

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

In the matter of the proposed amendment)
of ARM 24.138.301 definitions, 24.138.402,)
24.138.403, 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, proposed)
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 proposed 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 August 17, 2006, at 9:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) 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 (board) no later than 5:00 p.m. on August 11, 2006, 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@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of a periodic review, the board is proposing a substantial number of revisions to the board's administrative rules. Some of the amendments are technical in nature, such as the modification of punctuation and style according to the administrative rules for rule writing as designated by the Secretary of State. Other technical changes

substitute modern language for archaic phrasing, update obsolete or gender specific language and inaccurate statutory references, and achieve greater consistency in terminology use within the rules. It is reasonable and necessary to amend the rules throughout to specify that the board will accept proof of an applicant holding either a current CPR or ACLS card, when required. Other rule amendments and repeals propose to delete or amend language that duplicates, conflicts with, or creates confusion with recently adopted department rules that implement Chapter 467 L. 2005 (HB 182). Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed statutes. Accordingly, the board believes reasonable necessity exists to generally amend and repeal certain existing rules. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. 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) through (5) remain the same.

(6) "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~~ the patient's particular needs.

(7) "Prophylaxis" is a preventative and therapeutic dental health treatment process by which gingival irritants, including any existing combination of calculus deposits, plaque, material alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of teeth by a method or methods, which may include scaling, root planing, and subgingival curettage, that are most suitable for the patient, by an appropriately licensed dentist or licensed dental hygienist.

(8) remains the same.

(9) "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: 37-1-131, 37-4-205, 37-4-340, 37-29-201, MCA

IMP: 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

24.138.402 FEE SCHEDULE (1) through (4) remain the same.

~~(5) Written examination fee for denturists paid directly to testing agency~~ 200

(6) through (18) remain the same but are renumbered (5) through (17).

AUTH: 37-1-131, 37-1-134, 37-4-205, 37-4-340, 37-4-405, MCA

IMP: 37-1-134, 37-1-141, 37-4-301, 37-4-307, 37-4-340, 37-4-402, 37-4-405, ~~37-4-406~~, MCA

REASON: It is reasonable and necessary to amend this rule and delete (5) to clarify that dentist applicants pay examination fees directly to the testing agency and the board has no involvement in this process.

24.138.403 MANDATORY CPR (1) All licensed active status dentists, dental hygienists, and denturists shall possess a current cardiopulmonary resuscitation (CPR) or advanced cardiac life support (ACLS) card.

(2) remains the same.

(3) Licensees shall affirm the expiration date of the CPR or ACLS card on the ~~annual~~ renewal. The board may audit a licensee for compliance of a current CPR or ACLS card. An active licensee who practices without a current CPR or ACLS card may be subject to disciplinary action by the board.

(4) Internet CPR courses will be accepted if a hands-on evaluation of clinical competency is also included.

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

IMP: 37-4-307, ~~37-4-406~~, 37-29-401, MCA

REASON: The board has determined it is reasonable and necessary to amend this rule to remove the specification of an annual license renewal period. Section 37-1-141, MCA, requires that license renewal dates be set by department rule and ARM 24.101.413 contains the renewal date and frequency for the board's licensees. This amendment eliminates the possibility of having conflicting timeframes between department and board rules. It is reasonably necessary to add (4) to clarify in what circumstances the board will accept internet CPR courses in satisfaction of the requirements of this rule.

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) Allowable functions for a dental auxiliary practicing under the direct supervision of a licensed dentist shall include dental procedures as allowed by board rule and subject to (2) ~~below~~, in which:

(a) through (2)(a) remain the same.

(b) initiating, adjusting, and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide by a licensed dentist;

(c) through (3)(e) remain the same.

(f) placing, carving, or condensing any permanent restorations;

(g) taking final impressions of the involved arch for crowns, bridges, implant prosthesis, partial, or complete dentures;

(h) through (8) remain the same.

(a) has graduated from an accredited program of dental assisting, dental hygiene, or dentistry accredited by the Commission on Dental Accreditation or its successor; or

(b) and (c) remain the same.

