

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

In the matter of the amendment of)
ARM 24.138.3227 pertaining to onsite)
inspection of facilities)
NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 27, 2017, at 3:00 p.m., a public hearing will be held in Room 496, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 January 20, 2017, 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's e-mail).

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

24.138.3227 ONSITE INSPECTION OF FACILITIES (1) Each facility where moderate sedation or deep sedation/general anesthesia is to be provided shall be inspected initially, and at intervals not to exceed five years, ~~inspected by a team qualified inspector 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. One member must hold a deep sedation/general anesthesia permit.~~ Any dentist whose facility is to be inspected shall be notified at least 30 days prior to the inspection, or sooner if mutually agreed. ~~and the names~~ The name of the inspection team inspector shall be provided to the dentist.

(2) The onsite inspection shall include a test of the applicant and 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~~ inspector shall evaluate office staff in proficiency in handling emergency

procedures. ~~The inspection team shall~~ and evaluate the accuracy of anesthesia record-keeping.

(3) If the ~~onsite inspection team~~ inspector finds deficiencies present in the inspected office, the facility shall be given 30 days to address the deficiencies. 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 moderate sedation or deep sedation/general anesthesia only in qualifying facilities.

(4) If serious life-threatening deficiencies are found by the ~~onsite inspection team~~ inspector, the board will immediately limit the practitioner's permit by refusing to permit the administration of moderate sedation or deep sedation/general anesthesia on the premises.

(5) and (6) remain the same.

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

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

REASON: Section 37-4-511, MCA, requires the facility in which deep sedation or general sedation is administered to be equipped with proper drugs and equipment to safely administer anesthetic agents. To implement the law, the board adopted ARM 24.138.3209 through ARM 24.138.3233. This rule requires the board to perform inspections as a prerequisite to initial licensure, and then every five years following. ARM 24.138.3219 authorizes temporary licenses for "120 days or until the inspectors are able to make the inspection." The issue created through these rules is that this rule requires inspectors to be licensed and permitted providers, but the board only pays them \$150 per inspection. Given that providers are spread out across Montana, inspections sometimes require significant time and travel. Too often, inspectors simply do not have the time and/or money to close their private practice but incur the same overhead costs. The result is inspectors having good intentions to give back to the profession by performing inspections when time allows, but very few ever with enough time. Although inspectors report that money is somewhat of a concern, the bigger barrier is simply time. It is very difficult for two high-level dental inspectors and an actively practicing dentist to coordinate schedules, sometimes hundreds of miles apart, particularly when they involve patient emergencies and other circumstances beyond their control.

Although the board has prioritized initial inspections, currently there exists a backlog in which 21 out of 79 permits require initial inspection. Therefore, the board determined it is reasonably necessary to amend this rule to allow a single qualified inspector to perform the moderate sedation or deep sedation/general anesthesia facility inspections and address the backlog of initial inspections. The board's anesthesia committee will meet within the next year to evaluate the use of single inspectors and consider additional long-term solutions to further streamline the inspections process while continuing to protect the public.

4. 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., February 3, 2017.

5. 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.

6. 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.

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

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.3227 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; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail dlibsdden@mt.gov.

9. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
DR. DAVID JOHNSON, 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 December 27, 2016