

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

In the matter of the amendment of)
ARM 24.138.402 fee schedule,)
24.138.406 dental auxiliaries,)
24.138.2104 requirements and)
restrictions, 24.138.3207 continuing)
education, and the adoption of NEW)
RULES I through III pertaining to)
restricted volunteer licensure)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On November 5, 2009, 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 October 30, 2009, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, 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:

24.138.402 FEE SCHEDULE (1) through (16) remain the same.
(17) Restricted temporary volunteer license, original or renewal 10
(17) remains the same but is renumbered (18).

AUTH: 37-1-131, 37-1-134, 37-4-205, 37-4-340, 37-4-341, 37-4-405, MCA
IMP: 37-1-134, 37-1-141, 37-4-301, 37-4-307, 37-4-340, 37-4-341, 37-4-402, 37-4-405, MCA

REASON: The 2009 Montana Legislature enacted Chapter 315, Laws of 2009 (Senate Bill 226), an act authorizing the temporary licensure of nonresident dentists and dental hygienists to provide voluntary services to persons served by university clinics, correctional facility clinics, and certain federally funded clinics. The bill was signed by the Governor on April 18, 2009, and became effective October 1, 2009. The board determined it is reasonably necessary to amend this rule to establish a licensure fee for restricted temporary volunteer licensure and renewal in response to

the legislation. The fee will affect approximately 12 licensees each year and result in \$120 of additional annual revenue.

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) through (3)(j) remain the same.

(k) periodontal probing; or

(l) air polishing;

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

(4) through (8)(d) remain the same.

~~(9) No dentist shall allow a dental auxiliary not qualified as stated above to expose radiographs except during one training period that:~~

~~(a) is under the direct supervision of the dentist; and~~

~~(b) is not longer than six calendar months commencing from the time the auxiliary begins training.~~

(10) remains the same but is renumbered (9).

~~(11) (10) The board will accept documentation of (8)(a) through (c) 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 is amending this rule to add air polishing as a duty that cannot be performed by dental auxiliaries for reasons of public safety. The board concluded that air polishing equipment has the ability to harm gum tissue and this procedure should only be performed by a licensed dental hygienist having extensive education and appropriate training in the use of the equipment.

The board is deleting (9) to comply with (8)(d) that specifies that dental auxiliaries must first pass the written exam before they are allowed to expose radiographs. The board eliminated the requirement for passage of a clinical exam in 2007. The training program in (9) was in place to prepare auxiliaries for the clinical exam and is being deleted now as unnecessary.

It is reasonably necessary to delete the last sentence of (10) because testing entities issue a certificate when an auxiliary successfully passes the exam and the board no longer issues any certificates.

24.138.2104 REQUIREMENTS AND RESTRICTIONS (1) remains the same.

(a) for dentists, 60 per three-year cycle. Dentists who have general anesthesia ~~or conscious sedation~~ permits must acquire these complete 20 hours of anesthesia specific continuing education as part of the 60 continuing education credits in addition to those required for maintenance of those permits; . Dentists who have conscious sedation permits must complete 12 hours of anesthesia specific continuing education as part of the 60 continuing education credits required;

(b) through (5) remain 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

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.138.3207 to no longer require that dentists holding anesthesia permits obtain anesthesia specific continuing education (CE) in excess of the 60 hours already required by rule. The board concluded that the additional CE is not necessary and the public is adequately protected as long as anesthesia permit holders obtain some CE specific to anesthesia. Therefore, the board is amending these rules to require anesthesia specific CE as part of the total 60 hours of CE required for dentist licensure.

24.138.3207 REQUIREMENTS FOR CONTINUING EDUCATION IN ANESTHESIA (1) All dentists holding permits to provide general anesthesia must submit evidence of having attended a minimum of 20 clock hours of anesthesia specific continuing education every three years.

(2) All dentists holding permits to provide conscious sedation must submit evidence of having attended a minimum of 12 clock hours of anesthesia specific continuing education every three years.

(3) through (7) remain the same.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA

IMP: 37-1-319, 37-4-511, MCA

4. The proposed new rules provide as follows:

NEW RULE I RESTRICTED TEMPORARY LICENSURE OF NONRESIDENT VOLUNTEER DENTISTS AND DENTAL HYGIENISTS

(1) Dentists and dental hygienists actively licensed in good standing in another state and seeking to practice in Montana under a restricted temporary volunteer license, shall submit a complete application and the following documentation:

(a) verification of graduation from a dental or dental hygiene program or school accredited by the American Dental Association Commission on Dental Accreditation (CODA) or its successor;

(b) license verifications(s) from all states where the licensee currently holds a license;

(c) verification that the applicant has no pending discipline in any state in which the applicant holds current licensure; and

(d) a notarized statement that the applicant shall not receive monetary or other compensation for providing any dental or dental hygiene services in Montana, while in possession of the temporary volunteer license.

(2) Temporary volunteer licenses are valid for 14 days from the date of issuance.

(3) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months, a new application and fees must be submitted.

(4) Temporary volunteer licenses may be renewed annually by the date set by ARM 24.101.413.

AUTH: 37-1-131, 37-4-205, 37-4-341, MCA

IMP: 37-1-131, 37-1-141, 37-4-341, MCA

REASON: The 2009 Montana Legislature enacted Chapter 315, Laws of 2009 (Senate Bill 226), an act authorizing the temporary licensure of nonresident dentists and dental hygienists to provide voluntary services to persons served by university clinics, correctional facility clinics, and certain federally funded clinics. The bill was signed by the Governor on April 18, 2009, and became effective October 1, 2009. The board determined it is reasonably necessary to adopt New Rules I and II to set forth the minimum licensure requirements and scope of practice for this restricted volunteer license and further implement the legislation.

NEW RULE II SCOPE OF TREATMENT FOR TEMPORARY VOLUNTEER LICENSE (1) Temporary volunteer licensees shall:

(a) practice dentistry or dental hygiene within the scope of their professional license and in compliance with board statutes and administrative rules; and

(b) provide dental or dental hygiene services only to individuals served by clinics listed in 37-4-103, MCA.

AUTH: 37-1-131, 37-4-205, 37-4-341, MCA

IMP: 37-1-131, 37-4-341, MCA

NEW RULE III TEETH WHITENING (1) The board of dentistry interprets the definition of the practice of dentistry set forth at 37-4-101, MCA, to include services or procedures that alter the color or physical condition of a tooth or teeth.

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

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

REASON: It is reasonable and necessary to adopt New Rule III to address teeth whitening services currently being offered in salons and malls throughout Montana. The board notes that these teeth whitening procedures use a bleaching chemical that has potential to harm patients that have not had a thorough dental assessment done prior to application of the whitening agent. The board concluded that teeth whitening agents should only be applied by a dentist after a thorough examination and assessment of the individual patient's condition and needs.

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., November 13, 2009.

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 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 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 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 7, 2009, by electronic mail.

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

BOARD OF DENTISTRY
PAUL SIMS, DDS, 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 October 5, 2009