

Lunch and Learn: Professional Licensing

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Agenda

I. Logical Roadmap

II. Professions/Occupations

III. Boards/Programs

- a. Composition + Duties
- b. Administration

IV. Thematic Issues

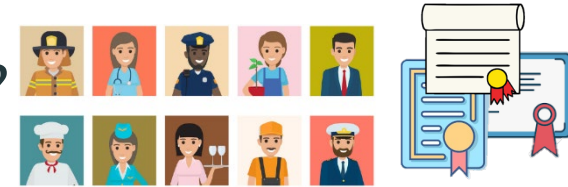
V. Questions?

Logical Roadmap



Why do we need to regulate certain professions/occupations?

What are the professions/occupations that we need to regulate?



How will we regulate them?

Who will be the experts?



Who will make the regulation happen?



What do we need to think about for future regulation?



“Sometimes we need to regulate certain professions / occupations”



2-8-101:

MT regulates certain professions and occupations only when it “is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage.”

“These are the professions / occupations that
need to be regulated”

TITLE 37 Professions and Occupations

(pg. 415 – 867)



Professions/Occupations

MEDICINE
DENTISTRY AND DENTAL HYGIENE
PODIATRY
PHARMACY
NURSING
NURSING HOME ADMINISTRATORS
OPTOMETRY
PHYSICAL THERAPY
CHIROPRACTIC
ACUPUNCTURE PRACTICE ACT
RADIOLOGIC TECHNOLOGISTS
SPEECH-LANGUAGE PATHOLOGISTS AND
AUDIOLOGISTS
HEARING AID DISPENSERS
PSYCHOLOGISTS
VETERINARY MEDICINE
MORTICIANS AND FUNERAL SERVICES
PHYSICIAN ASSISTANTS

PROFESSIONAL COUNSELING
OCCUPATIONAL THERAPY
NUTRITIONISTS
NATUROPATHIC PHYSICIANS
DIRECT-ENTRY MIDWIFERY
RESPIRATORY CARE PRACTITIONERS
DENTURITRY
BARBERING, COSMETOLOGY, ELECTROLOGY,
ESTHETICS, AND MANICURING
MASSAGE THERAPY
CLINICAL LABORATORY SCIENCE PRACTITIONERS
ATHLETIC TRAINERS
BEHAVIORAL HEALTH
SANITARIANS
WATER TREATMENT PLANT OPERATORS
WATER WELL CONTRACTORS
OUTFITTERS AND GUIDES
GENETIC COUNSELING

PUBLIC ACCOUNTANTS
REAL ESTATE BROKERS AND SALESPERSONS
REAL ESTATE APPRAISERS
PROPERTY MANAGERS
PRIVATE INVESTIGATORS, PRIVATE SECURITY AND
FIRE ENTITIES, AND PROCESS SERVERS
ATTORNEYS AT LAW
ARCHITECTURE
LANDSCAPE ARCHITECTURE
ENGINEERS AND LAND SURVEYORS
ELECTRICIANS AND ELECTRICAL SAFETY
PLUMBERS
CONSTRUCTION BLASTING
ELEVATOR CONTRACTORS, MECHANICS, AND
INSPECTORS



“We will regulate those professions / occupations through Boards and Programs”

2-8-401:

MT exercises its regulatory police power through the “establishment of licensing boards and licensing programs,” and provides a means for the public “to determine whether practitioners have met competency standards and to complain if the competency is suspect.”



“These are the Boards...”

