 8 falsely pretends to be qualified to practice the occupation  
 9 of a barber or a person who violates this chapter is guilty  
 10 of a misdemeanor and on conviction shall be fined not less  
 11 than \$25 or more than \$200 or imprisoned in the county jail  
 12 for not less than 10 days or more than 90 days, or both. In  
 13 addition, the board may ~~after hearing~~ suspend or revoke a  
 14 barber's certificate of registration or license to operate a  
 15 barbershop, school, or college, or both, by reason of the  
 16 person willfully violating this chapter or persistently  
 17 failing to conform to the rules adopted by the board."

18 Section 67. Section 37-31-331, MCA, is amended to  
 19 read:

20 "37-31-331. Refusal, revocation, or suspension of  
 21 licenses -- grounds ~~---notice and hearing.~~ (1) The board may  
 22 refuse to issue, refuse to renew, or may revoke or suspend a  
 23 license in any one of the following cases:

24 (a) failure of a person, firm, partnership, or  
 25 corporation operating a cosmetological establishment or

1 school of cosmetology to comply with this chapter;

2 ~~(b)(2)~~ failure to comply with the sanitary rules

3 adopted by the board and approved by the department of

4 health and environmental sciences for the regulation of

5 cosmetological establishments or schools of cosmetology;

6 ~~(c)(3)~~ gross malpractice;

7 ~~(d)(4)~~ continued practice by a person knowingly having

8 an infectious or contagious disease;

9 ~~(e)(5)~~ habitual drunkenness or habitual addiction to

10 the use of morphine or any habit-forming drug;

11 ~~(f)(6)~~ permitting a certificate of registration or

12 license to be used where the holder is not personally,

13 actively, and continuously engaged in business; or

14 ~~(g)(7)~~ failure to display the license.

15 ~~(2) -- However, the board may not refuse to authorize the~~

16 ~~department to issue or renew a license or revoke or suspend~~

17 ~~a license already issued until after notice and opportunity~~

18 ~~for a hearing."~~

19 Section 68. Section 37-33-311, MCA, is amended to

20 read:

21 "37-33-311. Denial, suspension, or revocation of

22 license. (1) The board ~~may, after hearing,~~ deny, suspend,

23 ~~revoke, or refuse to renew~~ a license under this chapter to a

24 person, otherwise qualified:

25 (a) who obtained the license by fraudulent

1 representation;

2 (b) for incompetency in practice;

3 (c) for use of untruthful or improbable statements to

4 patrons or in his advertisements;

5 (d) for habitual intoxication;

6 (e) for failure to renew; or

7 (f) for unprofessional and immoral conduct.

8 (2) The board may authorize the department to reissue

9 a license after a lapse of not less than 6 months if in the

10 board's judgment the act or conditions of disqualification

11 have been remedied."

12 Section 69. Section 37-40-203, MCA, is amended to

13 read:

14 "37-40-203. Rulemaking power. (1) The board may adopt

15 rules consistent with this chapter for its administration.

16 (2) The board's rulemaking and hearing functions shall

17 be in accordance with the Montana Administrative Procedure

18 Act."

19 Section 70. Section 37-43-202, MCA, is amended to

20 read:

21 "37-43-202. Powers and duties. (1) The board may

22 exercise the authority granted to it by this chapter.

23 (2) The board shall adopt rules and orders to

24 effectuate this chapter.

25 (3) The board may request the department to inspect



1 water wells drilled or being drilled, and the department has  
2 access to these at reasonable times.

3 (4) The board may, subject to 37-1-101 and 37-1-102,  
4 establish a program for training water well drillers or  
5 prospective water well drillers and apprentices to more  
6 effectively carry out this chapter.

7 (5) The rules of the board shall be compiled in  
8 printed form for distribution to interested persons, for  
9 which the department may charge a fee. Sums realized from  
10 these sales shall be deposited in the earmarked revenue fund  
11 for the use of the board, subject to 37-1-101(6).

12 (6) The board shall:

13 (a) authorize the department to issue licenses to  
14 qualified water well contractors in this state;

15 (b) cause examinations to be made of applicants for  
16 licenses;

17 (c) revoke or suspend licenses for good cause ~~after~~  
18 ~~notice and opportunity to be heard;~~

19 (d) reinstate licenses previously revoked when  
20 justification is shown to the satisfaction of the board; and

21 (e) generally perform duties which will carry out this  
22 chapter."

