

**DENTISTRY BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 37, CHAPTER 4
DENTISTRY AND DENTAL HYGIENE**

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CHAPTER 4 DENTISTRY AND DENTAL HYGIENE

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.
General provisions relating to health care practitioners, Title 37, ch. 2.
Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.
Dentistry, Title 37, ch. 29.
Validity of consent to medical treatment, Title 41, ch. 1, part 4.
Dentist to report child abuse, 41-3-201.
Duty of dentist to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Chapter Administrative Rules

Title 24, chapter 138, ARM Board of Dentistry.
ARM 24.138.2301 Unprofessional conduct.

Part 1 General

37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

- (a) "Board" means the board of dentistry provided for in 2-15-1732.
- (b) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.
- (c) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (d) "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(2) Except for the provisions of 37-4-104, a person is practicing dentistry under this chapter if the person:

- (a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to the person, any other person, or any agency;
- (b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in 37-4-104;
- (c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;
- (d) places the appliance or structure in the human mouth or attempts to adjust it;
- (e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S." or "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that the person can perform or will attempt to perform dental operations or render a diagnosis in connection with dental operations; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 363, L. 1981; amd. Sec. 1, Ch. 518, L. 1985; amd. Sec. 1, Ch. 151, L. 1997; amd. Sec. 113, Ch. 483, L. 2001; amd. Sec. 5, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (1) deleted former definition that read: "'Conscious sedation' means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia"; inserted definition of deep sedation; in definition of general anesthesia substituted current text for "means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure"; and deleted definition that read: "'General anesthetic' means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia.

(ii) The term does not include a nitrous oxide and oxygen mixture or any other anesthetic administered to produce conscious sedation". Amendment effective October 1, 2011.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 151 in (2), at beginning, inserted exception clause; in (2)(b), at end, inserted exception for personal representatives; and made minor changes in style.

1985 Amendment: Inserted (1)(c) through (1)(e) defining conscious sedation, general anesthesia, and general anesthetic; and in (2)(i) after "nature", inserted "subject to the limitations provided in 37-4-511".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (1)(b); changed internal references to the department and the board.

Chapter 363 changed "board of dentists" to "board of dentistry" in (1)(a).

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Administrative Rules

ARM 24.138.301 Definitions.

ARM 24.138.306 Teeth whitening.

Law Review Articles

Dental Malpractice: Under a Microscope, Toto, 142 Chi. Daily Bull. S14 (1996).

Products Liability Law and the Dental Profession, Harold, 43 Med. Trial Tech. Q. 117 (1996).

HIV and Dentistry, Lawyer, 29 Valparaiso U.L. Rev. 297 (1994).

A Primer on Dental Litigation, Pekarsky, 22 Trial Law. Q. 45 (1992).

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Except for the provisions in 37-4-104, appending the word "dentist" or the letters "D.D.S.", "D.M.D.", or similar letters to a person's name on a door or a sign, in a printed or published form, or in any other type of advertisement is prima facie evidence that the person is engaged in the practice of dentistry and is subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912; amd. Sec. 2, Ch. 151, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 151 at beginning inserted exception clause; after "a person's name" substituted current language regarding various advertising forms for "in any way for advertising or upon any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of the same to be done"; and made minor changes in style.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or to a dental surgeon employed by the United States government or to a legally licensed health care practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member's teaching functions. This chapter does not prevent students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of dentistry under the conditions and limitations defined by Title 37, chapter 29. The provisions of this chapter do not apply to a person engaged in the lawful practice of dentistry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(8) This chapter does not require licensure of the following individuals while engaged in the practice of dentistry, as provided in 37-4-101:

(a) students of an accredited commission on dental accreditation (CODA) dental hygiene program or school who are candidates for a dental hygiene degree and who practice dental hygiene without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of an accredited CODA dental hygiene program or school;

(b) students of an accredited CODA program or school who are candidates for a D.D.S. or D.M.D. degree and who practice dentistry without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a dentist licensed in Montana or a demonstrator or teacher who is a faculty member of a CODA dental program or school; or

(c) dental residents who have received a D.D.S. or D.M.D. degree from a CODA-accredited school and who are engaged in advanced education in dentistry at a dental school, hospital, or public health facility that offers the type of advanced program designed to meet accreditation requirements established by CODA. A dental resident may perform all clinical services within the advanced education program in which the dental resident is enrolled if the services are provided by the sponsoring institution and are authorized by the program supervisor. A dental resident who is not licensed in Montana may not engage in private practice or assess fees for clinical services rendered.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979; amd. Sec. 24, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 151, L. 1997; amd. Sec. 8, Ch. 230, L. 1999; amd. Sec. 1, Ch. 67, L. 2003; amd. Sec. 24, Ch. 126, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 126 in (2) near beginning after "physician" deleted "or surgeon" and after "dental surgeon" substituted "employed by the United States government or to a legally licensed health care practitioner" for "of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner"; in (8)(b) near middle after "supervision of" inserted "a dentist licensed in Montana or"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 67 inserted (8) exempting students of accredited commission or accredited program or school and dental residents from licensure. Amendment effective July 1, 2003.

Severability: Section 4, Ch. 67, L. 2003, was a severability clause.

Saving Clause: Section 5, Ch. 67, L. 2003, was a saving clause.

1999 Amendment: Chapter 230 inserted (6) outlining certain clinics that can enter into contracts or be employed with licensees; and inserted (7) prohibiting clinic employing or contracting with dentist from governing certain activities related to delivery of dental care or precluding or restricting dentist's independence related to certain aspects of dental care delivery. Amendment effective April 2, 1999.

1997 Amendment: Chapter 151 inserted (5) relating to contracted dental services; and made minor changes in style.

1984 Initiative Amendment: Inserted (4) referring to practice of dentistry.

Case Notes

Use of Declaratory Judgment to Settle Question of Business Association Between Dentist and Denturist Improper — Dismissal for Failure to State Claim and Exhaust Administrative Remedies: Brisendine, a licensed denturist, presented to the Board of Dentistry a proposal stating his desire to enter into a business association with a dentist regarding fees and compensation. The Board issued a letter stating that it was considering the proposal but that such association would probably constitute the illegal practice of dentistry. The Board further threatened sanctions against Brisendine if he went forward with his proposal, but no final decision was ever issued by the Board. Brisendine sought a declaratory judgment and injunctive relief in District Court, requesting a decision on whether the business association was legal. The District Court dismissed the complaint for failure to present a justiciable controversy. On appeal, the Supreme Court affirmed, holding that use of a declaratory judgment at this stage of the proceedings constituted an attempt to seek an advisory opinion and an unwarranted intrusion into the Board's regulatory authority. The Supreme Court noted that Brisendine could seek a declaratory judgment

from the Board without subjecting his license to suspension or revocation and that dismissal of the motion for declaratory judgment was proper because Brisendine had not exhausted his administrative remedies. *Brisendine v. St.*, 253 M 361, 833 P2d 1019, 49 St. Rep. 444 (1992), distinguished in *Ridley v. Guar. Nat'l Ins. Co.*, 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997).