Title 2, Chapter 15: Executive Branch Officers and Agencies

Part 17: Department of Labor and Industry

2-15-1730 through 2-15-1782:

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Alternative health care board

Board of medical examiners

Board of dentistry

Board of pharmacy

Board of nursing

Board of nursing home administrators

Board of optometry

Board of chiropractors

Board of radiologic technologists

Board of speech-language pathologists and audiologists

Board of psychologists

Board of veterinary medicine

Board of funeral service

Board of behavioral health

Board of barbers and cosmetologists

Board of physical therapy examiners

Board of occupational therapy practice

Board of respiratory care practitioners

Board of clinical laboratory science practitioners

Board of public accountants

Board of realty regulation

Board of real estate appraisers

Board of architects and landscape architects

Board of professional engineers and professional land surveyors

State electrical board

Board of plumbers

Board of athletic trainers

Board of outfitters

Board of massage therapy

“... and these are the Programs”

Title 37, Chapter 1, Part 4: Uniform Regulations for Licensing Programs Without Boards:
37-1-401(5)(a) through (c)

Boiler Operator Program

Construction Blaster Program

Crane / Hoisting Operator Program

Elevator Contractors, Mechanics, &
Inspectors Licensing Program

Fire Protection License Program

Genetic Counselor Program

Hearing Aid Dispenser Program

Pediatric Complex Care Assistant
Program

Private Security Program

Property Management Program

Sanitarians Program

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“Boards will be and do XYZ...”

37-1-123 through 136:

The Governor appoints Board members with the consent of the Senate; the Governor may also remove Board members with “reasonable cause.”

Each Board must be composed of professional and public members without conflicts of interest. Terms begin 1 July and are staggered. Members may serve 2 consecutive 4-year terms; they may not be reappointed within 4 years of 2nd consecutive term*.

Boards shall meet at least annually as a quorum; “under the active supervision of the state . . . shall set and enforce standards and adopt and enforce rules governing licensing, certification, registration, and conduct of [assigned profession/occupation].”

Any disciplinary action by a Board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

37-1-307: Board Authority. Each Board is designated as a criminal justice agency IAW meaning of 44-5-103.



“DLI will supervise the Boards and Programs”



Montana Department of
LABOR & INDUSTRY

2-15-121: An agency allocated to a department for administrative purposes only shall exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department . . . [BUT] accede, if the agency is a licensing board regulated by the Department of Labor and Industry under Title 37, to the active supervision required by 37-1-121(1)(d); ★

The department to which an agency is allocated for administrative purposes only shall: direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency.

AND . . .

37-1-101:

Establish and provide all the administrative, legal, and clerical services needed by the boards

Standardize policies and procedures, official records of the boards

Make arrangements and provide facilities for all meetings, hearings, and examinations

Contract for or administer and grade examinations required by each board

Investigate complaints of illegal or unethical conduct of a member of a profession / occupation under jurisdiction of DLI

Assess the costs of the department to the boards and programs on an equitable basis as determined by the department; monitor a board's cash balances; adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses; establish policies and procedures to set fees for administrative services

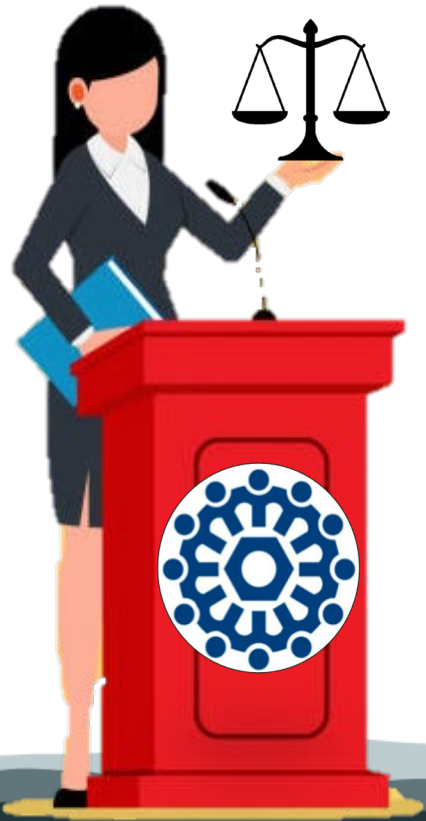
Issue a notice to and pursue an action against a licensed individual for reasonable cause as determined by a Board

37-1-106: Biennial Report. The department, in cooperation with each licensing board, shall prepare a biennial report.