(d) has successfully completed a board-approved radiology written and ~~practical~~ examination. The written examination must be passed prior to the dentist

allowing the auxiliary to expose radiographs. ~~To prepare for the examination, the auxiliary may, in any combination:~~

- ~~(i) complete an available didactic course in radiology;~~
- ~~(ii) complete an available clinical course in radiology;~~
- ~~(iii) train didactically with the supervising dentist;~~
- ~~(iv) train clinically with the supervising dentist.~~

(9) and (10) remain the same.

(11) The board will accept documentation of (8)(a) through (c) ~~above~~ as certification for radiographic exposure. The board will issue a certificate to those auxiliaries who complete (8)(d) as their means to qualify for radiographic exposure.

AUTH: 37-4-205, 37-4-408, MCA

IMP: 37-4-408, MCA

REASON: The board has determined that there exists reasonable necessity to amend this rule to eliminate the clinical examination requirement for dental auxiliaries. Following lengthy consideration and discussion, the board concluded that the clinical exam is no longer necessary as dental auxiliaries are adequately prepared and tested through the required training period and written exam.

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION (1) ~~All applicants shall submit a A completed application on the form furnished by the board or its designee. The application must include the following:~~

~~(a) through (c) remain the same.~~

~~(d) verification of graduation from a dental school accredited by the American Dental Association Commission on Dental Accreditation, or its successor. Verification must consist of an original dental school transcript and a diploma or a letter from the dean of the school of dentistry, program director, or the dean's equivalent attesting to the program of study, and that graduation status was attained;~~

~~(e) remains the same.~~

~~(f) copies of all other state professional licenses that are held by the applicant;~~

~~(g) remains the same but is renumbered (f).~~

~~(h) (g) a copy of the applicant's current CPR or ACLS card;~~

~~(i) a photograph of the applicant;~~

~~(j) and (k) remain the same but are renumbered (h) and (i).~~

~~(2) The applicant shall not be 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 individual unfit or incapable of practicing dentistry.~~

~~(3) A jurisprudence examination must be taken once the application for licensure has been approved. Applicants shall successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to issuance of a license.~~

~~(4) remains the same.~~

AUTH: 37-1-131, 37-4-205, ~~37-4-301~~, MCA

IMP: 37-1-131, 37-4-301, MCA

REASON: It is reasonably necessary to amend ARM 24.138.502, 24.138.503, 24.138.506, 24.138.511, and 24.138.530, to eliminate the requirement of submitting copies of other state licenses held. The board determined that requiring separate submission of the licenses is unnecessary, as they are obtained through the board's license verification process. The board is removing from ARM 24.138.502, 24.138.503, and 24.138.511, the requirement for licensure applicants to submit their photographs. It is reasonably necessary to delete this requirement to facilitate the electronic application process and achieve consistency in the licensure requirements of dentists, dental hygienists, and denturists.

24.138.503 INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION (1) ~~Each applicant shall submit a~~ A completed application ~~on a form furnished by the board or its designee. The application must include the~~ following:

- (a) and (b) remain the same.
- (c) affidavits from ~~three~~ two persons not related to the candidate, of the candidate's good moral character;
- (d) verification of graduation from a dental hygiene school accredited by the American Dental Association Commission on Dental Accreditation, or its successor. Verification must consist of an original dental hygiene school transcript ~~and a diploma~~ or a letter from the dean of the school of dental hygiene, program director, or dean's equivalent attesting to the program of study, and that graduation status was attained;
- (e) remains the same.
- (f) ~~copies of all other state professional licenses that are held by the applicant;~~
- (g) remains the same but is renumbered (f).
- ~~(h)~~ (g) a copy of the applicant's current CPR or ACLS card;
- ~~(i) a photograph of the applicant;~~
- (j) and (k) remain the same but are renumbered (h) and (i).
- (2) The applicant shall not be physically or mentally impaired by use of addictive drugs, alcohol, or any other drugs or substances, or by mental or physical illness, which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.
- (3) ~~A jurisprudence examination must be taken once the application for licensure has been approved.~~ Applicants must successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to issuance of a license.
- (4) remains the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-402, 37-4-403~~, MCA
IMP: 37-4-401, 37-4-402, ~~37-4-403~~, MCA

REASON: It is reasonable and necessary to amend this rule and change the number of required moral character affidavits from three to two to comply with the statutory requirements for dental hygiene licensure at 37-4-402, MCA.

