

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.138.407 functions for dental) ON PROPOSED AMENDMENT
hygienists, 24.138.3102 specialty) AND ADOPTION
advertising, and the adoption of NEW)
RULE I hygiene diagnosis and treatment)
planning)

TO: All Concerned Persons

1. On February 7, 2008, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption 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 February 1, 2008, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Board of Dentistry, 301 South Park Avenue, 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. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.138.407 FUNCTIONS FOR DENTAL HYGIENISTS (1) through (3) remain the same.

(a) diagnosis and treatment planning as per 37-4-401, MCA, except such dental hygiene diagnosis and treatment planning set forth at [NEW RULE I] that are necessary to the provision of educational, therapeutic, prophylactic, or preventive dental hygiene procedures;

(b) through (8) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-408, MCA

IMP: 37-4-401, 37-4-405, 37-4-408, MCA

REASON: The board determined it is reasonably necessary to amend this rule and adopt NEW RULE I to clarify the practice of Montana licensed dental hygienists. Following receipt of information from the Montana Dental Hygiene Association, the issue of dental hygiene diagnosis by licensed Montana dental hygienists was reviewed by the board's dental hygiene committee. The committee then brought the issue and a recommendation to the full board.

Noting that dental hygiene diagnosis is part of the established curricula at board approved dental hygiene schools accredited by the Commission on Dental Accreditation, the board reviewed the definition of dental hygiene practice at 37-4-401, MCA. The board found that specific dental hygiene diagnosis that is educational, therapeutic, prophylactic, or preventive in nature is within the practice of licensed dental hygienists. The board found that the restriction in 37-4-401, MCA, against the board or licensed dentists delegating "diagnosis, treatment planning, and prescription" is unclear. The board is amending this rule and adopting New Rule I to set forth the board's interpretation of the statute that dental diagnosis is not delegable, but that specific dental hygiene diagnosis is permissible for Montana licensed dental hygienists under the general supervision of a licensed dentist.

24.138.3102 SPECIALTY ADVERTISING (1) remains the same.

(2) A licensee shall not advertise using the terms "specialist," "specializing," or "practice limited to" unless the licensee has met the board standards for specialization as set forth in ARM 24.138.3101 and 24.138.3103 and the branch of dentistry advertised as a specialty branch of dentistry is sanctioned as a specialty branch of dentistry by (1).

(3) A licensee who possesses a verifiable combination of education and experience is not prohibited from including in his the licensee's practice one or more branches of dentistry. Any advertisement of such practice shall not make use of the terms "specialty," "specializing," "specialist," or "practice limited to" and must contain the statement "the services are being performed or provided by a general dentist," or words to that effect, and such statement must appear or be expressed in the advertisement as conspicuously as the branch of dentistry advertised.

(4) A Montana licensed dentist listing or advertising the dentist's services under any dental category that is a specialty recognized by the American Dental Association must clearly disclose within the licensee's individual advertisement that the services are provided by a general dentist. Any general disclosure or disclaimer made by the advertiser or not located within the specific licensee's advertisement does not comply with this requirement.

AUTH: 37-4-205, MCA

IMP: 37-4-205, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the advertisement of specialty services by Montana licensed general dentists. Following receipt of information and numerous requests for clarification, the issue was discussed by the board's advertising committee. The committee then brought the issue and a proposed rule amendment to the full board.

The board has discussed the advertising by general dentists under specialty headings in telephone directories several times over the past few years and has previously provided guidance through letters to all dental licensees. In addition, the board has received complaints of advertisements misleading the public and numerous requests for clarification in the area of specialty advertising. The board is amending this rule now to address the requests and further clarify the requirements for general dentists to advertise the provision of specialty dental services in their

general practices. The board concluded that the amendment will help ensure clear advertising and lessen any public misperception about the practices of announced specialists and that of general dentists.

Additional amendments are being made to comply with ARM punctuation requirements and to substitute gender neutral terms for gender specific language.

4. The proposed new rule provides as follows:

NEW RULE I PERMISSIBLE DENTAL HYGIENE DIAGNOSIS AND TREATMENT PLANNING (1) Montana licensed dental hygienists may perform only such dental hygiene diagnosis and treatment planning functions that are necessary to the provision of educational, therapeutic, prophylactic, or preventive dental hygiene procedures within the scope of practice of a licensed Montana dental hygienist.

AUTH: 37-1-131, 37-4-205, 37-4-408, MCA
IMP: 37-4-401, 37-4-405, 37-4-408, MCA

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@mt.gov, and must be received no later than 5:00 p.m., February 15, 2008.

6. An electronic copy of this Notice of Public Hearing is available through the department and board 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 web site accessible at all times, concerned persons should be aware that the web site 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.

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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Dentistry administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent 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 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, do not apply.

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

BOARD OF DENTISTRY
DR. PAUL SIMMS, DDS

/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 7, 2008