37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative — restrictions. (1) For the purpose of selling or otherwise disposing of a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided.

(2) A personal representative may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care;

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(c) allow any person other than a dentist to supervise and control the selection, compensation, terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;

(d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist or the dentist's practice; or

(e) limit or define the scope of services offered by the dentist.

(3) For the purposes of this section:

(a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered to a patient;

(b) "disabled" has the same meaning as provided for the term "permanently and totally disabled" in 15-30-2110; and

(c) "personal representative" of the estate of a deceased dentist has the same meaning as provided for the term in 72-1-103.

(4) The 12-month period provided for in subsection (1) begins when:

(a) the personal representative of the estate of a deceased dentist files a verified copy of the death certificate of the deceased with the department; or

(b) the personal representative of the disabled dentist files a verified copy of a document signed by a licensed physician that attests to the dentist's disability.

History: En. Sec. 5, Ch. 151, L. 1997.

Compiler's Comments

Applicability: Section 7, Ch. 151, L. 1997, provided: "[Section 5] [37-4-104] applies to the sale or disposal of a dental practice managed, owned, operated, or otherwise conducted by the personal representative of a dentist whose death or disability occurs on or after [the effective date of this act]." Effective October 1, 1997.

Part 2 Board of Dentistry

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies and hearings officer to issue subpoenas, 2-4-104, 2-4-611.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.
Board established, 2-15-1732.
Preservation of records, Title 22, ch. 3, part 2.
Subpoenas, Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to keep records and provide facilities, 37-1-101.
Licensing investigation and review — record access, 37-1-135.
Disrupting meeting as disorderly conduct, 45-8-101.

Part Administrative Rules

Title 24, chapter 138, subchapter 1, ARM Organizational rule.
Title 24, chapter 138, subchapter 2, ARM Procedural rules.
Title 24, chapter 138, subchapter 5, ARM Licensing.

37-4-201. Official seal — organization — subpoena power — screening panel. (1) (a) The board shall adopt an official seal of its own design and shall employ the seal to authenticate the board's acts and records.

(b) The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board.

(c) Any member of the board may administer oaths and affirmations, and the board may hear testimony and subpoena witnesses with respect to matters relating to the duties imposed upon the board by law.

(2) The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-4-311.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903; amd. Sec. 2, Ch. 60, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 60 inserted (2) requiring the board to establish a screening panel for disciplinary matters and authorize the screening panel to oversee any rehabilitation program; and made minor changes in style. Amendment effective October 1, 2005.

Cross-References

Oaths, Title 1, ch. 6.

37-4-202. Meetings — notice — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Board proceedings are open to public inspection unless a privacy issue is involved.

(4) Money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of money received and disbursements made by the department.

History: (1), (3) thru (5) En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2) En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 524, L. 1987; amd. Sec. 15, Ch. 481, L. 1997; amd. Sec. 14, Ch. 492, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 492 in (3) substituted text regarding open board meetings for former text that read: "Six members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest." Amendment effective October 1, 2001.

1997 Amendment: Chapter 481 at beginning of (3) increased number of members from five to six; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1987 Amendment: In (3) increased quorum requirement from four to five members.

Preamble: The preamble to Ch. 524, L. 1987, provided: "WHEREAS, Montana Initiative No. 97 created the Board of Dentistry; and

WHEREAS, Chapter 548, Laws of 1985, required the Legislative Audit Committee to conduct a review of the Board of Dentistry and to propose a bill to the 50th Legislature merging the Board of Dentistry and the Board of Dentistry if the Board of Dentistry has not licensed 30 denturists; and

WHEREAS, the Legislative Audit Committee has determined that the Board of Dentistry has not licensed 30 denturists."

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

37-4-203. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3); amd. Sec. 5, Ch. 363, L. 1981; amd. Sec. 8, Ch. 474, L. 1981.

37-4-204. Affiliation with national association authorized — delegates. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send delegates to the meetings of the association.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920; amd. Sec. 6, Ch. 363, L. 1981; amd. Sec. 9, Ch. 474, L. 1981; amd. Sec. 1, Ch. 349, L. 1983.

Compiler's Comments

1983 Amendment: Substituted "delegates" for "delegate".

1981 Amendments: Chapter 363 deleted former subsection (3) relating to railroad fares; and made minor changes in phraseology and punctuation.

Chapter 474 deleted subsections (1) through (3) relating to delegate reimbursement.

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

37-4-205. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act. Rules adopted under this section may include but are not limited to the following subjects:

(1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

(2) advertising by a licensed dentist including:

(a) the use of false, deceptive, or misleading advertising;

(b) the use of information concerning fees, areas of practice, specialization, personal background, and quality of service in advertising; and

(c) the use of warnings and disclaimers in advertising.

History: En. Sec. 2, Ch. 349, L. 1983; amd. Sec. 3, Ch. 518, L. 1985.

Compiler's Comments

1985 Amendment: After first sentence inserted remainder of section providing that rules may include the subjects of administration of anesthetics and advertising.

1985 Statement of Intent: The statement of intent attached to Ch. 518, L. 1985, provided: "A statement of intent is required for this bill because it contains a delegation of authority to allow the board of dentistry to adopt rules to regulate dental advertising and dental procedures involving the administration of anesthetics.

The legislature finds that no person who engages in the practice of dentistry or oral surgery should perform a dental or surgical procedure upon another person if a general anesthetic or general anesthesia is administered unless there is another qualified health professional available to monitor the

patient. The legislature intends that any rule regulating dental anesthetics adopted by the board should be consistent with this finding.

The legislature intends that the board impose additional, necessary requirements for the training and skill of individuals who administer and monitor general anesthesia, deep conscious sedation, or any anesthetic agent used in pain control. In preparing its rules, the board should be guided by the principles stated in the "American academy of oral and maxillofacial surgeons' Model State Rules for General Anesthesia" and any other guide pertinent to the subject.

The examination and qualification of monitoring assistants under section 2(3) [37-4-511(3)] should require a level of proficiency higher than that required for basic life support but need not encompass all the requirements for advanced cardiac life support certification.