23 Section 71. Section 37-43-311, MCA, is amended to  
24 read:

25 "37-43-311. Suspension and revocation of license --

1 grounds -- procedure. (1) A license issued under this  
2 chapter may be suspended or revoked by the board ~~in cases~~  
3 ~~other than failure of a licensee to renew the license after~~  
4 ~~notice and hearing:~~

5 (a) in the event the licensee has violated a condition  
6 of the bond maintained by him as a prerequisite to issuance  
7 of the license;

8 (b) for the practice of fraud or deceit in obtaining a  
9 license;

10 (c) for gross negligence;

11 (d) for incompetence;

12 (e) for conviction of a felony; or

13 (f) for violating the requirements of this chapter.

14 (2) Any person may make complaint against a licensee.

15 Complaints shall be in writing, signed by the complainant,  
16 and must specify the charges against the licensee. ~~The board~~  
17 ~~on its own motion or on receipt of a complaint shall hold a~~  
18 ~~hearing on charges.~~

19 (3) ~~A person bringing the complaint has the burden of~~  
20 ~~proof and must appear in person.~~ A unanimous vote of the  
21 board is required in order to revoke or suspend a license.  
22 If a suspension is directed by the board, it may not be for  
23 a period in excess of 1 year."

24 Section 72. Section 37-50-321, MCA, is amended ~~to~~  
25 read:

1       "37-50-321. Revocation, suspension, or refusal to  
2 renew certificate or license. ~~After notice and hearing as~~  
3 ~~provided in 37-50-314, the~~ The board may revoke or may  
4 suspend any certificate issued under 37-50-302 or any  
5 registraton granted under 37-50-303 or may revoke, suspend,  
6 or refuse to renew any license issued under 37-50-314 or may  
7 censure the holder of any such license for any one or any  
8 combination of the following causes:

9       (1) fraud or deceit in obtaining a certificate as  
10 certified public accountant or in obtaining a license to  
11 practice public accounting under this chapter;

12       (2) dishonesty, fraud, or gross negligence in the  
13 practice of public accountings;

14       (3) violation of any of the provisions of 37-50-301;

15       (4) violation of a rule of professional conduct  
16 promulgated by the board under the authority granted by this  
17 chapter;

18       (5) conviction of a felony under the laws of any state  
19 or of the United States;

20       (6) conviction of any crime, an element of which, is  
21 dishonesty or fraud, under the laws of any state or of the  
22 United States;

23       (7) cancellation, revocation, suspension, or refusal  
24 to renew authority to practice as a certified public  
25 accountant or a public accountant by any other state for any

1       cause other than failure to pay an annual registration fee  
2 in such other state;

3       (8) suspension or revocation of the right to practice  
4 before any state or federal agency;

5       (9) failure of a certificate holder or licensed  
6 accountant to obtain an annual license under 37-50-314  
7 within either 3 years from the expiration date of the  
8 license to practice last obtained or renewed by said  
9 certificate holder or registrant or 3 years from the date  
10 upon which the certificate holder or licensed accountant was  
11 granted his certificate or registration unless such failure  
12 shall have been excused by the board pursuant to the  
13 provisions of 37-50-314."

14       Section 73. Section 37-50-322, MCA, is amended to  
15 read:

16       "37-50-322. Reinstatement of certificate or license to  
17 practice. On application in writing ~~and after hearing~~  
18 ~~pursuant to notice~~, the board may authorize the department  
19 to issue a new certificate to a certified public accountant  
20 whose certificate has been revoked or may permit the  
21 relicensing of anyone whose license has been revoked or may  
22 reissue or modify the suspension of a license to practice  
23 public accounting which has been revoked or suspended."

24       Section 74. Section 37-50-336, MCA, is amended to  
25 read:

1       "37-50-336. Revocation or suspension of partnership or  
 2 corporation registration. ~~After notice and hearing as~~  
 3 ~~provided in 37-50-341, the~~ Ihg board shall revoke the  
 4 registration of a partnership or corporation if at any time  
 5 it does not have all the qualifications prescribed by the  
 6 section of this chapter under which it qualified for  
 7 registration."

