

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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| In the matter of the amendment of ARM |) | NOTICE OF AMENDMENT |
| 24.138.301, definitions, 24.138.402, |) | AND ADOPTION |
| fee schedule, 24.138.508, dental |) | |
| hygiene local anesthetic agent |) | |
| certification, 24.138.514, application |) | |
| to convert an inactive status license |) | |
| to an active status license, 24.138.519, |) | |
| grounds for denial of a license, and the |) | |
| adoption of new rules I-VI regarding |) | |
| dentist licensure by credentials for |) | |
| specialists, reinstatement of a license |) | |
| for non-payment of renewal fee, and |) | |
| licensure of retired or nonpracticing |) | |
| dentist or dental hygienist for |) | |
| volunteer service |) | |

TO: All Concerned Persons

1. On May 20, 2004, the Board of Dentistry published MAR Notice No. 24-138-60 regarding the proposed amendment and adoption of the above-stated rules at page 1189 of the 2004 Montana Administrative Register, issue no. 10.

2. A public hearing on the proposed amendment and adoption was held on June 15, 2004. Public comments were received concerning the proposed rule changes. The Board has thoroughly considered the comments and the Board's responses are as follows:

COMMENT 1: One commenter stated that although the 2003 Montana Legislature assured "intimate" involvement of the dental community in the rule making process to define the scope of practice of Limited Access Permit (LAP) dental hygienists, this rule notice was "hastily put together" and never fully considered by the Board as a whole.

RESPONSE 1: During the 2003 Legislative session, both licensed dentists and dental hygienists collaborated at the request of legislators to compose language for LAP licensure and practice, as a part of Senate Bill 190. From the passage of the legislation, the Board hygiene committee, in conjunction with the full Board, met on approximately six occasions to discuss and draft language for the proposed administrative rules. The Montana Dental Association (MDA) and the Montana Dental Hygiene Association (MDHA) were both represented on the committee, as well as other interested parties such as representatives from the Department of Public Health and Human Services. The full Board received the recommendations of the committee, discussed the issues

thoroughly, and voted to accept the committee's draft during the February 27, 2004 Board meeting.

COMMENT 2: One commenter stated that the rules regarding advertisement should apply to all licensees and not just dentists.

RESPONSE 2: The Board has previously discussed the issue of advertisement by all licensees and has decided to take no action at this time. Currently, dental hygienists do not maintain independent practices.

COMMENT 3: One commenter suggested adding language to New Rule IV to allow the Board to revoke a volunteer license upon proof that services outside the scope of the license had been provided.

RESPONSE 3: The Board has the authority under current statutes to discipline licensees for practice outside the scope of licensure.

COMMENT 4: Several commenters stated that LAP hygienists should be required to file annual reports with the Board so the effectiveness of the LAP licensure could be monitored.

RESPONSE 4: The Board discussed this issue at length during the February 2004 meeting. The Board will seek to gather information on the use of LAP hygienists in Montana through informational surveys and possibly with the assistance of the MDHA and/or the Department of Public Health and Human Services. No reporting requirement will be put into rule at this time.

COMMENT 5: Two commenters suggested changing the proposed qualifications for LAP hygienists under New Rule V. Suggestions included increasing the 350 hours of active practice, specifying the types of acceptable continuing education, and requiring letters of recommendation from licensed dentists and certification of where the LAP hygienist would practice.

RESPONSE 5: The committee studied numerous other states' qualifications for LAP hygienists. The committee considered that most hygienists interested in obtaining LAP licensure only practice part-time and recommended the proposed hours of continuing education and active practice accordingly. An increase in practice hours would likely be a deterrent to LAP applicants and the current hour requirements were determined to be sufficient to qualify for a LAP. Current rules on continuing education sufficiently address what are acceptable continuing education courses. The committee had considered whether to require letters of recommendation from dentists and determined the requirement may be more of an impediment to LAP

applicants and would not necessarily prove the applicant's qualifications.

COMMENT 6: A commenter asked who would be responsible to train the LAP hygienists to work independent of their current environments.

RESPONSE 6: All dental hygienists must practice within the scope of their license, and this includes the LAP hygienists. Available continuing education courses would round out the LAP hygienists' scope of practice and the required 3,000 hours of active practice would be their training.