“The Commissioner will have special duties over Boards”

37-1-121(1)(d): [Active supervision duties of DLI Commissioner]:

(d) provide oversight and supervision of the duties and authority exercised by boards regulated under Title 37, other than chapters 42 [water treatment plant operators], 43 [water well contractors], and 61 [attorneys], by exercising active supervision authority to approve or disapprove any board action identified by the department as restraining or potentially restraining competition in trade or commerce. Subject to the provisions of 37-1-122(6), the commissioner shall determine if the board action is made or taken pursuant to a clearly articulated state policy and if the restraint or potential restraint of trade or commerce is reasonable and necessary to protect the public health, safety, or welfare. Any approval or disapproval under this subsection (1)(d) must be in writing, comply with the provisions in 37-1-122, and set forth the particular reasons supporting the determination. A disapproval determination may include the commissioner's recommended modifications, if any, for the board's consideration. The commissioner may assign duties, as necessary, but may not assign final approval or disapproval.



“DLI is subject to EAIC review”

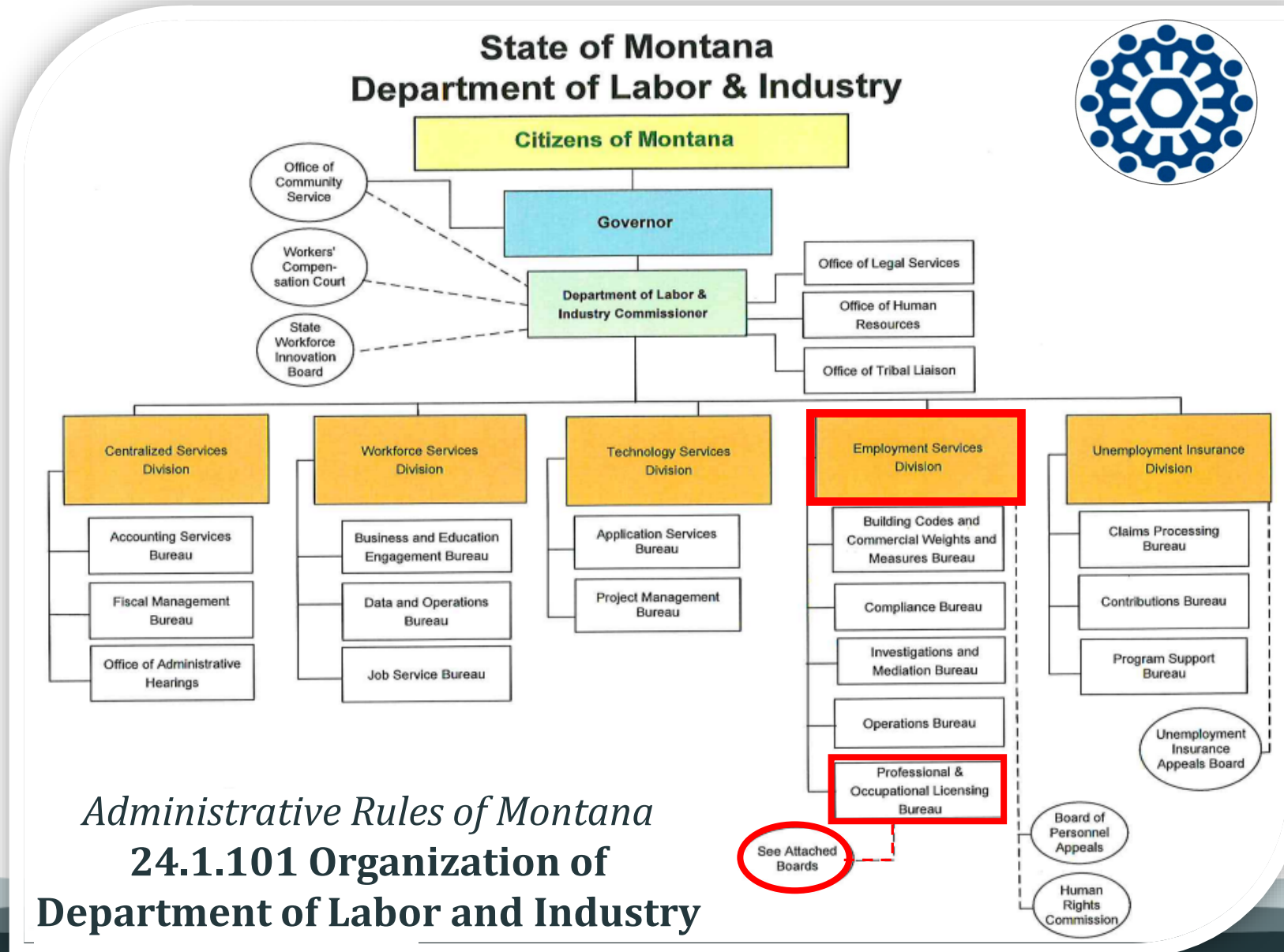
5-5-223: The Economic Affairs Interim Committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for [the Department of Labor and Industry, and its administratively attached boards].