8       Section 75. Section 37-52-311, MCA, is amended to  
 9 read:

10       "37-52-311. Revocation of certificate -- grounds --  
 11 procedure. (1) The board may cancel and revoke a certificate  
 12 of registration issued to a person under this chapter:

- 13       (a) for a violation of this chapter;
- 14       (b) on a conviction of the holder of the certificate
- 15 of a crime involving moral turpitude; or
- 16       (c) if the board finds the holder to be guilty of
- 17 habitual carelessness or inattention to business or of
- 18 fraudulent practices.

19       (2) The board may also cancel and revoke a certificate  
 20 of authority issued to a person, firm, or corporation under  
 21 this chapter:

- 22       (a) for failure to maintain indexes and abstract
- 23 records;
- 24       (b) for failure to have in charge of the business a
- 25 registered abstracter; or

1       (c) for violation of this chapter.  
 2       ~~(3) On a verified complaint being filed with the~~  
 3 ~~department charging the holder of a certificate of~~  
 4 ~~registration with a violation of any of the provisions of~~  
 5 ~~subsection (1) or (2) of this section, the board shall~~  
 6 ~~require the holder of the certificate to appear before it on~~  
 7 ~~a day fixed by the board to show cause why the certificate~~  
 8 ~~should not be canceled."~~

9       Section 76. Section 37-65-203, MCA, is amended to  
 10 read:

11       "37-65-203. Exclusive licensing jurisdiction -- no  
 12 additional fee. The Subject to [sections 1 through 6], the  
 13 board is vested with exclusive jurisdiction to issue  
 14 licenses for the privilege of practicing architecture. No  
 15 other state agency or political subdivision of the state,  
 16 including counties and municipalities, may levy any fee or  
 17 tax for such privilege."

18       Section 77. Section 37-65-321, MCA, is amended to  
 19 read:

20       "37-65-321. Revocation of certificate -- grounds --  
 21 ~~right to notice and hearing.~~ (1) The board may revoke a  
 22 certificate if ~~proof satisfactory to the board is presented~~  
 23 it is satisfied that any of the following causes exist:

- 24       (a) The certificate was obtained through fraud or
- 25 misrepresentation.

1 (b) The holder of the certificate has been found  
2 guilty by the board or by a court of justice of committed  
3 fraud or deceit in his professional practice or has been  
4 convicted of a felony by a court of justice.

5 (c) The holder of the certificate has been by the  
6 board found guilty of gross incompetency or of recklessness  
7 in the planning or construction of buildings.

8 (d) The holder of the certificate has violated  
9 standards of professional conduct adopted by the board.

10 (2) The board may revoke a certificate if the holder  
11 of the certificate has been found guilty by the board of any  
12 of the following acts which constitute unprofessional  
13 conduct:

14 (a) willful departure, in a material respect, from  
15 approved plans or specifications without the consent of the  
16 owner or his authorized representative;

17 (b) willful violation of the building codes of this  
18 state or a political subdivision;

19 (c) aiding or abetting an unlicensed person to violate  
20 or evade this chapter; or

21 (d) sealing or signing plans or specifications not  
22 prepared under his direct supervision and control.

23 ~~{3}--A--certificate--may--not--be--revoked--until--the--party~~  
24 ~~holding--the--certificate--is--given--notice--and--an--opportunity~~  
25 ~~for--a--hearing.~~

1 ~~{4}--If--the--board's--findings--and--conclusions--are~~  
2 ~~adverse--to--the--accused,--his--certificate--stands--revoked--and~~  
3 ~~annulled--at--the--expiration--of--30--days--from--the--final~~  
4 ~~decision--adverse--to--the--party."~~

5 Section 78. Section 37-66-202, MCA, is amended to  
6 read:

7 "37-66-202. Rulemaking power. The board may promulgate  
8 such rules, including setting of fees, as are necessary in  
9 the performance of its duties and may hear contested cases  
10 arising under this chapter."