COMMENT 7: Several commenters expressed concern that New Rule VI would allow LAP hygienists to diagnose medical conditions. They suggested allowing LAP hygienists to practice only when there is no disease present in patients and no adverse patient medical history, and for the Board to state in rule an acceptable level of blood pressure.

RESPONSE 7: Section 37-4-405, MCA, provides that LAP hygienists practicing under public health supervision are able to provide treatment based upon medical and dental health guidelines adopted by the Board in rule. New Rule VI provides these guidelines. The Board determined that LAP hygienists practicing within the guidelines would not be diagnosing medical conditions. Requiring the absence of all disease would effectively prohibit the LAP hygienists from practicing and would defeat the purpose of increasing access to dental hygiene preventative services. The Board determined it is not necessary to specify an acceptable level of blood pressure in rule.

COMMENT 8: Several commenters requested the Board address the placement of sealants by LAP hygienists.

RESPONSE 8: Section 37-4-405, MCA, allows LAP hygienists to provide limited dental hygiene preventative services, including sealant placement, in public health facilities without the prior authorization or presence of a licensed dentist. Further explanation and definition of sealant placement by LAP hygienists will be reviewed by the Board and if necessary, addressed at a future date through the rule making process.

COMMENT 9: Commenters stated that the Board should define exactly when LAP hygienists are required to refer patients to dentists.

RESPONSE 9: Section 37-4-405, MCA, provides that a LAP hygienist practicing under public health supervision shall refer all patients who need treatment falling outside the LAP

hygienist's scope of practice as described in subsection (4) of the statute.

COMMENT 10: One commenter asked for the Board to define "dental hygiene preventative services" and questioned who would be paid for x-rays taken by LAP hygienists.

RESPONSE 10: Section 37-4-405, MCA, defines the allowable dental hygiene preventative services as provided under public health supervision. The Board has no jurisdiction to mandate who would receive payment for x-ray services provided by either a dentist or a LAP hygienist.

COMMENT 11: Two commenters stated that patients should be examined by dentists prior to the taking of x-rays by LAP hygienists.

RESPONSE 11: Section 37-4-405, MCA, states that it is within the practice of LAP hygienists to expose x-rays in public health facilities without the prior approval or presence of licensed dentists. Proposed New Rule VI requires that a licensed dentist review x-rays exposed by a LAP hygienist within 30 days of such exposure.

COMMENT 12: One commenter stated that LAP hygienists should be responsible for maintaining and safeguarding patient records.

RESPONSE 12: The committee had discussed this issue at length and noted that patient records generally stay at the facilities where the services are rendered. The committee and Board determined that because LAP hygienists may move between facilities, keeping the records with the facilities would provide greater stability and better security.

COMMENT 13: Commenters asked the Board to define "public health facility" and "public health supervisor" and to instruct the "public health supervisors" of their responsibilities regarding the practice of the LAP hygienists. The commenters also asked for samples of the disclaimer required in (2)(a) of proposed New Rule VI.

RESPONSE 13: "Public health facility" is defined in 37-4-405, MCA, for the purpose of the LAP hygienists' practice. The statute allows the Board to identify by rule other public health facilities and programs at which LAP services may be provided. At this time, the Board is not proposing to identify any facilities in addition to those already provided in statute.

The term "public health supervisor" is not used in the implemented legislation and there is no need to define the term in rule. The Board has no jurisdiction to create and place any responsibilities upon employees of public health

facilities. The Board's jurisdiction extends only to its licensees.

The intent of the disclaimer requirement in this rule is clear. The Board intentionally left the choice of the specific wording of the disclaimers to the licensed LAP hygienists.

3. After considering the comments, the Board has amended 24.138.301, 24.138.402, 24.138.508, 24.138.514, and 24.138.519, and has adopted New Rules I (24.138.507), II (24.138.516), III (24.138.530), IV (24.138.420), V (24.138.509) and VI (24.138.425) exactly as proposed.

BOARD OF DENTISTRY
PAUL SIMS, DDS, PRESIDENT

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State August 9, 2004.