

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

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 24.138.402 fee schedule) HEARING ON PROPOSED
) AMENDMENT

TO: All Concerned Persons

1. On October 9, 2014, the Board of Dentistry (board) published MAR Notice No. 24-138-70 regarding the public hearing on the proposed amendment of the above-stated rule, at page 2346 of the 2014 Montana Administrative Register, Issue No. 19. A public hearing was scheduled for October 31, 2014, in Helena.

2. After the publication of the notice of public hearing, staff discovered that an error had occurred in paragraph 8 which contained the statement that the proposed rule change would significantly and directly affect small businesses. The board had decided during its June 13, 2014, full board meeting that the amendment to ARM 24.138.402 would not have a significant and direct impact on small businesses. The board is filing this amended notice to provide the accurate board decision in paragraph 10, and set new dates for a hearing and public comment deadline.

3. On December 1, 2014, at 10:00 a.m. a public hearing will be held in the Large Conference Room, 4th floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

4. 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 November 24, 2014, 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; or dlibsdden@mt.gov (board e-mail).

5. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.138.402 FEE SCHEDULE (1) through (6) remain the same.

- (7) Active renewal fee for dentists ~~453~~ 306
- (8) Active renewal fee for dental hygienists ~~70~~ 140
- (9) Active renewal fee for denturists ~~400~~ 200
- (10) Inactive renewal fee for dentists ~~453~~ 306
- (11) Inactive renewal fee for dental hygienists ~~70~~ 140
- (12) Inactive renewal fee for denturists ~~400~~ 200

(13) through (17) remain the same.

AUTH: 37-1-131, 37-1-134, 37-4-205, 37-4-340, 37-4-341, 37-4-405, 37-29-201, 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, 37-29-303, MCA

REASON: The board determined it is reasonably necessary to amend the fee schedule. The board is proposing a license renewal fee increase to achieve financial solvency. Current cash balance for the board will be depleted before the end of calendar year 2014 and the board is statutorily required to maintain fiscal solvency. The cash balance for the board as of mid-July, 2014 was slightly more than \$48,000. As of mid-September, 2014, it was approximately \$17,000. At the time of filing this amended notice, the cash balance is negative \$8,838.

The board has traditionally maintained a cash balance carryover of approximately \$200,000 from fiscal year to fiscal year, although board expenses have regularly exceeded revenue. Revenues for the board (from all sources) have risen from \$200,500 in fiscal year 2009 to over \$219,000 in fiscal year 2013, while board expenses have risen from \$220,300 to over \$270,000 over the same period.

At the end of fiscal year 2013, the board's cash balance was \$96,516. In comparison, the cash balance at the end of fiscal year 2012 was approximately \$147,000 and fiscal year 2011 approximately \$216,000. Staff provided a comprehensive fee increase proposal in the spring of 2010 (fiscal year 2010) when it appeared cash balance may dip below \$200,000, and the financial projection showed a steady erosion of the cash balance in the future. The board determined not to proceed with a fee increase, but to monitor the financial status. The final cash balance after fiscal year 2010 ended was \$226,446.

A number of factors have seen the board's cash balance erode significantly since fiscal year 2012. Primarily, starting in fiscal year 2012, the board incurred an increase in cost of contracting for an impairment program as required by 37-4-311, MCA, Rehabilitation. The board was responsible for paying a portion of the cost of a new licensing database purchased by the Business Standards Division of the Department of Labor and Industry for use by all licensing boards; an increase in personal service costs due to increases in employee wages and benefits as previously approved by the Legislature; the contracting of an independent investigator for dental office sanitation complaints in fiscal year 2013; and additional department legal and associated staffing fees to address a lawsuit against the board in fiscal year 2014. Additionally, there was an overall increase in costs for processing complaints and investigations over the past five fiscal years and there have also been increases in the cost of doing business that all licensing boards are required to pay, such as rent, information technology maintenance fees, postage, and mailing, etc.

The current board renewal fees have been in place since 1995 and the board is statutorily required to assess fees commensurate with costs. The board agreed it is highly unlikely a person would still be paying the same fee for a professional service for over 18 years. The average rate of inflation alone for this period has been approximately 2.52 percent per year or 45.4 percent.

The board estimates the increase in renewal fees will affect approximately 1620 licensees and will result in a total of \$363,350 revenue by June 30, 2015.

DENTISTS: 815 licensees at \$306 each renewal fee = \$249,390

DENTAL HYGIENISTS: 784 licensees at \$140 each renewal fee = \$109,760

DENTURISTS: 21 licensees at \$200 each renewal fee = \$4,200

The total revenue for fiscal year 2015, including the renewal fee increase, is estimated at \$404,034. The total expenses for the same period are estimated at \$291,023.

6. 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 e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., December 5, 2014.

7. An electronic copy of this notice of public hearing is available at www.dentistry.mt.gov (department and board's web site). 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.

8. 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 that 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.402 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513,

Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov.

11. Mark Jette, attorney, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
DR. TERRY KLISE, D.D.S., PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2014