11 Section 79. Section 37-67-202, MCA, is amended to  
12 read:

13 "37-67-202. Rulemaking and subpoena power. ~~{1}~~ The  
14 board shall have the power to adopt and amend all rules,  
15 including rules of procedure, not inconsistent with the  
16 constitution and laws of this state, which may be reasonably  
17 necessary for the proper performance of its duties and the  
18 regulation of the proceedings before it.

19 ~~{2}--In--carrying--into--effect--the--provisions--of--this~~  
20 ~~chapter,--the--board,--under--the--hand--of--its--chairman--and--the~~  
21 ~~rest--of--the--board,--may--subpoena--witnesses--and--compel--their~~  
22 ~~attendance--and--also--may--require--the--production--of--books,~~  
23 ~~papers,--documents,--etc.,--in--a--case--involving--the--revocation~~  
24 ~~of--registration--or--practicing--or--offering--to--practice~~  
25 ~~without--registration. Any member of the board may administer~~

1 oaths or affirmations to witnesses appearing before the  
 2 boards. If any person shall refuse to obey any subpoena so  
 3 issued or shall refuse to testify or produce any books,  
 4 papers, or documents, the board may present its petition to  
 5 the district court setting forth the facts, and thereupon  
 6 such court shall, in a proper case, issue its subpoena to  
 7 such person requiring his attendance before such authority  
 8 and there to testify or to produce such books, papers, and  
 9 documents as may be deemed necessary and pertinent by the  
 10 boards. Any person failing or refusing to obey the subpoena  
 11 or order of the court may be proceeded against in the same  
 12 manner as for refusal to obey any other subpoena or order of  
 13 said court."

14 Section 80. Section 37-67-331, MCA, is amended to  
 15 read:

16 "37-67-331. Revocation, suspension, or refusal to  
 17 renew certificate -- grounds -- procedure -- reinstatement.

18 (1) The board may reprimand or revoke, suspend, or refuse to  
 19 renew the certificate of a registrant found guilty of:

20 (a) fraud or deceit in obtaining a certificate of  
 21 registration;

22 (b) gross negligence, incompetency, or misconduct in  
 23 the practice of engineering or land surveying as a  
 24 registered professional engineer or land surveyor;

25 (c) a felony;

1 (d) violation of rules for professional conduct for  
 2 professional engineers and land surveyors adopted by the  
 3 board;

4 (e) if a land surveyor, failure to comply with the  
 5 Corner Recordation Act.

6 (2) Any person may make charges of fraud, deceit,  
 7 gross negligence, incompetency, or misconduct against a  
 8 registrant. The charges shall be made by affidavit and  
 9 subscribed and sworn to by the person making them and filed  
 10 with the department. Unless dismissed by the board as  
 11 unfounded or trivial, charges shall be heard by the board  
 12 within 3 months after the date on which they were made.

13 (3) The in the process of determining whether it  
 14 should take disciplinary actions, the board may require a  
 15 registrant to take a written or oral examination, or both,  
 16 in a proceeding to reprimand or revoke, suspend, or refuse  
 17 to renew.

18 (4) If, after hearing, four or more members of the  
 19 board vote in favor of sustaining the charges, the board  
 20 shall reprimand, suspend, refuse to renew, or revoke the  
 21 certificate of registration of the registered professional  
 22 engineer or land surveyor.

23 (5) The board, for reasons it considers sufficient,  
 24 may reissue a certificate of registration to a person whose  
 25 certificate has been revoked if four or more members of the

SB 460



1 board vote in favor of the reissuance."

2 Section 81. Section 37-69-321, MCA, is amended to  
3 read:

4 "37-69-321. Revocation or suspension of license --  
5 grounds. (1) The license and permit granted as herein  
6 provided may be at any time revoked for incompetency,  
7 dereliction of duty, or other sufficient cause ~~after a full~~  
8 ~~and fair hearing by said board.~~

9 (2) Any person, firm, or corporation licensed under  
10 the provisions of this chapter who performs plumbing work in  
11 the field of plumbing below the minimum basic standards for  
12 plumbing as set forth in the state plumbing code is subject  
13 to having his or its license revoked or suspended by the  
14 board."