37-1-122(6):

EAIC can provide an opportunity for public comment on the commissioner's actions at committee meetings, conduct a review, and/or suspend the commissioner's final determination.



Where Boards and Programs fit within DLI



Administrative Rules of Montana
**24.1.101 Organization of
Department of Labor and Industry**

“If you want a new Board or Program, you will first need to provide a detailed report”

2-8-402: A bill draft request to create a Department of Labor and Industry licensing board or licensing program must include a report that addresses:

- (a) how licensing would protect and benefit the public;
 - (b) how the unregulated practice of the profession or occupation would pose a hazard to public health, safety, or welfare and whether the nature of the profession or occupation makes it difficult for the consumer to evaluate the hazard;
 - (c) the proposed minimum education, experience, and examination requirements necessary to provide the service, comparative data, and analysis on the licensure of the profession or occupation in other states and whether the proposed requirements are greater, less than, or equal to a national average;
 - (d) the proposed scope of practice;
 - (e) a description of any overlapping scopes of practice with professions or occupations, whether licensed or not;
 - (f) an analysis of the impact licensure would have on the type, cost, and availability of services to consumers, the number of providers currently in the market, and other impacts on market conditions;
 - (g) a description of any licensure exceptions;
 - (h) existing practitioners and the date by which they would be required to meet proposed qualifications;
 - (i) a list of other states that license the profession or occupation;
 - (j) regulatory alternatives other than licensing that are available to the practitioners of the profession or occupation;
 - (k) previous efforts, if any, to regulate the profession or occupation; and
 - (l) whether the profession or occupation could be regulated by an existing licensing board or licensing program.
- (2) To estimate initial costs, the report must address:
- (a) the number of licensees anticipated and a basis for the estimate;
 - (b) if a licensing board is proposed, the proposed makeup of the licensing board membership; and
 - (c) the projected annual licensing fees based on information from the department of labor and industry for all costs associated with a licensing board or licensing program of the projected size.



The Thematic Issues

Public Safety vs Healthy Market

Safety or credentialism? Increased wages but increased prices?

Standards of Performance vs Barriers to Entry

High-quality Service or stifling the market?

License Portability

Military experience and Reciprocity

References

Montana Code Annotated, 2023

Title 37: Professions and Occupations

https://archive.legmt.gov/bills/mca/title_0370/chapters_index.html

Montana Code Annotated, 2023

Title 2, Chapter 15, Part 17: Department of Labor and Industry

https://archive.legmt.gov/bills/mca/title_0020/chapter_0150/part_0170/sections_index.html

Montana Department of Labor and Industry: Professional Boards & Licensing

<https://boards.bsd.dli.mt.gov/>

Montana Boards and Appointments

https://gov.mt.gov/boards_appointments/boards.aspx

Administrative Rules of Montana

Title 24: Labor and Industry

<https://rules.mt.gov/browse/collections/aec52c46-128e-4279-9068-8af5d5432d74/sections/a374a9a3-3160-44f6-90c3-de48e6a1b5a9>

Professional & Occupational Licensing Board Report, FY 2022-2023

https://boards.bsd.dli.mt.gov/_docs/Licensing-Governor-Report-FY-22-23.pdf

Questions?