

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

In the matter of the proposed)	NOTICE OF PUBLIC
amendment of ARM 24.138.301,)	HEARING ON PROPOSED
definitions, 24.138.402, fee)	AMENDMENT AND ADOPTION
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)	

1. On June 15, 2004, at 11:00 a.m., a public hearing will be held in room 471, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry no later than 5:00 p.m. on June 9, 2004, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Dentistry, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdden@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.138.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) "Advertisement" is any communication made or disseminated to the public in any manner designed to attract public attention to the practice of a dentist who is licensed to practice dentistry in Montana~~†.~~

(2) "Bait and switch advertising" is an alluring but insincere offer to sell a product or provide a service that the advertiser, in truth, does not intend or want to sell and which is designed to switch the consumer from purchasing the advertised product or service to another product or service, usually at a higher fee or on a basis more advantageous to the advertiser~~†.~~

(3) "Coronal polishing" is a dental procedure limited to the utilization of abrasive agents on the coronal surfaces of natural and restored teeth for the purpose of plaque and extrinsic stain removal.

(4) remains the same.

(5) "Material fact" is any fact that an ordinary, reasonable and prudent person would need to know or rely upon in making an informed decision concerning dental care or the selection of a dentist to serve his or her particular needs.

(6) remains the same.

(7) "Retired or nonpracticing dentist or dental hygienist" is a person who has surrendered or allowed the individual's license to expire for non-disciplinary reasons and has ceased to practice the individual's profession for remuneration.

(8) "Volunteer licensee" is a dentist or dental hygienist licensed according to rule to provide dental healthcare related diagnosis, care, or treatment without receiving or expecting to receive, compensation or any other form of remuneration.

AUTH: 37-4-205, 37-4-340, MCA

IMP: 37-4-101, 37-4-205, 37-4-340, 37-29-201, MCA

REASON: The 2003 Montana Legislature enacted Chapter 67, Laws of 2003 (House Bill 65), an act allowing certain retired or nonpracticing dentists and dental hygienists to provide services for indigent and uninsured persons in underserved or critical need areas. The bill was signed by the Governor on March 17, 2003, became effective on July 1, 2003, and is codified at 37-4-340, MCA.

The Board determined it is reasonable and necessary to specifically define several terms as used in the new legislation. The amendment to include these new definitions will lessen confusion for volunteer licensure applicants and will further implement the new law.

There is reasonable necessity to amend this rule to correct punctuation errors.

24.138.402 FEE SCHEDULE (1) through (19) remain the same.

<u>(20) Limited access permit application fee</u>	<u>50</u>
<u>(21) Limited access permit renewal fee</u>	<u>20</u>
<u>(22) Volunteer license, original or renewal</u>	<u>5</u>

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-4-405, MCA

IMP: 37-1-134, 37-4-301, 37-4-303, 37-4-307, 37-4-340, 37-4-402, 37-4-403, 37-4-405, 37-4-406, 37-29-304, MCA

REASON: The 2003 Montana Legislature enacted Chapter 67, Laws of 2003 (House Bill 65), an act allowing certain nonpracticing and retired dentists and dental hygienists to provide services

for indigent and uninsured persons in underserved or critical need areas. The bill was signed by the Governor on March 17, 2003, became effective on July 1, 2003, and is codified at 37-4-340, MCA.

The Board determined there is reasonable necessity to amend this existing rule to delineate the cost for both original and renewal licensure of volunteer dentists and dental hygienists. The amendment will provide needed information for volunteer licensure applicants and licensees and will further implement the new law. This amendment will affect approximately 10 to 15 volunteer licensees annually. The Board estimates that approximately \$50 to \$75 in revenue will be generated annually from this new license classification, but notes that if even one dentist or dental hygienist changes from an active or inactive status to "volunteer" status, there will be net decrease in revenue. Implementation and authority cites have been amended accordingly.

The 2003 Montana Legislature enacted Chapter 172, Laws of 2003 (Senate Bill 190), an act allowing dental hygienists with limited access permits to provide dental hygiene preventative services in public health facilities under general supervision of a dentist or under public health supervision. The bill was signed by the Governor on March 28, 2003, became effective on October 1, 2003, and is codified at 37-4-405, MCA.

