

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.138.208 denturist committee,) PROPOSED AMENDMENT,
24.138.402 fees, 24.138.407 dental) ADOPTION, AND REPEAL
hygienist functions, 24.138.414 license)
display, 24.138.502, 24.138.503,)
24.138.504, 24.138.505, 24.138.506,)
24.138.508, and 24.138.511 licensure)
and certification of dentists, dental)
hygienists, and denturists, 24.138.2104)
continuing education requirements,)
24.138.2301 and 24.138.2302 dentist)
and denturist unprofessional conduct,)
24.138.2402 screening panel; the)
adoption of New Rule I dental hygienist)
unprofessional conduct; and the repeal)
of 24.138.404 justifiable criticism and)
expert testimony, 24.138.405 infectious)
waste, 24.138.408 public service and)
quality of care, 24.138.409 patient)
selection, 24.138.410 patient records,)
24.138.411 emergency service,)
24.138.412 consultation and referral,)
24.138.413 rebate and split fees,)
24.138.420 volunteer licensee scope,)
24.138.501 dental and dental hygiene)
schools, 24.138.507 dentist specialist)
license, 24.138.515 licensure after)
denial or revocation, 24.138.519)
grounds for denial, 24.138.3004)
severability, and 24.138.3103 multiple-)
specialty announcements)

TO: All Concerned Persons

1. On March 19, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment, adoption, and repeal of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/94193441152>, Meeting ID: 941 9344 1152, Passcode: 687141; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656,

Meeting ID: 941 9344 1152, Passcode: 687141.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 no later than 5:00 p.m., on March 12, 2021, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, 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 rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.138.208 DENTURIST COMMITTEE (1) remains the same.

(2) The committee shall meet ~~at least once a year and~~ as needed to review issues pertaining to denturists and make recommendations to the full board.

AUTH: 37-29-201, MCA

IMP: 37-29-201, MCA

REASON: In reviewing standing committee requirements, staff noticed an annual requirement for the denturist committee. As the committee does not always have business to discuss each year, the board is eliminating the requirement to minimize licensee costs for unnecessary meetings and create uniform committee standards.

24.138.402 FEE SCHEDULE (1) through (8) remain the same.

(9) Inactive renewal fee for dentists ~~306~~ 153

(10) Inactive renewal fee for dental hygienists ~~140~~ 70

(11) Inactive renewal fee for denturists ~~200~~ 100

(12) through (16) remain the same.

AUTH: 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, 37-4-340, 37-4-341, 37-4-402, 37-4-405, 37-29-303, MCA

REASON: During a rule review, staff noted the inactive status renewal fee is the same as active status. Additionally, because the fees are the same, practitioners over time have chosen to remain active instead of choosing inactive status. The board determined it is illogical to charge inactive licensees, who are exempt from CE requirements, the same fee since the oversight cost of inactive licensees is lower. The board determined it is reasonably necessary to amend this rule and reduce

inactive renewal fees to 50 percent of the active fees. This change affects all three license types and aligns with similar fees for other boards. The board estimates 83 inactive licensees will be affected by the changes and result in an approximate \$9,900 reduction in annual revenue.

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

~~(4) Dentists shall refrain from delegating to dental hygienists any duties or responsibilities regarding patient care that cannot be delegated to dental hygienists under 37-4-401, MCA, and board rules.~~

(5) remains the same but is renumbered (4).

~~(6) A dentist shall not employ, supervise or otherwise use more dental hygienists than the dentist can reasonably supervise in keeping with the dentist's ethical and professional responsibilities.~~

(7) remains the same but is renumbered (5).

~~(8) A dentist licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the dentist's jurisdiction is used only by individuals competent to use it, as per ARM 37.14.1003.~~

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

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

REASON: During a comprehensive rule review, the board noticed that the conduct prohibited in (4), (6), and (8) are restrictions applicable to dentists, not functions of dental hygienists, and should be relocated to the dentists' unprofessional conduct rule. See REASON for ARM 24.138.2301.

24.138.414 DISPLAY OF LICENSES (1) All licensees must display, or have readily available by electronic means, their current license ~~in their place of employment in a noticeable area~~ for review by the public. If a licensee is working in more than one location, a copy of the license can be duplicated, or readily available by electronic means, for display in another office ~~or offices~~.