The legislature also intends that the board adopt rules for approving dental practice facilities in which general anesthesia is induced. The board may also adopt rules for approving dental practice facilities in which conscious sedation or nitrous oxide analgesia is used. In formulating any such rules, the board may look to similar rules developed by dental boards in California, Arizona, Texas, and other states. The board may appoint teams to inspect dental practice facilities. Initially these teams may include a majority of anesthesiologists. When a sufficient number of approved facilities exists, oral surgeons may constitute a majority of each inspection team. Rules for approving facilities should also establish the duration of permits, provide for periodic reinspection, and establish application and inspection fees. Compensation should be provided for service on inspection teams.

The board may delegate authority to examine monitoring assistants to inspection teams and may authorize such teams to adapt the practical aspect of examinations to the equipment in a particular facility.

Lastly, it is contemplated that the board will develop and implement appropriate rules regulating advertising practices by licensed dentists. The scope of such rules should extend to the content and purpose of such advertising as indicated in section 3 [37-4-205]. Such rules should have as a purpose the protection of the public from unprofessional advertising and the maintenance of professional standards in advertising by persons engaged in the practice of dentistry."

1983 Statement of Intent: The statement of intent attached to Ch. 349, L. 1983, provided in part: "A Statement of Intent is required because Section 2 [37-4-205] delegates to the Board of Dentistry power to make rules for the implementation, continuation, and enforcement of all sections within Title 37, chapter 4. This provision is intended as a backup to the various provisions giving the Board rulemaking authority over portions of the chapter as are found in 37-4-301 (examination criteria for dental license), 37-4-307 (dentist license fees), 37-4-321 [now repealed] (defining unprofessional conduct), 37-4-402 (examination criteria for dental hygienist license), 37-4-406 (hygienist license fees), and 37-4-408 (scope of duties of dental assistants). This is consistent with authority delegated to most other professional licensing boards. Section 2 grants the Board the authority to interpret or implement other parts of the chapter that are not covered by existing delegation. The Board shall be bound by statements of intent adopted in 1979 for these other sections and may not use Section 2 for rulemaking authority when a more specific delegation suffices."

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Administrative Rules

Title 24, chapter 138, ARM Board of Dentistry.

Part 3 Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Department to administer and grade examinations, 37-1-101.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-4-301. Qualifications — fees. Applicants for licensure shall submit an application that must include, when required:

- (1) certification of successful completion of the national board examination;
- (2) certification of successful completion of a regional board examination;
- (3) three affidavits of good moral character;
- (4) a certificate of graduation from a board-approved dental school; and
- (5) an application fee.

History: En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979; amd. Sec. 3, Ch. 349, L. 1983; amd. Sec. 1, Ch. 62, L. 1987; amd. Sec. 12, Ch. 224, L. 2003; amd. Sec. 32, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) through (3) that read: "(1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination must consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board, which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of a written and practical examination must be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. The examination must include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures"; in (1) after "board" deleted "written"; in (2) after "board" deleted "practical"; deleted former (4)(e) that read: "(e) an examination fee commensurate with costs and set by the board"; in (5) after "fee" deleted "commensurate with costs and set by the board"; deleted former (4)(g) and (4)(h) that read: "(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant"; deleted former (5) through (7) that read: "(5) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.

(6) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(7) The board is authorized to adopt necessary and reasonable rules governing application procedures"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 in (4)(f) substituted "an application fee" for "a licensure fee"; deleted former (5) that read: "(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1987 Amendment: In (1) inserted language in third sentence that changes oral interview from mandatory to discretionary; and at end of fourth sentence inserted "to be administered at times and places approved by the board".

1983 Amendment: In (2) added "periodontics" to exam subjects; inserted (4)(h) referring to copies of other state licenses; in (6) inserted "and passed"; and deleted (9), which read: "The board may in its discretion permit a dental student who has successfully completed his junior year in a recognized dental school and who files proof satisfactory to the board that he has the preliminary education described in this section to take a written examination in the subjects he has completed. Satisfactory grades secured shall be credited on the final examination of the student. The board shall require a fee commensurate with costs and set by the board for this examination, which shall apply on the final examination taken by the applicant."

Statement of Intent: The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, \$20 to \$25 for dentists and \$10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

Administrative Rules

ARM 24.138.402 Fee schedule.

ARM 24.138.502 Initial licensure of dentists by examination.

ARM 24.138.505 Dentist licensure by credentials.

37-4-302. Recognition of dental schools and dental hygiene schools. In determining what constitutes a recognized dental college, the board shall be guided by the standards, canons, and practices required for recognition by the commission on dental accreditation. In determining what constitutes a recognized dental hygiene school, the board shall recognize only those dental hygiene schools accredited by the commission on dental accreditation or its successor as designated by the United States department of education or the council on post-secondary accreditation, or both.

History: En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924; amd. Sec. 1, Ch. 66, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of first sentence, after "college", deleted "or school and/or a recognized school of dental hygiene" and at end substituted "commission on dental accreditation" for "council on dental education of the American dental association" and inserted second sentence setting criteria for recognition of dental hygiene schools. Amendment effective July 1, 1991.

Administrative Rules

ARM 24.138.501 Approved dental and dental hygiene schools.

37-4-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1); amd. Sec. 1, Ch. 66, L. 1981; amd. Sec. 4, Ch. 345, L. 1981.

37-4-304. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.

37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2); amd. Sec. 5, Ch. 345, L. 1981.

37-4-307. Notice of name and address change — local fees prohibited. (1) Each dentist shall give the board notice of any change in name, address, or status within 10 days of the change.

(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979; amd. Sec. 6, Ch. 345, L. 1981; amd. Sec. 7, Ch. 363, L. 1981; amd. Sec. 4, Ch. 349, L. 1983; amd. Sec. 28, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 1997; amd. Sec. 9, Ch. 230, L. 1999; amd. Sec. 9, Ch. 271, L. 2003; amd. Sec. 33, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) through (3) that read: "(1) Each licensed dentist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the renewal fee is not paid in a timely manner.

(3) (a) Except as provided in 37-1-138, in case of default in payment of the renewal fee by a licensee, the license must be forfeited by the licensee. The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for forfeiture, the license may not be forfeited.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each renewal period that they were unpaid, plus a late penalty fee for each renewal period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence"; in (1) near end after "within" substituted "10" for "30"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 in (3)(a) at beginning inserted "Except as provided in 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1999 Amendment: Chapter 230 at end of first sentence in (3)(a) substituted "forfeited by the licensee" for "revoked by the board"; in second and third sentences in (3)(a), in (3)(b), and in (3)(c)

substituted "forfeiture" for "revocation"; in (3)(b) and (3)(c) substituted "forfeited" for "revoked"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 492 in (1), in first sentence after "shall pay", deleted "each year"; in (2), in first sentence near beginning and in second sentence, before "renewal fee", deleted "annual" and in first sentence, after "fee must be made", deleted "each year" and inserted "license expiration"; in (3)(a), before "renewal fee", deleted "annual"; in (3)(c)(i), in two places, substituted "renewal period" for "year"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 in (2), in first sentence, substituted "made each year on or before the date set by department rule" for "made prior to March 1 of each year" and in second sentence, after "required", inserted "by the department" and at end substituted "not timely paid" for "not paid before March 1"; deleted former (3) and (4) that read: "(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dentistry because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text that read: "(1) A licensed dentist practicing within this state shall annually pay to the department before March 1, as a renewal fee for the year, a sum set by the board. Notice of the change in the amount of renewal fees shall be given to each dentist registered in this state by the department.