There is reasonable necessity to amend this existing rule to delineate the cost for both initial application and for renewal of dental hygiene limited access permits. The amendment will provide needed information for dental hygienists applying for such permits and will further implement the new law. This amendment will affect approximately 10 limited access permit hygienists annually. The Board estimates that during the first year, it will have approximately \$500 in revenue from this class of license, and thereafter annual revenue of approximately \$200. Implementation and authority cites have been amended accordingly.

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT CERTIFICATION (1) through (2)(c) remain the same.

(d) evidence of having ~~have~~ previously received a Montana dental hygiene license, or of being in the process of applying for a Montana dental hygiene license.

(3) and (4) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-401~~, 37-4-402, MCA
IMP: 37-4-401, 37-4-402, MCA

REASON: There is reasonable necessity to amend this rule to correct a grammatical error and to delete an erroneous authority cite.

24.138.514 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) through (3)(a) remain the same.

(b) evidence that the applicant has actively and competently practiced in this or another jurisdiction within the last five years;

(c) through (5) remain the same.

AUTH: 37-1-319, 37-4-205, MCA

IMP: 37-1-319, 37-4-307, 37-4-406, 37-29-201, MCA

REASON: It is reasonable and necessary to amend this rule to clarify the Board's intent to allow applicants to convert an inactive status to an active status license if the applicants have actively and competently practiced either in Montana or another jurisdiction. The prior rule language inadvertently limited the reactivation option to those who had practiced outside of Montana.

24.138.519 GROUNDS FOR DENIAL OF A LICENSE

(1) Licensure may be denied based on the following grounds:

~~(1)(a) Failure~~ failure to meet any requirements or standards established by law or rules of the board; ~~or~~

~~(2)(b) Misrepresentation~~ misrepresentation of facts and information on application for licensure or renewal of license; ~~or~~

~~(3)(c) Having~~ having another person appear in the applicant's place for examination; ~~or~~

~~(4)(d) Failure~~ failure to pass the licensure examination for licensure; or

~~(5)(e) A course of conduct which would be~~ that qualifies as grounds for discipline ~~under 37-29-311, MCA.~~

AUTH: ~~37-1-137,~~ 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-137, 37-29-201, ~~37-29-311,~~ MCA

REASON: There is reasonable necessity to amend this rule to delete citations to a repealed statute and to amend the authority and implementation cites for accuracy. Non-substantive formatting changes have also been made for clarity in meaning.

4. The proposed new rules provide as follows:

NEW RULE I DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS (1) The board shall provide for licensing by credentials of out-of-state licensed specialty dentists without additional examination, except a jurisprudence examination, if the applicant:

(a) submits an application on a form provided by the board or its designee;

(b) pays the appropriate fees, including a credentialing fee, a jurisprudence exam fee, and an application fee;

- (c) certifies to the board that the dentist:
 - (i) is a graduate of a dental school accredited by the commission on dental accreditation for the American dental association (CODA), or its successor;
 - (ii) has passed the national board examination and submits an original joint commission national board score card;
 - (iii) has passed or successfully completed:
 - (A) a general dentistry clinical practice examination for licensure administered by a testing agency; and
 - (B) a specialty residency of at least two years accredited by CODA or its successor, or a specialty approved by the board;
 - (iv) is in good standing in all jurisdictions where the applicant is licensed or has held a license. If employed by the federal government, the applicant shall be in good standing with the employing federal agency;
 - (v) is currently engaged in the practice of clinical, direct patient care dentistry, as demonstrated by any or all of the following:
 - (A) address of practice location(s);
 - (B) length of time at location(s);
 - (C) certification of not less than 1,000 hours per year in clinical direct patient care dentistry;
 - (D) a letter from all malpractice insurance carriers defining years of coverage and any claims history;
 - (E) DEA registration number, if any;
 - (F) documentation from a commanding officer regarding length of service, duties and responsibilities, and any adverse actions or restrictions, if the applicant is serving in the United States federal service; or
 - (G) documentation from the dean or appropriate administration of the institution regarding length and terms of employment and the applicant's duties, responsibilities and any adverse actions or restrictions, if the applicant is employed by a dental school;
 - (vi) has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a Montana license. Courses submitted must meet continuing education requirements as defined in board rule; and
 - (vii) is not physically or mentally impaired by use of addictive drugs, alcohol or any other drug or substance or by mental or physical illness which, in the determination of the board, renders the applicant unfit or incapable of practicing dentistry;
- (d) submits documentation of all unresolved or adverse decisions based on complaints, investigations, review procedures or other disciplinary proceedings undertaken by a state, territorial, local or federal dental licensing jurisdiction, dental society or law enforcement agency relating to criminal or fraudulent activity, dental malpractice or negligent dental care;