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

IMP: 37-4-205, 37-4-326, 37-29-201, MCA

REASON: Board staff noticed that (1) does not account for current technology that allows proof of licensure in an easier and more cost-effective manner than by posting on a wall. The board is amending (1) to allow digital display and proof of licensure and ensure the rule's validity through future technology developments.

Authority and implementation citations are being amended to accurately reflect the statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION

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

(e) a copy of a self-query of the National Practitioner Data Bank and the ~~Healthcare Integrity Data Bank~~;
(f) through (4) remain the same.

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

REASON: Following the merger of the National Practitioner Data Bank (NPDB) and Healthcare Integrity Data Bank, the board is amending this rule to use the correct name of the combined entity.

24.138.503 INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION (1) through (1)(d) remain the same.

(e) a copy of a self-query of the National Practitioner Data Bank and the ~~Healthcare Integrity Data Bank~~;
(f) through (4) remain the same.

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

REASON: See the REASON for ARM 24.138.502.

24.138.504 APPROVED CLINICAL EXAM CRITERIA FOR DENTISTS AND DENTAL HYGIENISTS (1) remains the same.

(2) Dental students who graduate during the state of emergency declared in the Governor of Montana's Executive Order 2-2020 or in the year 2021 shall be allowed to substitute a board-approved manikin-based operative exam in lieu of the patient-based examinations required in (1)(a) and (1)(b). All remaining non-patient-based requirements shall remain in effect. The exception outlined in this section shall expire ~~90 days after the Governor of the State of Montana ends the state of emergency declared in Executive Order 2-2020~~ December 31, 2021.

(3) and (3)(a) remain the same.

(b) Dental hygiene students who graduate during the state of emergency declared in the Governor of Montana's Executive Order 2-2020, or in the year 2021, shall be allowed to substitute a board-approved manikin-based examination in lieu of a patient-based clinical examination. The exception outlined in this section shall expire on December 31, 2021.

(4) through (6) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-1-131, 37-4-301, 37-4-402, MCA

REASON: The board has, in the past, made specific provisions for licensing examinations including manikin exceptions. Due to the ongoing effects of the COVID-19 pandemic, the board determined it is reasonably necessary to amend this rule to extend the dental clinical examination exceptions through 2021.

The board has received comments regarding issues with in-patient clinical examinations for dental hygienists. Based upon the comments and continued rise in infections, the board is adding (3)(b) to allow for a board-approved manikin examination for dental hygiene candidates through 2021.

24.138.505 DENTIST LICENSURE BY CREDENTIALS (1) through (1)(h) remain the same.

(i) submits a copy of a self-query of the National Practitioner Data Bank ~~and the Healthcare Integrity Data Bank; and~~

(j) submits a current CPR, ACLS, or PALS card; ~~and~~

~~(k) provides affidavits from three persons not related to the candidate regarding the applicant's good moral character.~~

(2) and (3) remain the same.

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

IMP: 37-1-131, 37-1-304, 37-4-301, MCA

REASON: Following the merger of the National Practitioner Data Bank (NPDB) and Healthcare Integrity Data Bank, the board is amending this rule to use the correct name of the combined entity.

The department has recommended all boards amend their rules to remove conflict and align with standardized department application procedures. The changes include no longer requiring affidavits to prove applicants' good moral character since they rarely yield substantive negative notations or provide information that the department cannot gain from other sources. Therefore, the board is striking the affidavit requirement for licensure by credentials.

24.138.506 DENTAL HYGIENIST LICENSURE BY CREDENTIALS

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

~~(g) affidavits from two persons not related to the candidate regarding the applicant's good moral character;~~

~~(h) (g) a copy of a self-query of the National Practitioner Data Bank and the Healthcare Integrity Data Bank; and~~

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

(2) through (4) remain the same.

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

IMP: 37-1-131, 37-1-304, MCA

REASON: See the REASON for ARM 24.138.505.

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT CERTIFICATION (1) remains the same.

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

(a) verification of successful passage of the ~~Western Regional Examining Board (WREB)~~ a board-approved local anesthetic examination within the last five years;

(b) through (d) remain the same.

(3) Application for a local anesthetic certificate by credentialing shall be made on an application provided by the board and shall include the following:

(a) verification of successful passage of the ~~WREB~~ a board-approved local anesthetic examination more than five years ago;

(b) through (f) remain the same.

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

(a) verify passage of a ~~WREB~~ board-approved local anesthetic examination;

(b) through (5) remain the same.