24.138.506 DENTAL HYGIENIST LICENSURE BY CREDENTIALS

(1) through (1)(g) remain the same.

~~(h) copies of all other state professional licenses;~~

(i) and (j) remain the same but are renumbered (h) and (i).

(2) The applicant may not be physically or mentally impaired by use of addictive drugs, alcohol, or any other drugs or substances, or by mental or physical illness, which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.

~~(3) The jurisprudence examination must be successfully passed once the application for licensure has been approved.~~ Applicants shall successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to issuance of a license.

(4) remains the same.

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

IMP: 37-1-304, MCA

24.138.507 DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS

(1) and (2) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-301~~, MCA

IMP: 37-1-304, 37-4-301, MCA

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT

CERTIFICATION (1) No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or a dental-surgical procedure unless and until ~~he or she~~ the hygienist possesses a local anesthetic permit issued by the board.

(2) Application for a local anesthetic ~~certificate~~ certification by examination shall be made on an application form ~~provided by the board~~ and must include the following:

(a) remains the same.

(b) a copy of the applicant's current CPR or ACLS card;

(c) through (3)(a) remain the same.

(b) a copy of the applicant's current CPR or ACLS card;

(c) through (g) remain the same.

(4) An applicant who wishes to ~~reactivate a~~ convert an inactive status local anesthesia certification in conjunction with the ~~reactivation or reinstatement~~ conversion of a an inactive dental hygiene license shall:

(a) and (b) remain the same.

(c) submit a copy of the applicant's current CPR or ACLS card;

(d) through (f) remain the same.

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

IMP: 37-4-401, 37-4-402, MCA

24.138.509 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) (1)~~ The board shall issue a limited access permit (LAP) to a Montana licensed dental hygienist who:

(a) and (b) remain the same.

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

(d) and (e) remain the same.

(3) and (4) remain the same but are renumbered (2) and (3).

(4) Pursuant to 37-4-405, MCA, the board identifies the following additional public health facilities and programs at which services under a LAP may be provided:

(a) Dodson School;

(b) Harlem Elementary School; and

(c) Harlem Junior/Senior High School.

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

IMP: 37-4-405, MCA

REASON: The board has determined it is reasonable and necessary to amend this rule to clarify that limited access permits will be issued only to applicants who are licensed in Montana as dental hygienists prior to applying for a LAP. Following a licensee's request to provide dental hygiene services under a LAP in an alternative setting, the board is amending the rule to specifically delineate three additional public health facilities and programs at which services can be provided under a LAP.

24.138.510 DENTURIST EXAMINATION (1) The examinations approved by the board for licensure shall include a written examination, a clinical/practical examination on a live patient, and a jurisprudence examination.

(2) Grading ~~will~~ shall be done by Montana licensed dentists and denturists conducting the examination or the board's designees.

(3) and (4) remain the same.

(5) In order to guarantee security of the test papers and protect the privacy of the applicant, examination papers may not be copied or duplicated by the applicant or the licensee.

(6) through (11) remain the same.

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-1-131, 37-29-201, ~~37-29-305~~, MCA

REASON: It is reasonably necessary to amend this rule to clarify that applicants and licensees are prohibited from copying examination paperwork and that this prohibition does not apply to staff or test administrators.

24.138.511 DENTURIST APPLICATION REQUIREMENTS (1) ~~Written application for denturist licenses shall be made on forms prescribed by the board~~

and provided by the department. Each applicant shall submit a completed application.

(2) The application fee and required documentation must be submitted to the board of dentistry and must include:

(a) official transcripts from all colleges or educational institutions must be provided sent directly to the board office by the college or institution;

(b) through (i) remain the same.