15 Section 82. Section 37-69-322, MCA, is amended to  
16 read:

17 "37-69-322. Revocation or suspension of license --  
18 procedure. (1) ~~Proceedings for the revocation~~ The board may  
19 revoke or suspension ~~of~~ suspend a journeyman or master  
20 plumber's license ~~may be taken by the board~~ on its own  
21 motion for matters in its knowledge or ~~may be taken~~ on the  
22 information of another. Accusations must be in writing and  
23 verified by a party familiar with the facts charged.

24 ~~(2) On receiving the accusation, the board shall, if~~  
25 ~~it considers the accusation sufficiently, make an order~~

1 ~~setting it for hearing and requiring the accused to appear~~  
2 ~~and answer the charge or accusation at the hearing.~~

3 ~~(3) (2) If the accused does not appear, the board may~~  
4 ~~proceed and determine the accusation in his absence, if the~~  
5 ~~accused confesses the accusation or refuses to answer the~~  
6 ~~charge or if on the hearing the board finds the charge or~~  
7 ~~accusation true, it may make an order either revoking the~~  
8 ~~license of the accused or suspending it for a fixed period."~~

9 Section 83. Section 37-70-202, MCA, is amended to  
10 read:

11 "37-70-202. Powers and duties. In addition to all  
12 other powers and duties conferred and imposed upon the board  
13 by law, the board shall have and exercise the following  
14 powers and duties:

15 (1) to promulgate rules which it determines to be  
16 necessary to carry out the provisions of this chapter;

17 ~~(2) to hear contested cases coming under the~~  
18 ~~provisions of this chapter; and~~

19 ~~(3) (2) to establish how permit fees are to be~~  
20 ~~collected and allocated under applicable state and local~~  
21 ~~building codes."~~

22 Section 84. Section 37-70-311, MCA, is amended to  
23 read:

24 "37-70-311. Revocation or suspension of license. (1)  
25 Any licensee who performs or any master licensee whose

1 associated firm performs warm air heating, ventilation, and  
2 air conditioning work in any building whatsoever below the  
3 standards set by the applicable warm air heating,  
4 ventilation, and air conditioning code may have his license  
5 revoked or suspended by the board.

6 (2) ~~Proceedings for the revocation~~ The board may  
7 ~~revoke or suspension of suspend~~ a license may be commenced  
8 ~~by the board~~ upon its own motion or upon ~~the~~ motion of any  
9 person. All complaints must be in writing, verified, and  
10 filed with the department. The board may deem the complaint  
11 sufficient as received or require further investigation.  
12 ~~When a complaint is deemed sufficient by the board, it shall~~  
13 ~~provide for a hearing at a specified time and place and the~~  
14 ~~department shall cause a true copy of notice of hearing and~~  
15 ~~of the complaint to be served upon the licensee at least 18~~  
16 ~~days before the day appointed in the order for hearing."~~

17 Section 85. Repealer. Sections 37-3-327, 37-3-328,  
18 37-4-324, 37-4-325, 37-13-314, 37-16-412, 37-19-312,  
19 37-31-333, 37-50-341, 37-51-322, and 37-60-306, MCA, are  
20 repealed.

-End-

SB 460

STATE OF MONTANA

REQUEST NO. 384-79

FISCAL NOTE

Form BD-15

In compliance with a written request received Feb. 15, 19 79, there is hereby submitted a Fiscal Note for SB 460 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

To provide a public member on various licensing boards and to create an appeals board attached to the Department of Administration.

ASSUMPTIONS:

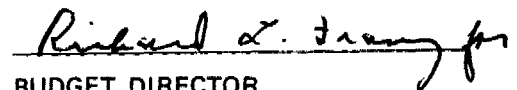
1. One additional board member will receive \$25 per day compensation plus travel in applicable boards – approximately \$600 each per year for 4 meeting days.
2. A 3-member appeals board will receive \$25 per day compensation plus travel expenses.
3. All expenses for the Appeals Board will be paid by the licensing board from which the appeal was taken.

FISCAL IMPACT:

Applicable boards will incur undeterminable costs due to the addition of an additional board member and the creation and operation of an appeals board.

COMMENT:

The Department of Professional and Occupational Licensing suggests that the additional costs may require fee increases to support some of the boards.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/21/79