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

IMP: 37-1-131, 37-4-401, 37-4-402, MCA

REASON: The board determined it is reasonably necessary to amend this rule to remove explicit references to the Western Regional Examining Board and instead allow board-approved local anesthetic examinations for dental hygienist certification. The board is amending the rule due to the board's express approval of the Central Region Dental Testing Service's (CRDTS) local anesthesia examination. The change will allow the board to approve further local anesthesia examinations, if warranted, without spending additional licensee funds through rulemaking.

24.138.511 DENTURIST LICENSE REQUIREMENTS (1) through (1)(e) remain the same.

(f) a self-query of the National Practitioner Data Bank ~~and the Healthcare Integrity Data Bank~~.

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

IMP: 37-1-131, 37-29-201, 37-29-302, 37-29-303, 37-29-306, MCA

REASON: Following the merger of the National Practitioner Data Bank (NPDB) and Healthcare Integrity Data Bank, the board is amending this rule to use the correct name of the combined entity.

24.138.2104 REQUIREMENTS AND RESTRICTIONS (1) remains the same.

~~(2) For the purpose of compliance, one continuing education credit will be recognized for each 60 minutes of involvement. Credit will not be earned for time spent in introductory remarks, coffee and luncheon breaks or business meetings.~~

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

~~(5) Continuing education credits will be allowed for attendance of multiday convention type meetings per year as follows:~~

~~(a) two credits for dental hygienists;~~

~~(b) three credits for dentists; and~~

~~(c) two credits for denturists.~~

(6) and (6)(a) remain the same but are renumbered (4) and (4)(a).

~~(b) A licensee shall not accept any form of remuneration for providing volunteer dental services.~~

~~(c) All volunteer dental services performed shall be within the scope of practice of the licensee.~~

(d) remains the same but is renumbered (b).

AUTH: 37-1-319, 37-4-205, 37-4-401, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, 37-4-401, MCA

REASON: During the rule review, the board concluded it is reasonably necessary to amend this continuing education (CE) rule to remove provisions on what an hour means, multiday conventions, and volunteer dental services. The board is striking (2) to further stress that licensees are responsible to select appropriate presentations. The board is striking (5) after determining the provision is contrary to the spirit of the rule in providing credits for simply attending a convention. While recognizing that licensees may gain useful practice insights by interacting with other practitioners and presenters at convention-type meetings, the board does not believe that possibility justifies granting CE credit for mere attendance. The board is deleting the volunteer dental provisions as they are adequately addressed in statute as noted in the repeal of ARM 24.138.420.

24.138.2301 UNPROFESSIONAL CONDUCT FOR DENTISTS AND DENTAL HYGIENISTS (1) For the purposes of implementing the provisions of 37-1-316, MCA, the board further defines "unprofessional conduct" for dentists and dental hygienists as follows:

~~(a) Continuing to practice dentistry or dental hygiene when the licensee's license has been suspended, revoked, or is not currently renewed.~~

(b) through (d) remain the same.

~~(e) Extracting teeth or performing dental treatment upon the written or verbal prescription of someone other than a licensed dentist.~~

(f) through (l) remain the same but are renumbered (e) through (k).

(l) Failing to store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(m) Failing to adhere to any bloodborne pathogen regulation as outlined in Occupational Safety and Health Administration (OSHA) regulation contained in 29 CFR 1910.1030, as amended and published in the Federal Register, volume 66, on January 18, 2001 beginning at page 5325, which is hereby incorporated by reference.

(n) Failing to seek consultation with those licensees or other health care professionals who have special skills, knowledge, and experience whenever needed to safeguard the welfare of the patient.

(o) Failing to return a patient, if a specialist or consulting dentist, unless the patient expressly reveals a different preference, to the referring dentists, or if none, to the dentists of record for future care.

(p) Accepting or tendering "rebates" or "split fees," which are commissions paid to others for referral of business.

(q) Delegating to dental hygienists or dental auxiliaries any duties or responsibilities regarding patient care that cannot be delegated to dental hygienists or dental auxiliaries under 37-4-401, MCA, and board rules.

(r) Dentists shall be obliged when consulted in an emergency by patients not of record to make reasonable arrangements for emergency care. If treatment is provided, the dentist, upon completion of such treatment, is obliged to return the patient to his or her regular dentist unless the patient expressly reveals a different preference.