- (e) submits documentation from the dean or appropriate administration of the institution regarding any malpractice claims against the applicant during the applicant's residency;
 - (f) submits a current CPR or ACLS card;
 - (g) provides affidavits from three persons not related to the applicant regarding the applicant's good moral character; and
 - (h) submits copies of all other state professional licenses.
- (2) A minimum grade of 75% is required for passage of the jurisprudence examination.

AUTH: 37-1-131, 37-4-205, 37-4-301, MCA
IMP: 37-1-304, 37-4-301, MCA

REASON: The Board has determined that it is reasonable and necessary to develop a rule to allow out-of-state licensed specialty dentists to obtain a Montana dental license by credentials with Board approval, but without having to complete additional clinical examinations. This rule will apply to applicants who have taken and passed both a clinical examination and a general dental examination and who are educated, qualified and/or experienced in a recognized dental specialty. Most dentists practicing within an approved and recognized dental specialty do not perform, or may not have performed within a substantial time period, procedures that would be tested if an additional general clinical examination were required for Montana licensure. The Board determined that to require this additional general clinical exam would be an unnecessary hardship for these specialist applicants.

NEW RULE II REINSTATEMENT OF A LICENSE FOR NON-PAYMENT OF RENEWAL FEE

- (1) A dentist or dental hygienist applicant requesting reinstatement must meet the requirements set forth in 37-4-307, MCA, for dentists and 37-4-406, MCA, for dental hygienists.
- (2) The applicant shall make a written request and complete a form approved by the board.
 - (3) The applicant shall provide, but is not limited to, the following:
 - (a) evidence the applicant has actively and competently practiced in this or another jurisdiction within the last five years;
 - (b) license verification from all jurisdictions where the applicant is licensed or has held a license;
 - (c) evidence of continuing education as follows:
 - (i) 60 hours of continuing education for a dentist for the three most current renewal years; or
 - (ii) 36 hours of continuing education for a dental hygienist for the three most current renewal years;
 - (d) a current CPR or ACLS card; and
 - (e) any other information the board may require as evidence of operative competency.

(4) If the applicant has been out of practice for longer than five years, the applicant shall provide evidence of, but not limited to, the following:

(a) completion of:

(i) a clinical competency course(s) or skills assessment analysis approved by the board; or

(ii) a board approved regional or state examination within the most recent five years;

(b) a license verification from all jurisdictions where the applicant is licensed or has held a license;

(c) continuing education as follows:

(i) 60 hours of continuing education for a dentist for the three most current renewal years; or

(ii) 36 hours of continuing education for a dental hygienist for the three most current renewal years;

(d) a current CPR or ACLS card; and

(e) any other information the board may require as evidence of operative competency.

(5) Applicants shall take the jurisprudence examination if the applicant has not practiced in Montana within the most recent five years.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA

IMP: 37-4-307, 37-4-406, MCA

REASON: The Board determined it is reasonable and necessary to adopt a new rule to clarify how an individual applies for license reinstatement after non-payment of renewal fees. The Board wanted this new rule to be very specific in setting forth the requirements for reinstatement, in order to further facilitate the reinstatement process and to lessen any confusion among licensees.

NEW RULE III LICENSURE OF RETIRED OR NONPRACTICING DENTIST OR DENTAL HYGIENIST FOR VOLUNTEER SERVICE

(1) Retired or nonpracticing dentists and dental hygienists seeking to practice under a volunteer license shall submit, on forms provided by the board, a complete application and the following documentation:

(a) verification of graduation from a dental or dental hygiene school accredited by the American dental association commission on dental accreditation (CODA) or its successor;

(b) copies of other state licenses held;

(c) verification of licensure from any other state that the applicant is or has been licensed in;

(d) proof of operative competency by either:

(i) a verified statement that the applicant has actively and competently practiced in Montana or another jurisdiction within the last five years; or

(ii) if the applicant has been out of practice for longer than five years, the applicant shall provide, but is not limited to:

(A) proof of completion of a board approved clinical competency course(s) or skills assessment analysis; or

(B) a board approved regional or state examination within the most recent five years;

(e) verification that the applicant has maintained for at least 10 years prior to retirement, full licensure in good standing in Montana, another state or jurisdiction, Canada or the United States armed forces;

(f) a notarized statement that the applicant shall not accept any form of remuneration for any dental or dental hygiene services rendered while in possession of the volunteer license;

(g) a copy of a current ACLS or CPR card; and

(h) any other information the board may require as evidence of operative competency.