(j) license verification(s) from all jurisdictions where the licensee has held/ or holds a license;

~~(k) copies of all other state licenses that are held by the licensee;~~

~~(l)~~ (k) a copy of a current CPR or ACLS card;

~~(m)~~ (l) three affidavits from three persons not related to the candidate, of the candidate's good moral character;

(n) remains the same but is renumbered (m).

~~(o) photograph of the applicant;~~

(p) and (q) remain the same but are renumbered (n) and (o).

~~(3) Licensee must successfully pass the jurisprudence examination.~~

~~(4)~~ (3) Licensee Applicant shall submit a copy of the board approved intern application including intern reports, showing internship clinical training, which are signed by the monitoring licensed dentist.

~~(5)~~ (4) The board may require application materials to be updated prior to the applicant taking the jurisprudence examination.

(5) Applicants must successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to the issuance of a license.

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-29-303, ~~37-29-304~~, 37-29-306, MCA

REASON: The board has determined it is reasonable and necessary to amend this rule to promote consistency in licensure requirements among the three professions regulated by the board.

24.138.512 DENTURIST INTERN (1) To be eligible for internship, the applicant must have completed all requirements for licensure set forth in 37-29-303~~(4)~~, MCA.

(2) A dentist intern is a person engaged in a clinical training program under the direct supervision of a Montana licensed dentist.

(a) Such training program shall consist of 2000 clock hours of training and performance in at least the following fields of practice:

~~(a)~~ (i) patient charting 36 hours minimum

(ii) through (d) remain the same.

(3) An intern shall file a monthly report with the board, on a form ~~provided by the department~~ and attested to by his the intern's supervising dentist. The report shall state the number of hours or units completed in each field of practice identified in (2) ~~above~~.

(4) No licensed dentist may supervise more than one intern at a time interns than is reasonable and appropriate to provide the necessary internship skill needed for licensure.

(5) Each intern shall be provided a separate work station in the laboratory area, containing standard dentistry equipment, i.e., lathe, torch, and storage space. Operatory facilities and other equipment will be shared with the intern. ~~The intern shall provide his own necessary hand tools~~ The necessary hand tools shall be provided by the intern.

(6) No intern may practice once the internship has been completed until after successful passage of the clinical examination and the applicant has met all other requirements for licensure.

AUTH: 37-1-131, 37-29-201, 37-29-303, MCA

IMP: 37-29-303, MCA

REASON: It is reasonably necessary to amend this rule to clarify that a Montana licensed dentist may supervise more than one dentist intern as long as the supervision terms are reasonable and appropriate. Similar supervision requirements currently exist in rule for dentist supervision of dental auxiliaries.

24.138.514 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) remains the same.

(2) An inactive status license does not entitle the holder to practice dentistry, dental hygiene, or dentistry in the state of Montana.

(3) The board may consider a licensee request to convert an inactive status license to active status for reactivation upon written request to the board if the applicant provides, but is not limited to, the following:

- (a) a completed form ~~approved by the board;~~
- (b) 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

24.138.515 CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL OR REVOCATION (1) through (1)(f) remain the same.

AUTH: 37-1-136, ~~37-4-301~~, 37-4-402, 37-29-201, MCA

IMP: 37-1-136, 37-1-137, MCA

24.138.519 GROUNDS FOR DENIAL OF A LICENSE (1) through (1)(b) remain the same.

- (c) having another person appear in the applicant's place for examination; or
- ~~(d) failure to pass the licensure examination; or~~
- ~~(e) (d)~~ (d) conduct that qualifies as grounds for discipline.

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

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

REASON: It is reasonably necessary to amend this rule and delete failure to pass a licensure examination as grounds to deny licensure. The board does not intend to deny licensure if an applicant fails an exam, retakes and subsequently passes the exam, and applicants may retake licensure examinations until successful.

24.138.530 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) remains the same.

~~(b) copies of other state licenses held;~~

(c) through (f) remain the same but are renumbered (b) through (e).