(s) Employing, supervising, or otherwise using more dental hygienists or dental auxiliaries than the dentist can reasonably supervise in keeping with the dentist's ethical and professional responsibilities.

(t) Failing to assure that the radiation source under the dentist's jurisdiction is used only by individuals competent to use it.

(u) Failing to safeguard the confidentiality of patient records, failing to maintain patient records in a manner consistent with the protection of the welfare of the patient, and failure to provide any information or records, upon request of the patient, that will be beneficial for the future treatment of the patient.

(v) Knowingly suppressing, omitting, or concealing any material fact or law without which an advertisement would be deceptive or misleading.

AUTH: 37-1-319, 37-4-205, 37-4-408, 75-10-1006, MCA

IMP: 37-1-316, 37-1-319, 37-4-101, 37-4-405, 37-4-408, 75-10-1006, MCA

REASON: As part of the comprehensive rule review, staff realized unprofessional conduct provisions are stated in numerous rules other than specific unprofessional conduct rules. Further, unprofessional conduct for dentists and dental hygienists are combined in a single rule. The board determined it is reasonably necessary to amend this rule and several others, adopt NEW RULE I, and repeal several rules to ensure all unprofessional conduct provisions are set forth in unprofessional conduct rules, and do so by specific license type. Acknowledging that many provisions of unprofessional conduct do overlap across license types, the board concluded that each license type has specific obligations which are better served by utilizing separate and discrete unprofessional conduct rules. Separating by license type will increase clarity by directing licensees to comprehensive licensee-specific rules.

After the adoption of MAR Notice No. 24-138-77, the board expanded its involvement with dental auxiliaries, also known as assistants. Specifically, auxiliaries may now practice certain activities under general supervision which does not require a dentist to be on-site. ARM 24.138.406 covers supervision and delegation of duties to auxiliaries; however, with the expansion of use, the board determined it is reasonably necessary to expressly clarify in (1)(q) and (s) that failure to supervise or delegating tasks to auxiliaries, in violation of board rules, is

unprofessional conduct and licensees who do so are subject to the disciplinary process.

Authority and implementation citations are being amended to accurately reflect the statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS (1) For the purposes of implementing the provisions of 37-1-316, MCA, the board further defines "unprofessional conduct" as follows:

(a) through (j) remain the same.

(k) failing to respond to correspondence from the board, or failing to comply with final orders of the board; ~~and~~

(l) making and fitting dentures over dental implants in violation of board rules;

(m) failing to store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA;

(n) failing to adhere to any bloodborne pathogen regulation as outlined in Occupational Safety and Health Administration (OSHA) regulation contained in 29 CFR 1910.1030, as amended and published in the Federal Register, volume 66, on January 18, 2001 beginning at page 5325, which is hereby incorporated by reference; and

(o) accepting or tendering "rebates" or "split fees," which are commissions paid to others for referral of business.

AUTH: 37-1-136, 37-1-319, 37-29-201, 75-10-1006, MCA

IMP: 37-1-316, 37-1-319, 37-29-402, 37-29-403, 75-10-1006, MCA

REASON: See REASON for ARM 24.138.2301. Authority and implementation citations are being amended to accurately reflect the statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.138.2402 SCREENING PANEL (1) remains the same.

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

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

IMP: 37-1-307, 37-4-201, 37-29-105, MCA

REASON: To maximize openness and enhance public protection and safety, the board determined the express prohibition of anonymous complaints in (2) is unduly restrictive. The board determined it is reasonably necessary to strike this prohibition as potentially restrictive of legitimate and verifiable complaints. The board acknowledged the potential difficulty in prosecuting such complaints without additional evidence, but after discussion, concluded that the interest of the public outweighs the potential increased compliance case load. Authority citations are amended to reflect the statutory sources of the board's rulemaking authority.

4. The proposed new rule is as follows:

NEW RULE I UNPROFESSIONAL CONDUCT FOR DENTAL HYGIENISTS

(1) For the purposes of implementing the provisions of 37-1-316, MCA, the board further defines "unprofessional conduct" for dental hygienists as follows:

(a) Continuing to practice dental hygiene when the licensee's license has been suspended, revoked, or is not currently renewed.

(b) Administering, dispensing, or prescribing approved topical agents in violation of board rules.

(c) Having been convicted of violating a federal or state statute or rule regulating the possession, distribution, or use of a controlled substance scheduled in Title 50, chapter 32, MCA.