(2) The board may exempt applicants not meeting the above requirements of (1) on a case-by-case basis until July 1, 2005.

(3) The board shall review applications submitted by applicants with medically diagnosed mental or physical disabilities on a case-by-case basis.

(4) Renewal fees and late fees or a portion of such fees may be waived for eligible persons applying for licensure under this rule after July 1, 2004, upon approval of the board.

(5) Volunteer licenses must be renewed annually.

AUTH: 37-1-131, 37-4-204, 37-4-340, MCA

IMP: 37-4-340, MCA

REASON: The 2003 Montana Legislature enacted Chapter 67, Laws of 2003 (House Bill 65), an act allowing certain nonpracticing and retired dentists and dental hygienists to provide services for indigent and uninsured persons in underserved or critical need areas. The bill was signed by the Governor on March 17, 2003, became effective on July 1, 2003, and is codified at 37-4-340, MCA.

The Board believes there is reasonable necessity to adopt this new rule to implement this piece of legislation. This new rule describes the application process and licensing requirements for retired or nonpracticing dentists or dental hygienists to obtain licensure to provide professional services, on a volunteer basis, to indigent or uninsured patients in underserved or critical need areas of Montana.

NEW RULE IV SCOPE OF TREATMENT FOR VOLUNTEER LICENSEES

(1) Volunteer licensees shall practice dentistry or dental hygiene within the scope of their professional license.

(2) Volunteer licensees shall provide dental healthcare services to indigent or uninsured patients in underserved or critical need areas of the state as determined by state or federal government.

(3) Diagnosis, treatment plans, and treatment are at the discretion of the volunteer licensee, within the scope of the volunteer licensee's training, competency and qualifications.

AUTH: 37-1-131, 37-4-204, 37-4-340, MCA
IMP: 37-4-340, MCA

REASON: The 2003 Montana Legislature enacted Chapter 67, Laws of 2003 (House Bill 65), an act allowing certain nonpracticing and retired dentists and dental hygienists to provide services for indigent and uninsured persons in underserved or critical need areas. The bill was signed by the Governor on March 17, 2003, became effective on July 1, 2003, and is codified at 37-4-340, MCA.

The Board believes there is reasonable necessity to adopt this new rule to timely implement the new legislation. This rule delineates the scope of treatment for retired or nonpracticing dentists and dental hygienists in providing professional services, on a volunteer basis, to indigent or uninsured patients in underserved or critical needs areas of Montana.

NEW RULE V DENTAL HYGIENE LIMITED ACCESS PERMIT

(1) A Montana licensed dental hygienist may submit a completed application for a limited access permit (LAP) on a form provided by the board.

(2) The board shall issue a LAP to a licensed dental hygienist who:

(a) possesses an active, unrestricted Montana dental hygiene license;

(b) certifies that the dental hygienist has actively practiced either:

(i) 2,400 clinical hours over the last three years; or

(ii) a career total of 3,000 hours, with a minimum of 350 hours in each of the last two years;

(c) provides the name of the applicant's current liability insurance carrier, and policy number and expiration date;

(d) provides evidence of completion of 12 additional continuing education credits for the three-year cycle immediately preceding LAP application; and

(e) pays all appropriate fees.

(3) A LAP dental hygienist shall maintain 48 hours of continuing education credits for each three-year cycle following initial issuance of a LAP. The 48 hours includes the 36 hours required for a dental hygiene license and an additional 12 hours required for the LAP.

(4) LAPs must be renewed annually.

AUTH: 37-1-131, 37-4-205, 37-4-301, 37-4-405, MCA
IMP: 37-4-405, MCA

REASON: The 2003 Montana Legislature enacted Chapter 172, Laws of 2003 (Senate Bill 190), an act allowing dental hygienists with limited access permits to provide dental hygiene preventative services in public health facilities under general supervision of a dentist or under public health

supervision. The bill was signed by the Governor on March 28, 2003, became effective on October 1, 2003, and is codified at 37-4-405, MCA.