(2) If a registered dentist absents himself from the state for a period of 1 or more years or does not engage in active practice within this state, he may continue his license in good standing by a payment set by the board each year or at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(3) In case of default in payment of the annual renewal fee by a dentist, his license shall be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the renewal fee plus a late payment penalty prescribed by the board before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect renewal fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(4) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state."

1983 Statement of Intent: The statement of intent attached to Ch. 349, L. 1983, provided in part: "Sections 4 and 8 [amending 37-4-307 and 37-4-406] give the Board the authority to adopt rules imposing a demonstration of continued competency for license renewal. The Board is not required to adopt such rules. It is contemplated that a study will be conducted to review other existing program designs in determining a viable means of demonstrating continued competency."

1981 Amendments: Chapter 345 deleted "and not to exceed \$50" at end of first sentence in (1). Chapters 345 and 363 deleted "The board may increase or decrease the annual renewal fee to maintain in the earmarked revenue fund at all times an amount, to be known as the emergency fund, to be used for the purpose of administering, policing, and enforcing this chapter. The emergency fund shall be maintained at an approximate level of \$2,500" after "a sum set by the board" in (1); Ch. 345 deleted ", not to exceed \$25," after "a payment set by the board each year" in (2); substituted "a fee prescribed by the board" for "a fee of \$25" in (2); and substituted "penalty prescribed by the board" for "penalty of \$10" in the middle of (3).

Fees Prescribed by Board — 1981 Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

1979 Statement of Intent: The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, \$20 to \$25 for dentists and \$10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

Administrative Rules

ARM 24.138.403 Mandatory CPR certification.

ARM 24.138.514 Application to convert inactive status license to active status license.

Attorney General's Opinions

Self-Government Powers — Professional Licensing — Conflict With State Statutes: The city of Helena, operating under a home rule charter, passed an ordinance requiring a license fee of all city

businesses. State statutes that prohibit municipalities from imposing license fees on certain professions did not apply because the statutes were not (prior to the 1983 amendment of 37-4-307) made specifically applicable to self-government units. Home rule governments have all powers not specifically denied by the Montana Constitution, law, or charter. 39 A.G. Op. 60 (1982).

37-4-308 through 37-4-310 reserved.

37-4-311. Rehabilitation. The board shall establish a rehabilitation or medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

History: En. Sec. 1, Ch. 358, L. 1997; amd. Sec. 13, Ch. 224, L. 2003; amd. Sec. 6, Ch. 122, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 122 substituted "rehabilitation or medical assistance program to assist and rehabilitate licensees" for "protocol for the referral to a board-approved rehabilitation program for licensees"; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 224 near middle substituted "licensees subject to the jurisdiction of the board" for "licensed dentists". Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

37-4-312. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensee, professional standards review organization, the Montana dental association or any component society of the association, and any other person may report to the board any information that the licensee, organization, association, society, or person has that appears to show that a licensee is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program endorsed by the board under 37-4-311 in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that the program personnel recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

History: En. Sec. 2, Ch. 358, L. 1997; amd. Sec. 14, Ch. 224, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 224 in three places in (1) substituted "licensee" for "licensed dentist" or "dentist"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

Administrative Rules

ARM 24.138.2719 Relapse.

37-4-313. Compelling licensee evaluation. The board has the right to compel an evaluation of a licensee, after notice to the licensee and a hearing if requested by the licensee, based on information reported pursuant to 37-4-312. The evaluation must be conducted at a facility authorized to conduct evaluations under a program referred to in 37-4-311.

History: En. Sec. 3, Ch. 358, L. 1997.

37-4-314. Immunity of person providing information. A person, organization, association, society, or health care facility that in good faith provides information to the state board of dentistry pursuant to 37-4-312 is not subject to suit for civil damages as a result of providing the information.

History: En. Sec. 4, Ch. 358, L. 1997.

37-4-315 through 37-4-320 reserved.

37-4-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979; amd. Sec. 8, Ch. 363, L. 1981; amd. Sec. 2, Ch. 62, L. 1987; amd. Sec. 44, Ch. 83, L. 1989.

37-4-322. When publishing professional cards not unprofessional conduct. (1) It is not considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated in this section, a card bearing the dentist's name only, together with the dentist's degree or the word "dentist" and giving office location, hours, and telephone numbers. If the dentist limits the dentist's practice to a specialty, the dentist may announce it or the dentist may announce an absence from or a return to practice in the same manner.

(2) A dentist may publish a list of fees, but the listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979; amd. Sec. 1362, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

Title 24, chapter 138, subchapter 30, ARM Interpretive rules for advertising.

37-4-323. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.

37-4-324. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.

37-4-325. Witness fees and mileage. (1) Each witness who appears by order of the board or any member of the board is entitled to receive, if demanded, for attendance the same fees and mileage allowed by law to a witness in civil cases in the district court. The amount must be paid by the party at whose request the witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, the witness's fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which the witness is entitled for travel to and from the place at which the witness is required to appear and 1 day's attendance. If the witness demands the fees at the time of service and they are not at that time paid or tendered, the witness may not be required to attend before the board, a member of the board, or a referee as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M. 1947, 66-915; amd. Sec. 1363, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Cross-References

Mileage allowed witnesses, 2-18-503, 2-18-504.

Witness fees, Title 26, ch. 2, part 5.

37-4-326. Acts constituting misdemeanors. A person, company, or association is guilty of a misdemeanor and upon conviction shall be punished with a fine of not less than \$50 or more than \$200 or by imprisonment for not more than 6 months in the county jail or both if the person, company, or association:

(1) sells, barter, or offers to sell or barter a diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchases or procures by barter a diploma, certificate, or transcript with the intent of using the diploma, certificate, or transcript as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating dental practice;

(3) with fraudulent intent, alter in a material regard a diploma, certificate, or transcript;

(4) use or attempt to use a diploma, certificate, or transcript that has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in the office the required certificate for the current period of licensed practice; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to the board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of the person, company, or association at any time within 60 days prior to the notice, together with a sworn statement showing under and by what license or authority the person, company, or association and the employee are and have been practicing dentistry, but the affidavit may not be used as evidence against the person, company, or association in any proceeding under this section.