(d) Failure to maintain an office(s) in sanitary conditions consistent with current accepted sterilization and disinfection protocols for treatment rooms or sterilization and laboratory areas, or operating under unsanitary conditions after a warning from the board.

(e) Extracting teeth or performing dental treatment upon the written or verbal prescription of someone other than a licensed dentist.

(f) Obtaining a fee or other compensation, either directly or indirectly by the representation that a manifestly incurable disease, injury, or condition of a person can be cured.

(g) Testifying in court on a contingency witness-fee basis.

(h) Failing to supervise and monitor the actions of all dental auxiliaries and dental hygienists in regard to patient care which are in the direct employ of a hygienist.

(i) Violating the regulations concerning the administration of anesthesia.

(j) Failure to respond to correspondence from the board, or to comply with final orders of the board.

(k) Representing or recording as an oral prophylaxis, coronal polishing by itself, without an appropriately licensed dentist or licensed dental hygienist inspecting for and removing any supragingival and subgingival calculus and gingival irritants deemed necessary for removal by an appropriately licensed dentist or licensed dental hygienist.

(l) Commission of an act of sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice of dental hygiene.

(m) Failing to store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(n) Failing to adhere to any bloodborne pathogen regulation as outlined in Occupational Safety and Health Administration (OSHA) regulation contained in 29 CFR 1910.1030, as amended and published in the Federal Register, volume 66, on January 18, 2001 beginning at page 5325, which is hereby incorporated by reference.

(o) Accepting or tendering "rebates" or "split fees," which are commissions paid to others for referral of business.

(p) Failing to seek consultation with those licensees or other health care professionals who have special skills, knowledge, and experience whenever needed to safeguard the welfare of the patient.

(q) Failing to safeguard the confidentiality of patient records, failing to maintain patient records in a manner consistent with the protection of the welfare of the patient, and failure to provide any information or records, upon request of the patient, that will be beneficial for the future treatment of the patient.

AUTH: 37-1-319, 37-4-205, 37-4-408, 75-10-1006, MCA

IMP: 37-1-316, 37-1-319, 37-4-405, 37-4-408, 75-10-1006, MCA

REASON: See REASON for ARM 24.138.2301.

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

24.138.404 JUSTIFIABLE CRITICISM AND EXPERT TESTIMONY

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

IMP: 37-1-131, 37-1-308, MCA

REASON: Staff discovered this rule, encouraging licensees to report criticism of other licensees, has not been altered in over a decade. This process currently exists through standard compliance procedures. Legal staff further noted that the rule limits licensees' freedom of speech under the U.S. and Montana Constitutions, and its continued use is legally questionable. The board is repealing this rule as no longer effective, confusing to licensees, and because procedures addressing the rule's intent already exist, and the rule is unnecessarily duplicative.

24.138.405 MANAGEMENT OF INFECTIOUS WASTE

AUTH: 37-1-131, 37-4-205, 37-29-201, 75-10-1006, MCA

IMP: 75-10-1006, MCA

REASON: See REASON for ARM 24.138.2301. Additionally, this rule's reference to a weblink is ineffective as links change. As a result, the board is repealing this rule and moving relevant provisions to the unprofessional conduct rules for each license type per the REASON for ARM 24.138.2301.

24.138.408 SERVICE TO THE PUBLIC AND QUALITY OF CARE

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

IMP: 37-1-131, MCA

REASON: The comprehensive review identified several rules implemented in the 1980s that are obsolete and unnecessary. As primarily an aspirational statement, this rule is likely too vague and subjective to be enforceable. The board is repealing this unnecessary rule to simplify and streamline the rules.

24.138.409 PATIENT SELECTION

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

REASON: The board determined it is reasonably necessary to repeal this rule since the unprofessional conduct provisions of 37-1-316, MCA, address this type of discrimination through relevant violations of state and federal laws and the prohibition of conduct not meeting generally accepted standards of practice.

24.138.410 PATIENT RECORDS

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

REASON: During the comprehensive rule review, the board identified several rules implemented in the 1980s that have become obsolete and unnecessary. The board is moving the provisions of (1) to the unprofessional conduct rules for each license type per the REASON for ARM 24.138.2301. The board is repealing the remaining unnecessary provisions as state and federal regulations already govern licensees' record-keeping obligations and licensees may feel an obligation to keep records longer than the minimum for statute of limitations purposes.

