

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT,
24.138.301 definitions, 24.138.402, 24.138.403,) ADOPTION, AND REPEAL
and 24.138.406 general provisions, 24.138.502,)
24.138.503, 24.138.506 through 24.138.512,)
24.138.514, 24.138.515, 24.138.519, and)
24.138.530 licensing, 24.138.2101 and)
24.138.2105 renewals and continuing education,)
24.138.2302 unprofessional conduct,)
24.138.2402 screening panel, 24.138.3202)
and 24.138.3206 anesthesia rules, adoption)
of NEW RULES I - IX professional assistance)
program, NEW RULE X reactivation of a lapsed)
license, NEW RULE XI reactivation of an expired)
license, NEW RULE XII definition of nonroutine)
application, NEW RULE XIII fee abatement, and)
repeal of 24.138.516 reinstatement of license)
for nonpayment of renewal fee, 24.138.517)
denturist license reinstatement, and 24.138.2401)
complaint procedure)

TO: All Concerned Persons

1. On July 27, 2006, the Board of Dentistry (board) published MAR Notice No. 24-138-62 regarding the proposed amendment, adoption, and repeal of the above-stated rules, at page 1795 of the 2006 Montana Administrative Register, issue no. 14.

2. On August 17, 2006, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the August 25, 2006, deadline.

3. After publication of the proposal notice, two nonsubstantive errors were discovered. In ARM 24.138.301(6), the comma following "reasonable" was inadvertently not underlined. This comma was shown, but not designated as being new language. ARM 24.138.515 contained a typographical error in the designation of information that was to remain the same. The board intended the text of the rule to remain the same and the proposal should have read (1) through (2)(f) remain the same instead of (1) through (1)(f) remain the same.

4. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: A commenter stated that the amendment to ARM 24.138.406(8)(d) deletes all references to didactic training by the supervising dentist. The commenter urged that (8)(d)(iii) and (iv) not be stricken to specify that both clinical and didactic training are required of auxiliaries.

RESPONSE 1: The board acknowledges that training is necessary in order for the dental auxiliary to pass the required written exam. However, the board concluded that it is not necessary to dictate by rule who does the training or how in fact the training is conducted, as long as the auxiliary ultimately passes the exam. The board is amending the rule exactly as proposed.

COMMENT 2: A commenter supported the amendment to ARM 24.138.509, adding three identified settings at which services may be provided under a Limited Access Permit to address access to care issues.

RESPONSE 2: The board acknowledges the comment and is amending the rule exactly as proposed.

COMMENT 3: A commenter stated (2)(b), (c), and (d) should not be included in NEW RULE XII (24.138.304). The commenter stated that applications where a dental hygienist applicant does not satisfy the required practice hours or has graduated from a nonaccredited school should be considered routine and evaluated by department personnel and that allowing the board to subsequently define other criteria as nonroutine is inappropriate.

RESPONSE 3: The board concluded that these enumerated nonroutine instances are few enough in number and are unusual circumstances that require the review and expertise of the full board in order to grant or deny licensure. The board is adopting the rule exactly as proposed.

5. The board has amended ARM 24.138.301, 24.138.402, 24.138.403, 24.138.406, 24.138.502, 24.138.503, 24.138.506, 24.138.507, 24.138.508, 24.138.509, 24.138.510, 24.138.511, 24.138.512, 24.138.514, 24.138.515, 24.138.519, 24.138.530, 24.138.2101, 24.138.2105, 24.138.2402, 24.138.3202, and 24.138.3206 exactly as proposed.

6. The board is not amending ARM 24.138.2302 at this time. The board received numerous comments in opposition to the proposed amendment to this rule. Following review and consideration of all comments received and due to concerns raised by the comments and by the board itself, the board has decided to not amend the rule as proposed at this time. The board anticipates conducting additional research and having subsequent discussions to address the issues raised by the comments.

7. The board has adopted NEW RULE I (24.138.2701), NEW RULE II (24.138.2703), NEW RULE III (24.138.2705), NEW RULE IV (24.138.2707), NEW RULE V (24.138.2710), NEW RULE VI (24.138.2712), NEW RULE VII

(24.138.2714), NEW RULE VIII (24.138.2716), NEW RULE IX (24.138.2719), NEW RULE X (24.138.524), NEW RULE XI (24.138.525), NEW RULE XII (24.138.304), and NEW RULE XIII (24.138.430) exactly as proposed.

8. The board has repealed ARM 24.138.516, 24.138.517, and 24.138.2401 exactly as proposed.

BOARD OF DENTISTRY
PAUL SIMS, D.D.S., PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2007