

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

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| In the matter of the amendment of |) | NOTICE OF PUBLIC HEARING ON |
| ARM 24.138.304 definition of |) | PROPOSED AMENDMENT, |
| nonroutine application, 24.138.505 |) | ADOPTION, AND REPEAL |
| dentist licensure by credential, |) | |
| 24.138.509 dental hygiene limited |) | |
| access permit, 24.138.530 licensure |) | |
| of retired or nonpracticing dentist or |) | |
| dental hygienist for volunteer service, |) | |
| 24.138.601 restricted temporary |) | |
| licensure of nonresident volunteer |) | |
| dentists and dental hygienists, |) | |
| 24.138.2106 exemptions and |) | |
| exceptions, 24.138.3221 minimum |) | |
| qualifying standards, 24.138.3223 |) | |
| minimum monitoring standards; the |) | |
| adoption of NEW RULE I infection |) | |
| control; and the repeal of ARM |) | |
| 24.138.518 renewals |) | |

TO: All Concerned Persons

1. On October 13, 2017, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry (board) no later than 5:00 p.m., on October 6, 2017, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

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

24.138.304 DEFINITION OF NONROUTINE APPLICATION (1) A ~~nonroutine application includes all criteria as defined in ARM 24.101.402.~~ "Nonroutine application" means an application submitted to the division in which the application is defined as nonroutine either by ARM 24.101.402 or by these rules.

- (a) A nonroutine application means that according to the application, the applicant reveals that one or more of the following scenarios apply to the applicant:
- (i) they have voluntarily surrendered, canceled, forfeited, or failed to renew a license as a result of any of the following:
 - (A) a complaint filed against them;
 - (B) a consent agreement; or
 - (C) an investigation or disciplinary proceedings;
 - (ii) they have voluntarily or involuntarily surrendered their privileges to provide services to health maintenance organizations, Medicare/Medicaid, or other payers, or have voluntarily or involuntarily surrendered hospital privileges, health maintenance organization participation, Medicare/Medicaid, or other payers during a pending investigation or in anticipation of an investigation, or have had such privileges reprimanded, denied, restricted, suspended, placed on probation, revoked, or subjected to other sanction or action;
 - (iii) they have been expelled from or asked to resign from any professional organization, or have been censured by a professional organization;
 - (iv) they have had civil or criminal charges pending or have pleaded guilty, forfeited bond, or been convicted of a crime (including plea of no contest or deferred prosecution), whether or not an appeal is pending, with the exception of the following:
 - (A) minor-in-possession charges or convictions;
 - (B) one misdemeanor committed more than five years ago; or
 - (C) traffic offenses, unless the illegal use or possession of alcohol or drugs is involved;
 - (v) the applicant's health care professional license was disciplined or was voluntarily surrendered in this state or another state or jurisdiction; and
 - (vi) there are inconsistencies in the application or in the supporting documentation of the application, or any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

(2) The board may also consider applications as nonroutine in any of the following instances:

- (a) remains the same.
- (b) the dental hygiene credentialing applicant does not meet the practice hours required by board rule;
- (c) through (4) remain the same.

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

IMP: 37-1-101, 37-1-131, 37-4-301, 37-4-402, 37-29-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule and clearly delineate the criteria for categorizing license applications as nonroutine. This change will further implement 37-1-101, MCA, which provides that the department shall process routine license applications on behalf of the professional and occupational licensing boards. Although the board has previously relied on its September 2009 nonroutine motion, this rule amendment will replace that motion

and provide licensing staff clarification and guidance to differentiate between routine and nonroutine applications.

The board is also amending (2)(b) as only dental hygiene credentialing applicants are required to document proof of practice hours pursuant to ARM 24.138.506.

24.138.505 DENTIST LICENSURE BY CREDENTIALS (1) and (2) remain the same.

(3) Application material remains valid for one year from the time it is received in the office.

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

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

REASON: The board is amending this rule to align with current standardized department procedures for license application processing that includes a one-year life span from the initial date of application. After one year, an application will automatically time out and the applicant will be required to reapply. Standardized application procedures will enhance efficiency and create cost savings in the licensing process.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) through (1)(c) remain the same.

~~(d) provides the name and address of the public health facility or facilities where the applicant intends to provide services under a LAP~~ acknowledges on the application that the applicant understands which public health facilities are eligible to provide services under a limited access permit pursuant to 37-4-405, MCA;

(e) through (5) remain the same.

AUTH: ~~37-1-131~~, 37-4-205, 37-4-405, MCA

IMP: 37-4-405, MCA

REASON: The board determined it is reasonably necessary to amend this rule to enable dental hygienists with limited access permits (LAP) to provide services in any facility that qualifies under 37-4-405, MCA, without reapplying for the LAP or notifying the board office of a work location change. Noting there is no requirement in rule or the license renewal process for LAP holders to update work locations, the board believes this amendment will increase access to care in these facilities.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.138.530 LICENSURE OF RETIRED OR NONPRACTICING DENTIST OR DENTAL HYGIENIST FOR VOLUNTEER SERVICE (1) through (1)(d) remain the same.

(e) a ~~notarized~~ signed statement that the applicant shall not accept any form

of remuneration for any dental or dental hygiene services rendered while in possession of the volunteer license;

(f) through (5) remain the same.