24.138.411 EMERGENCY SERVICE

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, MCA

REASON: During the comprehensive rule review, the board identified several rules implemented in the 1980s that have become obsolete and unnecessary. This rule contains requirements that are incumbent upon any doctor-patient relationship and stating it in rule is unnecessary. Further, the board believes all licensees will undertake their best efforts to treat emergency patients. The board is repealing this rule and relocating (2) to ARM 24.138.2301 dentist unprofessional conduct.

24.138.412 CONSULTATION AND REFERRAL

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-101, MCA

REASON: See REASON for ARM 24.138.2301. As part of their standard of care, licensees must seek consultation when practicing beyond professional limitations. Further, the applicable standard of care for licensees would generally require the actions outlined in the rule.

24.138.413 REBATE AND SPLIT FEES

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

REASON: See REASON for ARM 24.138.2301.

24.138.420 SCOPE OF TREATMENT FOR VOLUNTEER LICENSEES

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

REASON: It is reasonably necessary to repeal this rule because its provisions unnecessarily repeat statutory language in violation of 2-4-305(2), MCA.

24.138.501 APPROVED DENTAL AND DENTAL HYGIENE SCHOOLS

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-4-302, MCA

REASON: It is reasonably necessary to repeal this rule because its provisions unnecessarily repeat statutory language in violation of 2-4-305(2), MCA.

24.138.507 DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-1-304, MCA

REASON: Board staff fields a consistent number of calls from out-of-state licensees with specialty practices who are moving to Montana. This rule contemplates a type of licensure that does not exist in Montana since every dentist receives the same license with no specialty notation. The board's specialty rules in subchapter 31 require licensees to abide by certain standards pertaining to specialty advertising and announcements. Also, while the board does maintain records of specialties for licensees if submitted, there is no requirement for this reporting. Due to its confusing nature, the board is repealing this rule, so the remaining application rules more clearly set forth the appropriate application routes.

24.138.515 CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL OR REVOCATION

AUTH: 37-1-136, 37-4-402, 37-29-201, MCA
IMP: 37-1-136, 37-1-137, MCA

REASON: The board determined this rule's provisions are adequately addressed in 37-1-314, MCA, and this repeal will not significantly impact standard operations. Further, the board notes that personal interviews in (2)(f) are fraught with potential allegations of improper bias. Final orders denying, suspending, or revoking a license explicitly set forth preconditions to reconsideration of the board's decision.

24.138.519 GROUNDS FOR DENIAL OF A LICENSE

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA
IMP: 37-1-137, 37-29-201, MCA

REASON: The board is repealing this rule after determining that the provisions are adequately addressed in statute. Generally, see 37-1-131 and 37-1-316, MCA, providing grounds for denial.

24.138.3004 SEVERABILITY

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

REASON: During the rule review, staff discovered several rule provisions which seem to have been adopted to protect the validity of board rules. The board concluded it is reasonably necessary to repeal this rule since every board rule was adopted following the statutorily outlined processes of the Montana Administrative Procedure Act (MAPA). In following these statutory requirements, the board has properly implemented its regulations and should challenges arise, any judicial intervention regarding one rule would not reverberate through the rules as a whole.

24.138.3103 STANDARDS FOR MULTIPLE-SPECIALTY ANNOUNCEMENTS

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

REASON: Board staff noticed that the provisions of this rule are similar to ARM 24.138.3102, and the only difference being the notation of "multiple specialty announcements." The board is repealing this rule as it is unnecessary and confusing to repeat provisions in both rules.

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., March 26, 2021.

7. An electronic copy of this notice of public hearing is available at www.dentistry.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site 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. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.208, 24.138.402, 24.138.407, 24.138.414, 24.138.502, 24.138.503, 24.138.504, 24.138.505, 24.138.506, 24.138.508, 24.138.511, 24.138.2104, 24.138.2301, 24.138.2302, and 24.138.2402 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.138.404, 24.138.405, 24.138.408, 24.138.409, 24.138.410, 24.138.411, 24.138.412, 24.138.413, 24.138.420, 24.138.501, 24.138.507, 24.138.515, 24.138.519, 24.138.3004, and 24.138.3103 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations 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 to dlibsdden@mt.gov.

11. Kevin Bragg, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
AIMEE AMELINE, DDS
PRESIDENT

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

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 16, 2021.