

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.138.407 Functions for Dental	)	PROPOSED AMENDMENT AND
Hygienists, 24.138.425 Limited Access	)	ADOPTION
Permit Treatment Guidelines –	)	
Practicing Under Public Health	)	
Supervision, 24.138.509 Dental	)	
Hygiene Limited Access Permit,	)	
24.138.2102 Subject Matter	)	
Acceptable for Dentist and Dental	)	
Hygienist Continuing Education,	)	
24.138.2104 Requirements and	)	
Restrictions, and the adoption of New	)	
Rule I Limited Prescriptive Authority –	)	
Qualifications – Allowable Percentages	)	
of Topical Agents	)	

TO: All Concerned Persons

1. On March 16, 2018, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption 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 March 9, 2018, 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. GENERAL REASONABLE NECESSITY STATEMENT: The 2017 Montana Legislature enacted Chapter 288, Laws of 2017 (Senate Bill 120), an act to allow dental hygienists to administer local anesthetics under general supervision and allow limited prescriptive authority for topical agent prescriptions for specific fluoride agents, oral anesthetics, and nonsystemic oral antimicrobials. The bill was signed by the Governor on May 4, 2017, became effective immediately on signature, and is codified at 37-4-401 and 37-4-405, MCA. The board determined it is reasonably necessary to propose a new rule and amend certain existing rules to coincide with the 2017 legislative changes and implement the bill by determining the education and competency requirements, including continuing education, for dental hygiene prescriptive authority, and the percentage of active ingredients in fluoride agents,

topical oral anesthetic agents, and nonsystemic oral antimicrobials that may be prescribed by a dental hygienist.

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

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

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

(c) prescribing any drug ~~except fluoride agents, topical oral anesthetic agents, and nonsystemic oral antimicrobials, under the general supervision of a licensed dentist or under public health supervision with a limited access permit,~~ as per 37-4-401, MCA;

(d) administering or dispensing any drugs, without the prior authorization and direct supervision of the supervising dentist. This does not pertain to local anesthetic agents administered by a licensed dental hygienist qualified to administer the agents, topical agents, fluoride agents, topical oral anesthetic agents, nonsystemic oral antimicrobials, or ~~to~~ sulcular medicaments;

(e) through (8) remain the same.

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

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

24.138.425 LIMITED ACCESS PERMIT TREATMENT GUIDELINES – PRACTICING UNDER PUBLIC HEALTH SUPERVISION (1) Pursuant to 37-4-405, MCA, the LAP dental hygienist practicing under public health supervision, including providing prescriptive services, shall adhere to the following medical health guidelines:

(a) through (2)(e)(iv) remain the same.

(v) dental hygiene preventative services provided; ~~and~~

(vi) any agent prescribed, administered, or dispensed including dose amount and refill, date of the action, and rationale for prescribing; and

(vi) remains the same but is renumbered (vii).

(f) remains the same.

AUTH: 37-1-131, 37-4-205, 37-4-401, 37-4-405, MCA

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

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) and (2) remain the same.

(3) A LAP dental hygienist shall maintain 48 hours of continuing education credits for each three-year cycle following initial issuance of a LAP. The 48 hours includes the 36 hours required for a dental hygiene license and an additional 12 hours required for the LAP. If the LAP dental hygienist qualifies for limited prescriptive authority pursuant to 37-4-405, MCA, and [NEW RULE I], the dental

hygienist shall maintain an additional three continuing education credits for each three-year cycle.

(4) and (5) remain the same.

AUTH: 37-4-205, 37-4-401, 37-4-405, MCA

IMP: 37-4-401, 37-4-405, MCA

24.138.2102 SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION (1) through (1)(a)(xvi) remain the same.

(xvii) practice management; ~~and~~  
(xviii) dental anesthesiology; ~~and~~  
(xix) pharmacology.

(b) through (d) remain the same.

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

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

24.138.2104 REQUIREMENTS AND RESTRICTIONS (1) and (1)(a) remain the same.

(b) for dental hygienists, 36 per three-year cycle. Dental hygienists who have a limited access permit must complete an additional 12 continuing education hours pursuant to ARM 24.138.509. Dental hygienists who qualify for limited prescriptive authority pursuant to 37-4-401 and 37-4-405, MCA, must complete an additional three continuing education hours pursuant to [NEW RULE I]; or

(c) through (6) remain the same.

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

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

5. The proposed new rule is as follows:

NEW RULE I LIMITED PRESCRIPTIVE AUTHORITY – QUALIFICATIONS – ALLOWABLE PERCENTAGES OF TOPICAL AGENTS (1) Education and competency for dental hygiene prescriptive authority will be accomplished by:

(a) meeting the requirements of ARM 24.138.407(1)(a) and shall include a pharmacology course;

(b) maintaining three credit hours of continuing education each three-year renewal cycle to include courses in:

- (i) fluoride agents;
  - (ii) topical oral anesthetics; or
  - (iii) nonsystemic oral antimicrobials; and
- (c) meeting the requirements of ARM 24.138.2104.

(2) The hygienist shall attest they meet the qualifications for limited prescriptive authority on the initial application for licensure and the continuing education requirement on the annual license renewal application.

(3) Allowable percentages of prescribed agents are:

- (a) topical anti-caries treatments (using sodium fluoride unless otherwise stated):
  - (i) toothpastes - 1.1 percent (or stannous fluoride 0.4 percent);
  - (ii) topical gels - 1.1 percent (or stannous fluoride 0.4 percent);
  - (iii) oral rinses – 0.05 percent, 0.2 percent, 0.44 percent, or 0.5 percent, or oral rinse concentrate at 0.63 percent stannous fluoride;
  - (iv) fluoride varnish – 5 percent;
  - (v) prophylactic paste – 1.25 percent; and
  - (vi) fluoride paste – 5 percent;
- (b) topical oral anesthetic agents:
  - (i) up to 20 percent benzocaine;
  - (ii) up to 2 percent viscous lidocaine; and
  - (iii) cetacaine to include 14 percent benzocaine, 2 percent butamben, and 2 percent tetracaine hydrochloride; and
- (c) nonsystemic oral antimicrobials:
  - (i) chlorhexidine gluconate rinses – 0.12 percent.

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

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

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](mailto:dlibsdden@mt.gov), and must be received no later than 5:00 p.m., March 23, 2018.

7. An electronic copy of this notice of public hearing is available at [www.dentistry.mt.gov](http://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](mailto: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, apply and have been fulfilled. The primary bill sponsor was contacted on June 6, 2017, by telephone and by electronic mail.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.407, 24.138.425, 24.138.509, 24.138.2102, and 24.138.2104 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.

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](mailto: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, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2018.