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

(h) remains the same but is renumbered (g).

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

(3) through (5) remain the same, but are renumbered (2) through (4).

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

IMP: 37-4-340, MCA

24.138.2101 DEFINITION OF CONTINUING EDUCATION (1) remains the same.

(a) review existing concepts and techniques; ;

(b) convey information beyond the basic professional education; ; and

(c) update knowledge on advances in dental, medical and dental hygiene sciences, and dentistry practices.

(2) remains the same.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, 37-4-205, 37-29-306, MCA

24.138.2105 REPORTING PROCEDURES (1) remains the same.

(2) Licensees are required to keep a ~~record~~ certificate of attendance of continuing education completed and make this available to the board if so requested.

(3) Licensees shall affirm their understanding of and compliance with continuing education requirements with the ~~annual~~ license renewal.

(4) Failure of licensee to produce ~~records~~ certificates of attendance of required continuing education may result in disciplinary action. Following an audit failure, the licensee will be afforded a one-year period to gain the appropriate continuing education requirements. If compliance is not attained, disciplinary action pursuant to 37-1-312, MCA, will be taken.

(5) remains the same.

AUTH: 37-1-319, 37-4-205, MCA
IMP: 37-1-306, 37-4-205, MCA

REASON: The board has determined that reasonable necessity exists to amend this rule and clarify for licensees what is acceptable to the board as documentation of CE attendance for random audits.

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS

- (1) through (1)(h) remain the same.
(i) testifying in court on a contingency-witness fee basis; and
(j) ~~fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant; and~~
(k) remains the same but is renumbered (j).

AUTH: 37-1-136, 37-1-319, 37-29-201, MCA
IMP: 37-1-316, 37-29-402, 37-29-403, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that placement of dentures on or over dental implants is not considered unprofessional conduct for denturists. Following review and discussion, the board concluded that there is no statutory prohibition on this placement and that it is within the scope of practice of Montana licensed denturists.

24.138.2402 SCREENING PANEL (1) ~~The board~~ screening panel shall consist of three dentists, one dental hygienist, one public member, and one dentist. The presiding officer of the screening panel may reappoint ~~screening panel members,~~ or replace screening panel members as necessary at the presiding officer's discretion.

(2) The screening panel shall not consider anonymous complaints.

AUTH: 37-4-205, 37-29-201, MCA
IMP: 37-1-307, MCA

REASON: It is reasonable and necessary to amend this rule to specify that the board does not consider anonymous complaints. This is not a new board policy, but was formerly included in ARM 24.138.2401 that is proposed for repeal in this notice.

24.138.3202 PERMIT REQUIRED FOR ADMINISTRATION OF ANESTHESIA (1) ~~In order to To~~ administer general anesthesia or conscious sedation, a Montana licensed dentist must possess a permit ~~from the board to do so.~~ Such a permit ~~must be renewed every year.~~

(2) ~~In order to To~~ obtain a permit, the dentist makes application ~~on a form provided by the board~~ and must meet specific minimum qualifying standards as set forth in the rules.

(3) Anesthesia administration permits must be renewed every year.

~~(3)~~ (4) The board may grant to a Montana licensed dentist, upon receipt of an application and payment of the initial inspection fee, a temporary permit

authorizing the dentist to administer general anesthesia, light general anesthesia, or conscious sedation for a period not to exceed 120 days or until the inspectors are able to make the inspection, ~~whichever event occurs first~~. This temporary permit may be extended upon board approval.

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

IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: It is reasonable and necessary to amend this rule to specify that only Montana licensed dentists qualify for full or temporary anesthesia administration permits. This is not a new requirement, but is being specifically identified to alleviate confusion among applicants and licensees.

24.138.3206 ON-SITE INSPECTION OF FACILITIES (1) Each facility where conscious sedation or general anesthesia is to be provided shall be initially inspected by a team appointed by the board prior to the initial issuance of the appropriate permit to administer anesthesia on the premises, and at intervals not to exceed five years. Adequacy of the facility and competency of the anesthesia team will be evaluated by the inspection team. The inspection team shall consist of at least two individuals. Any dentist whose facility is to be inspected shall be notified at least 30 days prior to the inspection and the names of the inspection team shall be provided to ~~him~~ the dentist.