AUTH: 37-1-131, ~~37-1-141~~, 37-4-340, MCA

IMP: 37-1-131, 37-1-141, 37-4-340, MCA

REASON: The board is amending this rule and ARM 24.138.601 as the department has determined and the board agrees that it is not necessary to require notarized applications. In anticipation of and to further facilitate the online submission of license applications, the board will no longer require the signature or content to be notarized on any application. Eliminating this requirement may also increase access to care for low income citizens by expediting the processing of these types of applications.

Authority citations are being amended to provide the complete sources of the board's rulemaking authority.

24.138.601 RESTRICTED TEMPORARY LICENSURE OF NONRESIDENT VOLUNTEER DENTISTS AND DENTAL HYGIENISTS (1) through (1)(c) remain the same.

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

(2) through (4) remain the same.

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

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

24.138.2106 EXEMPTIONS AND EXCEPTIONS (1) remains the same.

(2) New licensees shall be exempt from continuing education requirements until March 1st ~~of the year~~ following their initial licensure in Montana, however, they are encouraged to participate actively in continuing education programs.

(3) The board may prorate continuing education credit to licensees after March 1st following their initial licensure in Montana related to the balance of the three-year audit cycle from the date of initial licensure. Dentists may be prorated 20 continuing education credits per audit cycle or 1.66 credits per month licensed. Dental hygienists may be prorated 12 continuing education credits per audit cycle or 1.00 credit per month licensed. Denturists may be prorated 12 continuing education credits per audit cycle or 1.00 credit per month licensed.

(3) and (4) remain the same but are renumbered (4) and (5).

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

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

REASON: In 2015 the board amended its continuing education (CE) rules to require a CE audit every three-year cycle from an annual audit cycle of a select group of licensees based on their year of initial licensure. The board was concerned that new

licensees may be audited after their first year of exemption with little time to provide the full credit hours required. Therefore, the board is amending this rule to clarify the CE requirements for new licensees and prorate CE hours for those new licensees who may be audited in the first three-year audit cycle after their initial licensure per ARM 24.138.2104.

Authority citations are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.138.3221 MINIMUM QUALIFYING STANDARDS (1) and (2) remain the same.

(3) With respect to moderate sedation, no dentist shall administer drugs to achieve the state known as moderate sedation during a dental procedure or a dental-surgical procedure, unless ~~he or she~~ the dentist has received formal training in moderate sedation techniques from an institution, organization, or training course ~~approved by the board~~. If training for moderate sedation is through continuing education, proof of course content must accompany the initial application in the form of a course outline or syllabus. A minimum of 60 hours of instruction plus management of at least 20 dental patients, by the intravenous route, per participant, are required to achieve competency in moderate sedation techniques. The dentist must furnish evidence of having completed this training.

(a) through (6) remain the same.

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

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

REASON: The board determined it is reasonably necessary to amend this rule to clarify and reinforce the board's intention that it is the licensee's responsibility to determine which moderate sedation courses and training meet the rule requirements. The board does not approve these courses.

24.138.3223 MINIMUM MONITORING STANDARDS (1) through (1)(c) remain the same.

(d) Food and Drug Administration approved medical devices or manual sphygmomanometer stethoscope for monitoring blood pressure shall be used during the sedation procedure.

(2) through (2)(c) remain the same.

(d) Food and Drug Administration approved medical devices or manual sphygmomanometer stethoscope for monitoring blood pressure shall be used during the sedation procedure.

(3) and (4) remain the same.

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

IMP: 37-1-131, 37-4-101, 37-4-408, 37-4-511, MCA

REASON: Upon recommendation of the board's anesthesia committee, the board determined it is reasonably necessary to amend this rule to further ensure public safety. Food and Drug Administration (FDA) approved medical devices or a manual

sphygmomanometer stethoscope provide more accurate readings than non-FDA-approved or over-the-counter devices. The board concluded that this amendment is critical for patients under deep sedation/general anesthesia and moderate sedation.

4. The proposed new rule is as follows:

NEW RULE I INFECTION CONTROL (1) Each person who is licensed pursuant to the provisions of Title 37, chapter 4, MCA, shall comply with the provisions of the Guidelines for Infection Control in Dental Health-Care Settings, 2003. The board adopts and incorporates by reference the guidelines which set forth the Centers for Disease Control and Prevention (CDC) recommendations for infection prevention and control in a dental-care setting. A copy of the guidelines is available, free of charge, from the CDC web site at <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5217a1.htm>.

AUTH: 37-1-131, 75-10-1006, MCA
IMP: 37-1-131, 75-10-1005, MCA

REASON: Due to licensee inquiries and an increasing number of complaints by the public and dental office staff regarding unsanitary conditions in dental offices, the board is adopting NEW RULE I to address dental office infection control. The board concluded that adopting these standards is necessary to ensure public safety and provide a consistent reference tool for board inspectors and investigators to use in gauging the seriousness of violations.

5. The board proposes to repeal the following rule:

24.138.518 RENEWALS

AUTH: 37-1-131, 37-1-141, 37-4-205, 37-29-201, MCA
IMP: 37-1-131, 37-1-141, 37-29-306, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals. Also, CPR, ACLS, and PALS certification is addressed in ARM 24.138.403.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., October 20, 2017.

7. An electronic copy of this notice of public hearing is available at www.dentistry.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system

maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.304, 24.138.505, 24.138.509, 24.138.530, 24.138.601, 24.138.2106, 24.138.3221, and 24.138.3223 will not significantly and directly impact small businesses.

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

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.138.518 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or to dlibsdden@mt.gov.

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

BOARD OF DENTISTRY
GEORGE JOHNSTON, DDS
PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 11, 2017.