The Board believes there is reasonable necessity to adopt this new rule to timely implement the new legislation. This rule defines the qualifications necessary and provides the process for a licensed dental hygienist to obtain a limited access permit (LAP), pursuant to the new legislation. Dental hygienists with LAPs can provide dental hygiene preventative services under either general supervision of a licensed dentist or public health supervision. The dental hygienist will be able to provide such dental hygiene preventative services to patients in public health facilities who, due to age, infirmity, disability, or financial constraints, would be otherwise unable to obtain regular dental care.

NEW RULE VI LIMITED ACCESS PERMIT TREATMENT GUIDELINES-PRACTICING UNDER PUBLIC HEALTH SUPERVISION (1) Pursuant to 37-4-405, MCA, the LAP dental hygienist practicing under public health supervision shall adhere to the following medical health guidelines:

(a) The LAP dental hygienist shall gather and review the patient's current medical history, including but not limited to:

- (i) diagnosed chronic diseases;
- (ii) surgical procedures;
- (iii) medications;
- (iv) drug allergies and/or adverse reactions;
- (v) blood pressure and pulse rate; and
- (vi) previous difficulty associated with dental procedures.

(b) The LAP dental hygienist may provide dental hygiene preventative services to a patient without prior physician or dentist authorization unless the patient has:

- (i) a medical condition requiring pre-medication;
- (ii) uncontrolled hypertension; or
- (iii) uncontrolled diabetes.

(c) If a patient has one or more severe systemic diseases, the LAP dental hygienist shall consult with a physician or dentist regarding the appropriateness of treatment and the conditions under which to provide dental hygiene preventative services.

(2) Pursuant to 37-4-405, MCA, the LAP dental hygienist practicing under public health supervision shall adhere to the following dental health guidelines:

(a) The LAP dental hygienist shall provide to the public health facility a disclaimer indicating that the dental hygiene preventative services provided do not preclude the need for a comprehensive examination by a licensed dentist.

(b) The LAP dental hygienist shall recommend patient referral to a licensed Montana dentist once each calendar year, or as the patient's dental health status indicates. The

patient's records shall be made available for continued comprehensive dental care.

(c) The LAP dental hygienist shall document the patient dental history and conduct a screening appraisal prior to providing dental hygiene preventative services.

(d) If a LAP dental hygienist exposes radiographs, a licensed Montana dentist shall evaluate the radiographs within 30 days of exposure.

(e) The LAP dental hygienist shall maintain a dental record including, but not limited to:

(i) adverse medical history;

(ii) dental history and charting;

(iii) results of dental screening;

(iv) summary of discussions and consultations with a physician(s) and/or dentist(s);

(v) dental hygiene preventative services provided; and

(vi) any radiographs exposed.

(f) Patient dental records shall be the responsibility of the public health facility where the dental hygiene preventative services are provided.

AUTH: 37-1-131, 37-4-205, 37-4-405, MCA

IMP: 37-4-405, MCA

REASON: The 2003 Montana Legislature enacted Chapter 172, Laws of 2003 (Senate Bill 190), an act allowing dental hygienists with limited access permits to provide dental hygiene preventative services in public health facilities under general supervision of a dentist or under public health supervision. The bill was signed by the Governor on March 28, 2003, became effective on October 1, 2003, and is codified at 37-4-405, MCA.

The Board believes there is reasonable necessity to adopt this new rule to timely implement the new legislation. The new statutory language provides that licensed dental hygienists with limited access permits (LAP) practicing in public health facilities under public health supervision shall provide treatment based upon medical and dental health guidelines adopted by board rule. This rule delineates the medical and dental health guidelines that will control the provision of such dental hygiene preventative services under public health supervision to patients who, due to age, infirmity, disability, or financial constraints, would be otherwise unable to obtain other regular dental care.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdden@state.mt.us, and must be received no later than 5:00 p.m., June 23, 2004.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/den>. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Dentistry maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Dentistry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdden@state.mt.us, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

9. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
PAUL SIMS, DDS, PRESIDENT

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State May 10, 2004.