(2) The on-site inspection shall include a test of the applicant and ~~his~~ the applicant's staff on their abilities to recognize and manage complications likely to occur considering the techniques being used. Early recognition of complications will be emphasized. The facility must be inspected for the presence of drugs and equipment appropriate for the level of sedation or anesthesia to be provided. Monitoring assistants shall be examined for their knowledge of their respective roles in normal operating procedures and in various emergency situations. The inspection team shall evaluate office staff in proficiency in handling emergency procedures. The inspection team shall evaluate the accuracy of anesthesia record keeping.

(3) If the on-site inspection team finds deficiencies present in the inspected office, the facility shall be given 30 days to address the deficiencies ~~comply with the recommendations of the inspection team~~. If, at the completion of this 30-day period, the deficiencies have not adequately been rectified, the board will limit the practitioner's permit to apply general anesthesia or conscious sedation only in qualifying facilities.

(4) through (6) remain the same.

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

IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: The board has determined that it is reasonable and necessary to amend this rule to clarify that anesthesia inspectors only note deficiencies and they do not make any decisions nor recommendations for the board.

5. The proposed new rules provide as follows:

NEW RULE I REHABILITATION PROGRAM PURPOSE

(1) The board approves a program to provide assistance, rehabilitation, and aftercare monitoring to all licensed healthcare providers under the jurisdiction of the board who are suspected and/or found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance, or by mental or chronic physical illness.

(2) The board encourages and permits the rehabilitation of licensees based upon the extent to which the public health, safety, and welfare can be assured. Early intervention and referral are paramount to promoting public health, safety, and welfare.

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board determined that reasonable necessity exists to adopt New Rules I through IX. Pursuant to 37-4-311, MCA, these new rules will delineate the protocol for the referral of licensees found to be impaired by drugs, alcohol, mental illness, or chronic physical illness to a board approved rehabilitation program. The new rules clarify for licensees and license applicants, who are participants or prospective participants of the rehabilitation program, the processes, procedures, and requirements of the board and the rehabilitation program.

NEW RULE II RESPONSIBILITIES OF BOARD APPROVED

REHABILITATION PROGRAM (1) The board approved rehabilitation program (program) as set forth in 37-4-311 and 37-4-312, MCA, shall fulfill terms to be set by contract with the board to include, but not limited to the following:

(a) provide two tracks for assistance of licensee or license applicants under the board's jurisdiction:

- (i) a disciplinary track; and
- (ii) a nondisciplinary track;

(b) provide recommendations to the licensee or license applicant for appropriate evaluation and treatment facilities;

(c) recommend to the board terms and conditions of treatment, rehabilitation, and monitoring of licensees or license applicants known to the board; and

(d) monitor all aftercare of participants under contract to ensure public safety and compliance with agreed treatment recommendations propounded by one or all of the following:

- (i) the board, through stipulations and/or final orders;
- (ii) treatment centers; and
- (iii) the program.

(2) The program shall consult with the board regarding program processes and procedures to ensure that program responsibilities are met consistent with board orders, requests, and contract terms.

(3) The program shall provide information to and consult with the board upon the board's request.

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE III REPORTING OF SUSPECTED IMPAIRMENT

(1) Individuals, entities, or associations may report information to the board of suspected impairment of a licensee or license applicant as provided in 37-4-312, MCA.

(2) Individuals, entities, or associations may report information of suspected impairment of a licensee or license applicant to the appropriate personnel of the program in lieu of reporting to the board as provided by 37-4-312, MCA.

(3) Reports received by the board of suspected impaired licensees or license applicants may be referred to the program at the board's discretion through the nondisciplinary track without formal disciplinary action against the licensee or license applicant.