History: En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918; amd. Sec. 7, Ch. 492, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 492 in (7), after "office the required", deleted "annual registration" and near end, after "for the current", substituted "period of licensed practice" for "year"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed

practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

Cross-References

Willfully defined, 1-1-204.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-4-327. Practicing dentistry without license — penalty. (1) Except as provided in 37-4-101 through 37-4-104 and this section, a person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a license to practice dentistry from the department entitling the person to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury in excess of the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter must be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 557, L. 1987; amd. Sec. 4, Ch. 151, L. 1997; amd. Sec. 25, Ch. 126, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 126 in (1) near middle after "secured a" substituted "license" for "certificate". Amendment effective July 1, 2005.

1997 Amendment: Chapter 151 in (1), at beginning, inserted exception clause; and made minor changes in style.

1987 Amendment: Near beginning of (2), after "chapter", inserted "except those paid to a justice's court".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justices' courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Criminal jurisdiction of Justices' Courts, 3-10-303.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Affidavits, Title 26, ch. 1, part 10.

Injunctions, Title 27, ch. 19.

Disciplinary authority of boards — injunctions, 37-1-136.

Case Notes

Board of Dentistry Not Immune When Seeking Injunctive Relief in District Court: The Board of Dentistry alleged that Kandarian, a denturist, was practicing dentistry without a license and sought an injunction in District Court. The lower court dismissed the injunction action against Kandarian but also dismissed his counterclaim against the Board on the basis that the Board enjoyed quasi-judicial immunity with respect to its actions. The Supreme Court reversed the lower court, holding that the Board did not have immunity for its actions when it sought injunctive relief in District Court. *St. v. Kandarian*, 248 M 444, 813 P2d 409, 48 St. Rep. 504 (1991). On remand, the District Court did not err in summarily dismissing Kandarian's claims of invasion of privacy, wrongful litigation, intentional interference with business, slander and libel, outrage, intentional infliction of emotional distress, and negligence. *St. v. Kandarian*, 268 M 408, 886 P2d 954, 51 St. Rep. 1381 (1994).

37-4-329 through 37-4-339 reserved.

37-4-340. Volunteer work — licensure — fee waiver — rules. (1) A retired or nonpracticing dentist or dental hygienist may apply for a license to practice dentistry or dental hygiene for the purpose of providing services to indigent or uninsured patients in underserved or critical need areas. An applicant for licensure under this subsection (1) may be required by the board to establish that the applicant is competent to practice before the board grants the applicant a license.

(2) It is not within the scope of a license issued to a dentist or dental hygienist under this section to provide services for remuneration.

(3) If a person is eligible for licensure under the provisions of subsection (1) and the person applies for a license prior to July 1, 2004, the person's renewal fees and late fees accrued since the person's license lapsed are waived. The board may adopt rules providing that renewal fees and late fees or a portion of those fees may be waived for eligible persons applying for licensure under this section after July 1, 2004.

(4) The board may adopt rules setting forth licensing requirements, fees, and other rules necessary to implement any other provisions of this section.

History: En. Sec. 2, Ch. 67, L. 2003.

Compiler's Comments

Severability: Section 4, Ch. 67, L. 2003, was a severability clause.

Saving Clause: Section 5, Ch. 67, L. 2003, was a saving clause.

Effective Date: Section 6, Ch. 67, L. 2003, provided: "[This act] is effective July 1, 2003."

37-4-341. Licensure of out-of-state volunteer dentists and dental hygienists without examination. (1) The board may issue a restricted temporary license to a nonresident dentist or dental hygienist, without examination, to practice in a clinic listed in 37-4-103(6) if the applicant:

(a) has graduated from a dental or dental hygiene program or school accredited by the commission on dental accreditation;

(b) is currently licensed in another state as an actively practicing dentist or dental hygienist; and

(c) is in good standing and does not have a disciplinary action pending in the other state.

(2) A dentist or dental hygienist holding a restricted temporary license under this section:

(a) may not receive monetary or other compensation for providing services; and

(b) may serve only those persons served by the clinics listed in 37-4-103(6).

(3) An application for a restricted temporary license must be submitted on a form approved by the board.

(4) The board shall issue a restricted temporary license within 45 calendar days of receipt of a completed application that demonstrates that the applicant meets the requirements of this section. A restricted temporary license may be renewed annually.

(5) A restricted temporary license is not intended as a means to allow an applicant to practice in this state before a permanent license is granted or as a means to obtain a permanent license when the applicant does not otherwise meet the requirements for permanent licensure.

(6) The board may adopt rules to implement this section, including but not limited to rules to:

(a) establish the scope of practice for a dentist or dental hygienist practicing with a restricted temporary license;

(b) establish a limitation on the number of days a dentist or dental hygienist may practice with a restricted temporary license during any 12-month period; and

(c) set fees for issuance of the restricted temporary license that must be commensurate with costs.

History: En. Sec. 1, Ch. 315, L. 2009; amd. Sec. 4, Ch. 195, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 195 in (4) in first sentence substituted "45 calendar days" for "60 days" and in second sentence substituted "restricted temporary license" for "temporary restricted license"; in (6)(a) and (6)(b) inserted "restricted" before "temporary license"; in (6)(c) substituted "restricted temporary license" for "license"; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2009.

Administrative Rules

ARM 24.138.601 Restricted temporary licensure of nonresident volunteer dentists and dental hygienists.

ARM 24.138.603 Scope of treatment for temporary volunteer license.

Part 4 Dental Hygienists and Auxiliary Personnel

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Exemptions from physician's licensing requirements, 37-3-103.

Practice of healing arts not practice of medicine, 37-3-103(1)(n).

Limitations on administration of general anesthetics, 37-4-511.

Part Administrative Rules

ARM 24.138.407 Functions for dental hygienists.

ARM 24.138.503 Initial licensure of dental hygienists by examination.

ARM 24.138.508 Dental hygiene local anesthetic agent certification.

37-4-401. Practice of dental hygiene — rulemaking. (1) (a) The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board defines and authorizes through rule, and that may be performed under general supervision of a licensed dentist.

(b) The practice of dental hygiene also includes and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents under the general supervision and authorization of a licensed dentist.

(c) (i) The practice of dental hygiene also includes prescriptive authority limited to fluoride agents, topical oral anesthetic agents, and nonsystemic oral antimicrobials that:

(A) are not controlled substances; and

(B) do not require a license by the federal drug enforcement agency.

