

Emerging Issue: Medical Marijuana

General Provisions for DOLI Boards

Prepared for the Children, Families, Health, and Human Services Interim Committee
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Background

The work group reviewing issues related to the Medical Marijuana Act has recommended that a new regulatory board be established to license, inspect, and discipline caregivers. This briefing paper provides general information on the authority of regulatory boards under the jurisdiction of the Department of Labor and Industry, as well as on the issues related to getting a new board underway.

General Provisions for Regulatory Boards

The state has established numerous professional and occupational licensing boards that set standards for professions ranging from medicine, nursing, and dentistry to real estate, plumbing, and cosmetology. The boards are generally governed by the provisions of Title 37, chapter 1, of the Montana Code Annotated. In addition, each board is more specifically governed by laws established for the board and by administrative rules developed by the board.

A key provision of Title 37, chapter 1, requires that the people licensed by each board pay the full costs of operating the board. This includes the costs of the administrative support provided by the Department. The fees are set by rule, by each board. Other general provisions include:

- Private associations and members of the public may submit lists of nominees to the governor, for appointment to boards.
- Board members are entitled to both pay and travel expenses for each day spent on official board business.
- Boards may:
 - ▶ grant or revoke licenses to protect the public's health, safety, and welfare;
 - ▶ require fingerprint background checks if authorized;
 - ▶ investigate and act on any complaints the department receives of illegal or unethical conduct of a licensee;
 - ▶ establish screening panels to investigate complaints and determine whether reasonable cause exists that a violation occurred;
 - ▶ establish disciplinary steps for licensees;
 - ▶ seek an injunction to prevent a person from engaging in the practice of the occupation until a license is obtained; and
 - ▶ determine penalties for violations of any licensure laws or regulations.

Board Membership

The number of board members for each board is established by law and varies from board to board. However, most boards are made up primarily of members of the profession that they license and regulate. In addition, the laws establishing each board generally set minimum experience levels and often set residency requirements for board members.

The table below shows requirements for two established licensing boards.

| Provision | Medical Examiners | Pharmacists |
|---------------------------------|--|---|
| Membership | 5 doctors of medicine 1 doctor of osteopathy 1 podiatrist 1 licensed nutritionist 1 physician assistant 1 volunteer EMT <u>2 members of the public</u> 12 members total | 5 pharmacists 1 pharmacy technician <u>2 members of the public</u> 7 members total |
| Residency/Practice Requirements | Resident for 5 years Practicing in Montana for 5 years | Public members must be residents Professional members must have 5 consecutive years of practice immediately prior to appointment |
| Length of Term | 4 years | 5 years |
| Number of Meetings | At least 2 per year | At least 1 per year |
| Inspections Required? | No | Yes |

Getting a New Board Off the Ground

Establishing a new regulatory board is a two-part process. First, the Legislature must approve legislation that creates the board. After that, the governor must appoint the board, and the members must establish the administrative rules for the board. Recently created boards have taken more than a year to reach the point of adopting rules, setting fees, and issuing licenses. The amount of time needed for this process depends in part on whether members of the board agree on the direction the board should take and the provisions that should be included in administrative rule.

The initial legislation establishing a new board needs, at a minimum, to establish the number of board members, the interests that they represent, the length of their terms, and the qualifications a person must meet to obtain a license.

In addition, the legislation may establish requirements for maintaining licensure and may set out some specific regulations, such as requiring periodic inspections or establishing under what conditions a license would be denied or revoke. However, boards are often give broad rulemaking authority to determine how to approach many of those types of issues.

Although boards are required to be supported by the fees of licensees, a new board operates in the red until the board has adopted rules and set licensing fees.