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE IV PROTOCOL FOR SELF-REPORTING TO A BOARD APPROVED REHABILITATION PROGRAM

(1) If a licensee or license applicant chooses to self-report to the program and the program has determined that the licensee or license applicant needs assistance or supervision, the licensee or license applicant shall be required to:

(a) enter into an aftercare contract with the program for the specified length of time determined by the program; and

(b) abide by all the requirements set forth by the program.

(2) Self-reporting by a licensee or license applicant may still result in disciplinary action if:

(a) the program determines that the self-reporting licensee or license applicant poses a danger to the licensee or license applicant or to the public;

(b) the licensee or license applicant is in noncompliance with a contract for aftercare monitoring;

(c) a licensee or license applicant has not completed evaluation, treatment, or aftercare monitoring as recommended by the program; or

(d) the screening panel otherwise determines that disciplinary action is warranted.

(3) The program shall notify and disclose to the board the identity of a licensee participating in the program, along with providing to the board all relevant facts and documentation, when any of the following occur:

(a) the participant engages in actionable behavior as described in 37-4-312, MCA;

(b) the participant is noncompliant with the aftercare monitoring contract; or

(c) there are credible allegations that patient safety or public harm is at risk by the participant's continued practice.

(4) The program shall notify and disclose to the board the identity of a new license applicant who is determined by the program to have significant impairment issues.

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE V PROTOCOL FOR DISCIPLINARY TRACK (1) All licensees or license applicants under the jurisdiction of the board who participate in the program as defined in 37-4-311, MCA, under the disciplinary track shall be reported to the board by name.

(2) Licensees or license applicants are admitted to the disciplinary track through one or more of the following:

- (a) as a condition of licensure;
- (b) as a result of a sanction imposed by a board final order;
- (c) as a result of noncompliance with the licensee or license applicants' aftercare contract with the program; or
- (d) as determined by the board and/or program.

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE VI PROTOCOL FOR NONDISCIPLINARY TRACK (1) A licensee or license applicant under the jurisdiction of the board who participates in the program as defined in 37-4-311 and 37-4-312, MCA, under the nondisciplinary track shall be reported to the board by participant number.

(2) A participant who is noncompliant or refuses a reasonable request by the program shall be reported by name to the board.

(3) If the board determines that a participant does not abide by all terms and conditions of the program, the participant will be referred to the screening panel of the board for appropriate action under the disciplinary track.

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE VII REPORTING TO THE BOARD (1) The screening panel and the full board shall receive an appropriate written compliance status report from the program at intervals established by contract with the board and program regarding each program participant:

- (a) under a monitoring agreement;
- (b) referred to the program; or
- (c) in the process of evaluation or treatment.

(2) The identity of a participant in the nondisciplinary track must be withheld from the board unless the participant does not meet one of the requirements set forth in [NEW RULE VI].

(3) A participant in the disciplinary track shall be reported to the board as required in [NEW RULE V].

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE VIII DISCHARGE REQUIREMENTS (1) The program shall facilitate participant discharge from the program.

(2) The discharge criteria are determined by the board in conjunction with the program recommendations.

(3) Upon the discharge of a participant from the program, the program shall report to the board the discharge of the participant, and if applicable, provide to the board:

(a) verification of the participant's satisfactory completion of monitoring and program requirements as appropriate for public safety;

(b) verification of the participant's completion of board final order terms and conditions with recommendation of the program for discharge; and/or

(c) notification that the participant is transferring to another jurisdiction.

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE IX RELAPSE (1) The program shall define relapse and determine when relapse has occurred.

(2) The program may report to the board a participant with a single episode of relapse and/or early detection of relapse, with nominal substance abuse.

(a) Even in cases where the program does not report participants under (2), the program shall reevaluate the participant and document any further treatment recommended by the program.

(3) A participant who has second or severe relapse shall be reported to the board screening panel for review.

(4) A participant's relapse may necessitate the participant's:

(a) withdrawal from practice;

(b) further evaluation and/or treatment as determined by the program;

(c) monitoring terms being reassessed and/or modified by the program;

(d) compliance with other recommendations as determined by the program;

or

(e) discipline as imposed by a board final order.