(ii) Prescriptive authority under this section must be:

(A) done under the general supervision of a licensed dentist or by a dental hygienist practicing with a limited access permit under public health supervision;

(B) pursuant to rules adopted by the board; and

(C) in compliance with applicable laws concerning prescription packaging, labeling, and recordkeeping requirements.

(iii) The board shall determine by rule the education and competency requirements required for dental hygiene prescriptive authority.

(iv) The board shall determine by rule the percentage of fluoride, chlorhexidine gluconate, or any other active ingredients in any medication that may be prescribed by a dental hygienist under this section.

(2) Subsection (1) does not allow the board or a licensed dentist to delegate any of the following duties:

(a) diagnosis, treatment planning, and prescription other than prescriptions authorized under subsection (1)(c);

(b) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;

(c) restorative, prosthetic, orthodontic, and other procedures that require the knowledge and skill of a dentist;

(d) prescription for drugs or medications, other than those listed under subsection (1)(c); or

(e) work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part); amd. Sec. 5, Ch. 349, L. 1983; amd. Sec. 1, Ch. 449, L. 1985; amd. Sec. 2, Ch. 66, L. 1991; amd. Sec. 1, Ch. 288, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 288 in (1)(a) substituted "as the board defines and authorizes through rule" for "as the board in writing defines and authorizes"; in (1)(b) near end substituted "agents under the general supervision" for "agents only under the direct supervision"; inserted (1)(c) providing for limited prescriptive authority and rulemaking; in (2) at beginning substituted "Subsection (1)" for "However, this section"; in (2)(a) inserted "other than prescriptions authorized under subsection (1)(c)"; in (2)(d) inserted "other than those listed under subsection (1)(c)"; and made minor changes in style. Amendment effective May 4, 2017.

1991 Amendment: At end of first sentence inserted "and that may be performed under general supervision of a licensed dentist" and in second sentence, after "the agents", inserted "only"; and made minor change in style. Amendment effective July 1, 1991.

1985 Amendment: In opening paragraph inserted second sentence relating to administering local anesthetic.

Statement of Intent: The statement of intent attached to Ch. 449, L. 1985, provided: "The legislature believes that a statement of intent is necessary because this bill authorizes the board of

dentistry to make rules to implement the provisions permitting a licensed dental hygienist to administer local anesthetic agents under the direct supervision and authorization of a licensed dentist. The legislature intends that, as a prerequisite to issuance of a certificate to administer local anesthetic agents to a dental hygienist, the board, in addition to other criteria prescribed by 37-4-402, shall determine that the applicant is qualified to administer local anesthetic agents and holds a currently valid certificate to perform cardiopulmonary resuscitation from an agency recognized as qualified to make such certification. The board's rules for license renewal pursuant to 37-4-406 shall also recognize these criteria."

1983 Amendment: In opening paragraph, substituted "services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are" for "the doing by one person for a direct or indirect consideration, with respect to the teeth of another person, an act or service" and inserted "procedures" after "preventive"; and in (2) inserted "other than root planing and subgingival curettage".

Administrative Rules

ARM 24.138.407 Functions for dental hygienists.

ARM 24.138.3219 Permit required for administration of anesthesia.

ARM 24.138.3221 Minimum qualifying standards.

37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided by rules adopted under 37-1-319, a person may not engage in the practice of dental hygiene or practice as a dental hygienist in this state until the person has passed an examination approved by the board under rules adopted by the board and has been issued a license by the department.

(3) An applicant for licensure shall submit an application that must include, when required:

- (a) certification of successful completion of the national board written examination;
- (b) certification of successful completion of a regional board practical examination;
- (c) two affidavits of good moral character;
- (d) a certificate of graduation from a board-approved dental hygiene school; and
- (e) an application fee.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part), 66-923(3); amd. Sec. 4, Ch. 337, L. 1979; amd. Sec. 6, Ch. 349, L. 1983; amd. Sec. 2, Ch. 449, L. 1985; amd. Sec. 29, Ch. 429, L. 1995; amd. Sec. 15, Ch. 224, L. 2003; amd. Sec. 34, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (2) near end after "rules" substituted "adopted by the board" for "it considers proper"; deleted former (3) and (4) that read: "(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination must consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing examination procedures"; deleted former (5)(e) that read: "(e) an examination fee commensurate with costs and set by the board"; in (3)(e) after "fee" deleted "commensurate with costs and set by the board"; deleted former (5)(g) and (5)(h) that read: "(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant"; deleted former (6) through (8) that read: "(6) Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass the first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 224 in (5)(f) substituted "an application fee" for "a licensure fee"; deleted former first sentence in (6) that read: "Applications must be submitted no less than 20 days prior to the jurisprudence examination"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1995 Amendment: Chapter 429 in (2) substituted "provided by rules adopted under 37-1-319" for "provided in 37-4-404"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: In (3) in second sentence, after "written part", inserted "and" and after "clinical part", deleted "and an oral interview with the board which may include questions pertaining to the practice of dental hygiene"; in (6) in first sentence, before "jurisprudence examination", deleted "board interview and" and in second sentence, after "jurisprudence examination", deleted "or the oral interview".

1985 Statement of Intent: See compiler's comment under 37-4-401 concerning Ch. 449, L. 1985.

1983 Amendment: Inserted (5)(h) referring to copies of other state licenses; and in (6), inserted second sentence referring to jurisprudence examination.

1979 Statement of Intent: The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, \$20 to \$25 for dentists and \$10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

Administrative Rules

ARM 24.138.503 Initial licensure of dental hygienists by examination.

ARM 24.138.506 Dental hygienist licensure by credentials.

ARM 24.138.509 Dental hygiene limited access permit.

37-4-403. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5); amd. Sec. 7, Ch. 345, L. 1981.

37-4-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4); amd. Sec. 8, Ch. 345, L. 1981; amd. Sec. 7, Ch. 349, L. 1983; amd. Sec. 3, Ch. 66, L. 1991.

37-4-405. Dental hygienist to practice under supervision of licensed dentist — exceptions — definitions. (1) A licensed dental hygienist may:

(a) with the permission of the supervising dentist, practice in the office of a licensed and actively practicing dentist under the general supervision of a licensed dentist; or

(b) provide dental hygiene preventative services in a public health facility under the general supervision of a licensed dentist or, subject to the provisions of subsection (4), under public health supervision.

(2) A dental hygienist may give instruction in oral hygiene without the direct supervision or general supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

(3) For the purposes of this section, the following definitions apply:

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

(c) "public health facility" means:

(i) federally qualified health centers; federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b; nursing homes; extended care facilities; home health agencies; group homes for the elderly, disabled, and youth; head start programs; migrant worker facilities; local public health clinics and facilities; public institutions under the department of public health and human services; and mobile public health clinics; and

(ii) other public health facilities and programs identified by the board under subsection (6); and

(d) "public health supervision" means the provision of limited dental hygiene preventative services without the prior authorization or presence of a licensed dentist in a public health facility.

(4) (a) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services that include removal of deposits and stains from the surfaces of teeth, the application of topical fluoride, polishing restorations, root planing, placing of sealants, oral cancer screening, exposing radiographs, charting of services provided, and prescriptive authority as allowed under 37-4-401(1)(c).

(b) A licensed dental hygienist practicing under public health supervision may not provide dental hygiene preventative services that include local anesthesia, denture soft lines, temporary restorations, or any other service prohibited under 37-4-401.

(c) A licensed dental hygienist practicing under public health supervision shall provide:

(i) for the referral to a licensed dentist of any patient needing treatment outside the scope of practice authorized for a licensed dental hygienist under this subsection (4); and

(ii) treatment based upon medical and dental health guidelines adopted by rule by the board.

(5) (a) A dental hygienist practicing under public health supervision shall obtain a limited access permit from the board.

(b) The board shall adopt rules:

(i) defining the qualifications necessary to obtain a limited access permit; and

(ii) providing a process for obtaining a limited access permit.

(c) The provision of services under a limited access permit is limited to patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care.

(6) The board may identify, by rule, other public health facilities and programs, in addition to those listed in subsection (3)(c), at which services under a limited access permit may be provided.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979; amd. Sec. 9, Ch. 363, L. 1981; amd. Sec. 4, Ch. 66, L. 1991; amd. Sec. 1, Ch. 172, L. 2003; amd. Sec. 2, Ch. 288, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 288 in (3)(b) near beginning after "means treatment" deleted "except the administration of local anesthesia"; in (4)(a) at end inserted "and prescriptive authority as allowed under 37-4-401(1)(c)"; and made minor changes in style. Amendment effective May 4, 2017.

2003 Amendment: Chapter 172 in middle of (1)(a) after "dentist" deleted "in a public or private institution, under a board of health, or in a public clinic authorized by the board"; inserted (1)(b) allowing dental hygienist to provide preventative services in public health facility under supervision of licensed dentist or under public health supervision; in (2) near middle before "supervision" inserted "direct supervision or general"; in (3) substituted "the following definitions apply" for "'supervision' is defined as follows" and inserted definitions of public health facility and public health supervision; inserted (4) providing criteria for when licensed dental hygienist may provide preventative services under public health supervision; inserted (5) requiring dental hygienist practicing under public health supervision to obtain limited access permit from board, requiring board to adopt rules, and limiting services provided under limited access permit to patients or residents of facilities or programs who are unable to receive regular dental care due to age, infirmity, disability, or financial constraints; inserted (6) allowing board to identify by rule additional public health facilities and programs where limited access permit services may be provided; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Near beginning of (1), after "hygienist", inserted "with the permission of the supervising dentist", near middle substituted "under the general supervision" for "but may not practice except under the direct personal supervision", and at end deleted "authorized by the board"; deleted former first sentence of (2) that read: "The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care facility, or a school or public health program after a review of a request for such service and a description of the type of supervision necessary is made by the board"; in (2)(a) substituted definition of direct supervision for former definition that read: "the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment"; in (2)(b) substituted definition of general supervision for former definition that read: "those tasks and procedures that do not require the presence of a dentist on the premises but shall remain under the dentist's directive order, control, responsibility, and evaluation"; deleted former (3) that read: "(3) Notwithstanding any other provisions of this section, a dental hygienist may continue performing tasks and procedures requiring direct supervision if:

(a) the supervising dentist required to be on the premises has been called out of the office briefly for an emergency; and

(b) both the hygienist and the patient consent"; and made minor changes in style. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 66, L. 1991, provided: "The intent of the amendments to 37-4-404(2) [now repealed] is to permit the board of dentistry to establish, within the parameters set by statute, the number of practice hours required for licensure of dental hygienists by credentials.

The intent of the amendments to 37-4-405(1) is to ensure that, except for the administration of local anesthesia, it is up to the discretion of the supervising dentist and not the board to determine if a dental hygienist is to perform the duties referred to in Title 37, chapter 4, under general or direct supervision."

1981 Amendment: Added subsection (3) stating circumstances under which dental hygienist may practice without direct supervision those tasks and procedures that normally require supervision.

Administrative Rules

ARM 24.138.407 Functions for dental hygienists.

37-4-406. Notice of name and address change — local fees prohibited. (1) Each dental hygienist shall give the board notice of any change in name, address, or status within 10 days of the change.

(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979; amd. Sec. 9, Ch. 345, L. 1981; amd. Sec. 8, Ch. 349, L. 1983;

amd. Sec. 30, Ch. 429, L. 1995; amd. Sec. 8, Ch. 492, L. 1997; amd. Sec. 10, Ch. 230, L. 1999; amd. Sec. 10, Ch. 271, L. 2003; amd. Sec. 35, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 deleted former (1) through (3) that read: "(1) Each licensed dental hygienist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required if the renewal fee is not paid in a timely manner.

(3) Except as provided in 37-1-138, in case of default in payment of the renewal fee by any licensee, the licensee shall forfeit the license.

(a) The board shall give the licensee 30 days' notice of its proposed forfeiture action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the forfeiture will be considered.

(b) The payment of the renewal fee on or before the time set for forfeiture, with a reasonable late fee set by the board, excuses the default.

(c) A license forfeited for nonpayment of the renewal fee may be reinstated within 5 years of forfeiture if:

(i) renewal fees are paid for each period that they were unpaid, plus a late penalty for each period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence"; in (1) after "within" substituted "10" for "30"; deleted former (5) that read: "(5) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 in (3) at beginning inserted "Except as provided in 37-1-138"; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1999 Amendment: Chapter 230 in (3) substituted "licensee shall forfeit" for "board must revoke"; and in first and second sentences in (3)(a), in (3)(b), and in (3)(c) substituted "forfeiture" for "revocation"; in (3)(c) substituted "forfeited" for "revoked"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 492 in (1), in first sentence after "shall pay", deleted "each year"; in (2), in first and second sentences before "renewal fee", deleted "annual" and in first sentence, near middle, inserted "license expiration"; in (3)(c)(i), in two places, substituted "period" for "year"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional

compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 deleted third sentence in (1) that read: "The renewal must be for either active or inactive status, as defined by rules of the board"; in (2), in first sentence, substituted "made on or before the date set by department rule" for "made prior to March 1 of each year" and at end of second sentence substituted "not timely paid" for "not paid before March 1"; deleted former (3) and (4) that read: "(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dental hygiene because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Statement of Intent: See compiler's comment under 37-4-401 concerning Ch. 449, L. 1985.