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

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE X REACTIVATION OF A LAPSED LICENSE (1) To reactivate a lapsed license, a licensee shall meet the requirements of 37-1-141, MCA, and submit the following:

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

(b) proof of CE as follows:

(i) a dentist shall submit 60 hours of CE obtained in the most recent three years;

(ii) a dental hygienist shall submit 36 hours of CE obtained in the most recent three years; and

(iii) a denturist shall submit 36 hours of CE obtained in the most recent three years.

AUTH: 37-1-141, 37-4-205, 37-29-201, MCA
IMP: 37-1-141

REASON: The board has determined that it is reasonable and necessary to adopt New Rules X and XI to further implement 37-1-141, MCA. The new rules identify additional board requirements for the reactivation of lapsed and expired licenses.

NEW RULE XI REACTIVATION OF AN EXPIRED LICENSE (1) To reactivate an expired license, a licensee shall meet the requirements in 37-1-141, MCA, and submit the following:

- (a) a copy of a current CPR or ACLS card;
- (b) a license verification from all jurisdictions where the licensee is licensed or has held a license; and
- (c) proof of CE as follows:
 - (i) a dentist shall submit 60 hours of CE obtained in the most recent three years;
 - (ii) a dental hygienist shall submit 36 hours of CE obtained in the most recent three years; and
 - (iii) a denturist shall submit 36 hours of CE obtained in the most recent three years.

AUTH: 37-1-141, 37-4-205, 37-29-201, MCA
IMP: 37-1-141

NEW RULE XII DEFINITION OF NONROUTINE APPLICATION (1) A nonroutine application includes all criteria as defined in ARM 24.101.402.

(2) The board may consider applications as nonroutine in any of the following instances:

- (a) the applicant does not meet the license criteria in the specified statute or rule regarding licensure;
 - (b) the dental hygiene applicant does not meet the practice hours required by board rule;
 - (c) the applicant has graduated from a nonaccredited school as defined by board statute or rule; or
 - (d) any other criteria as determined by the board.
- (3) All dental credentialing applications are considered nonroutine.
(4) All denturist applications are considered nonroutine.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-101, 37-1-131, 37-4-301, 37-4-402, 37-29-306, MCA

REASON: It is reasonable and necessary to adopt New Rule XII to further implement 37-1-101, MCA, which states the department will process routine licensure applications on behalf of the board. This new rule identifies additional

criteria determined by the board to characterize nonroutine applications and therefore require the board's consideration for processing.

NEW RULE XIII FEE ABATEMENT (1) The Board of Dentistry adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the board. The department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

Adoption and incorporation of ARM 24.101.301 will allow the department to promptly eliminate excess cash balances of the board resulting from unexpectedly high licensing levels or other nontypical events. Abatement in these cases will allow the licensees who have paid fees into the board's program to receive temporary relief provided by abatement. Adoption of this rule does not relieve the board from its duty to use proper rulemaking procedures to adjust the board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

6. The rules proposed to be repealed are as follows:

24.138.516 REINSTATEMENT OF A LICENSE FOR NONPAYMENT OF RENEWAL FEE found at ARM page 24-12051.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-4-307, 37-4-406, MCA

24.138.517 DENTURIST LICENSE REINSTATEMENT found at ARM page 24-12052.

AUTH: 37-1-141, 37-29-201, MCA
IMP: 37-1-141, MCA

24.138.2401 COMPLAINT PROCEDURE found at ARM page 24-12227.

AUTH: 37-4-205, 37-29-201, MCA
IMP: 37-1-308, 37-1-309, MCA

REASON: It is reasonable and necessary to repeal these rules to avoid duplication and remain in compliance with department rules implementing HB182. The board is incorporating any remaining necessary provisions into other rules as appropriate.

7. 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@mt.gov, and must be received no later than 5:00 p.m. August 25, 2006.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.dentistry.mt.gov. The department strives to make the electronic copy of this Notice 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 technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The board 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@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State July 17, 2006