1983 Amendment: Substantially revised and enlarged section (see 1983 Session Law). Text formerly read: "(1) Before March 1 of each year, a licensed dental hygienist shall pay to the department a renewal fee set by the board. In default of payment, the board may, after hearing and on 30 days' notice, revoke the license of the hygienist in default; but the payment of the renewal fee on or before the time of hearing, with an additional sum set by the board excuses the default. The department may collect the fee by suit.

(2) The board may likewise revoke or suspend the license of a dental hygienist for violating this chapter."

1983 Statement of Intent: The statement of intent attached to Ch. 349, L. 1983, provided in part: "Sections 4 and 8 [amending 37-4-307 and 37-4-406] give the Board the authority to adopt rules imposing a demonstration of continued competency for license renewal. The Board is not required to adopt such rules. It is contemplated that a study will be conducted to review other existing program designs in determining a viable means of demonstrating continued competency."

1981 Amendment: Deleted ", not to exceed \$25" after "a renewal fee set by the board" in the first sentence of (1); and deleted ", not to exceed \$10," after "an additional sum set by the board" in the second sentence of (1).

Fees Prescribed by Board — 1981 Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

1979 Statement of Intent: The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, \$20 to \$25 for dentists and \$10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

37-4-408. Auxiliary personnel — employment, duties, and limitations. (1) A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist, except that this section may not be construed to allow the board by rule to permit a licensed dentist to delegate to any auxiliary personnel prophylaxis or any of the duties prohibited to dental hygienists under 37-4-401. The performance of intraoral tasks by a dental auxiliary, as permitted by board rules, must be under the direct supervision of a licensed dentist, except as provided in subsection (2).

(2) A dental auxiliary who holds a certified dental assistant certification from the dental assisting national board may be supervised under general supervision.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1; amd. Sec. 9, Ch. 349, L. 1983; amd. Sec. 5, Ch. 66, L. 1991; amd. Sec. 15, Ch. 492, L. 2001; amd. Sec. 26, Ch. 126, L. 2005; amd. Sec. 1, Ch. 157, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 157 in (1) at end of last sentence inserted exception clause; inserted (2) concerning supervision of a dental auxiliary who holds a certified dental assistant certification; and made minor changes in style. Amendment effective April 18, 2019.

2005 Amendment: Chapter 126 near middle of second sentence after "dentist" deleted "in the dentist's office", after "rule to" substituted "permit" for "provide for delegation by", after "dentist to" inserted "delegate to", after "personnel" inserted "prophylaxis or", and at end after "37-4-401" deleted "or a prophylaxis"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 492 in last sentence at end after "under the direct supervision of" substituted "a licensed dentist" for "the licensed dentist employing the personnel"; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: Inserted first sentence defining dental auxiliary; and made minor changes in style. Amendment effective July 1, 1991.

1983 Amendment: Changed "shall" to "may" at beginning of first sentence and in last sentence inserted "all" before "dental auxiliaries".

Administrative Rules

ARM 24.138.406 Functions for dental auxiliaries.

ARM 24.138.407 Functions for dental hygienists.

Part 5 Regulatory Provisions

Part Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms that must contain:

- (a) the name and address of the person, firm, or corporation to which the work authorization is directed;
- (b) the patient's name or identification number, but if only a number is used, the patient's name must be written on the duplicate copy of the work authorization retained by the dentist;
- (c) the date on which the work authorization was written;
- (d) a description of the work to be done, including diagrams if necessary;
- (e) a specification of the type and quality of the materials to be used; and
- (f) the signature of the dentist and the number of the dentist's license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization, and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3); amd. Sec. 1364, Ch. 56, L. 2009; amd. Sec. 21, Ch. 109, L. 2009.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 109 in (1) near end of introductory clause after "forms" deleted "prescribed by the board"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

Law Review Articles

The Patient Has Not Been Informed: A Proposal for a Physician Conflict of Interest Disclosure Law, Michna, 27 Val. U.L. Rev. 495 (1993).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 5, Ch. 493, L. 1979.

37-4-504 through 37-4-510 reserved.

37-4-511. Limitations regarding deep sedation or general anesthesia. (1) A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under deep sedation or general anesthesia unless the vital signs of the patient are continually monitored by another trained health care professional.

(2) The facility in which deep sedation or general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under deep sedation or general anesthesia, and to treat the complications that may arise from deep sedation or general anesthesia.

History: En. Sec. 2, Ch. 518, L. 1985; amd. Sec. 1365, Ch. 56, L. 2009; amd. Sec. 6, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (1) and (2) that read: "(1) A person engaged in the practice of dentistry or oral surgery may not perform any dental or surgical procedure upon another person if a general anesthetic is administered unless the anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1)"; in (1) substituted "deep sedation or" for "light" and at end substituted "trained health care professional" for "person who has been examined by the board or its agent in life support skills and who has demonstrated a satisfactory level of proficiency as established by the board"; deleted former (4) that read: "(4) A person engaged in the practice of dentistry or oral surgery may not administer a general anesthetic to any other person unless the administering person satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications of general anesthesia. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3)"; in (2) in three places inserted "deep sedation or"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 24.138.403 Mandatory CPR certification.

Title 24, chapter 138, subchapter 32, ARM Anesthesia rules.

37-4-512 through 37-4-514 reserved.

37-4-515. Hospital admissions — patient histories and examinations. (1) For purposes of this section, "oral surgeon" means a dentist who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accreditation body approved by the United States office of education.

(2) A qualified oral surgeon who is a member of the medical staff of a hospital and who admits a patient to the hospital for oral or maxillofacial surgery may take the history and perform a physical examination of the patient if the patient has no known medical problems.

(3) This section does not affect hospital staff privileges of any hospital and may not be construed to require that any specific privilege, including taking a history or performing a physical examination, be extended or not extended to any oral surgeon.

History: En. Sec. 1, Ch. 313, L. 1987.

Compiler's Comments

1987 Statement of Intent: The statement of intent attached to Ch. 313, L. 1987, provided: "This bill may require the department of health and environmental sciences [now department of public health

and human services] to amend Rule 16.32.320, Administrative Rules of Montana, or to modify its interpretation of that rule, which incorporates by reference federal regulations governing hospital staffing (42 CFR 405 subpart J). If the federal regulations do not prohibit a hospital from authorizing an oral surgeon to take patient histories and perform physical examinations, no action by the department is contemplated. Because the federal regulations are ambiguous, the department may make appropriate changes in its rules if necessary to administer this act.

Should other dental specialties emerge, with in-hospital training equivalent to that of oral surgeons, the board of dentistry may recognize these specialists as qualified to take patient histories and perform physical examinations."