

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 24.138.304 definition of) PROPOSED AMENDMENT
nonroutine application, 24.138.3101)
general standards for specialties, and)
24.138.3102 specialty advertising)

TO: All Concerned Persons

1. On January 7, 2019, at 11:00 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 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 December 31, 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. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.138.304 DEFINITION OF NONROUTINE APPLICATION (1) "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~~ this rule.

(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~~ the applicant;

(B) and (C) remain the same.

(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~~ was expelled from or asked to resign from any professional organization, or ~~have been~~ was censured by a professional organization;

(iv) ~~they have~~ had civil or criminal charges pending or ~~have~~ pleaded guilty, forfeited bond, or ~~been~~ was 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) and (B) remain the same.

(C) traffic offenses, unless the illegal use or possession of alcohol or drugs ~~is~~ was involved; or

(v) ~~the applicant's~~ had a health care professional license ~~was~~ disciplined or ~~was~~ voluntarily surrendered in this state or another state or jurisdiction; ~~and~~.

~~(vi) (b) there are~~ Department staff may also determine that applications with inconsistencies in the application or in the supporting documentation of the application, or any substantive irregularity deemed by department staff to warrant irregularities require board review and approval prior to license issuance of the license.

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

(a) through (d) remain the same.

~~(3) All dental credentialing applications are considered nonroutine.~~

~~(4) All denturist applications are considered nonroutine.~~

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 to further implement 37-1-101, MCA, which provides the department shall process routine licensure applications on behalf of the professional and occupational licensing boards. Nonroutine applications requiring board review and approval are generally defined in department rule at ARM 24.101.402. The board is simplifying and streamlining (1) to enhance readability and more clearly identify additional criteria for nonroutine applications that require board review.

The board is eliminating (3) and (4) to further facilitate the timely licensure of qualified applicants via the department's standardized application procedures. The board concluded there is no reason to require the board's review of all denturist and dental credentialing applications prior to licensure which may delay issuing a license for several months until the next board meeting. Because the board has established clear licensure standards for staff to follow, the board determined this amendment will improve licensing efficiency and respond to the need for timely licensure of dentists and denturists in Montana. With these changes, the board believes that licensing processes and decisions are based on sound principles that will ensure adequate protection of the public.

24.138.3101 GENERAL STANDARDS FOR SPECIALTIES (1) The following are included within the standards of the American Dental Association National Commission on Recognition for Dental Specialties and Certifying Boards for

determining what dentists have the education experience and other appropriate requirements for announcing specialization and limitation of practice:

(a) The ~~special~~ specialty area(s) of dental practice and an appropriate certifying board must be approved by the ~~American Dental Association~~ National Commission on Recognition for Dental Specialties and Certifying Boards.

(b) remains the same.

(c) The practice carried on by dentists who announce as specialists shall be limited exclusively to the ~~special~~ specialty area(s) of dental practice announced by the dentist.

AUTH: 37-4-205, MCA

IMP: 37-4-205, 37-4-301, MCA

REASON: For years the board, like most throughout the nation, has deferred to the American Dental Association's (ADA) process for recognizing dental specialties. However, the ADA's process resulted in several groups (e.g., implantologists and anesthesiologists) claiming that they were wrongly excluded from the specialty list, with some threatening litigation. In 2015, the U.S. Supreme Court ruled in *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101, that among other things, licensing boards should retain their own decision-making authority rather than defer that authority to professional associations. In reaction to the decision, the ADA and states throughout the country have revisited this issue. Further, the ADA created an independent National Commission on Recognition for Dental Specialties and Certifying Boards to hopefully remove some of the objectionable behavior in the previous process. Numerous state boards are now updating regulations to both protect the public from deceptive advertisements and boards from legal liability. Following consideration and discussion at several committee and full board meetings, the board determined it is reasonably necessary to amend this rule and ARM 24.138.3102 to align with these national-level changes and recognize those dental specialty areas as approved by the National Commission on Recognition for Dental Specialties and Certifying Boards.

24.138.3102 SPECIALTY ADVERTISING (1) The board finds that terms stating or implying that a dentist is a specialist in some field of dentistry are terms of art indicating that the dentist has completed an accredited post-doctoral educational program in that field of at least two years. Therefore, a licensed dentist seeking specialty recognition must have successfully completed a post-doctoral program in a specialty area of dentistry consisting of at least two full-time years and which is accredited by an accreditation agency that is recognized by the Commission on Dental Accreditation.

(~~4~~) (2) The ~~special~~ specialty areas of dental practice approved by the ~~American Dental Association~~ National Commission on Recognition for Dental Specialties and Certifying Boards and the designation for ethical specialty announcement limitation of practice are:

(a) dental public health;

(b) endodontics;

(c) oral pathology;

- (d) oral and maxillofacial surgery;
- (e) orthodontic dentofacial orthopedics;
- (f) pedodontics (dentistry for children);
- (g) periodontics;
- (h) prosthodontics;
- (i) oral and maxillofacial radiology; and
- (j) other board-approved specialties.

~~(2)~~ (3) A licensee shall not advertise using the terms "specialist," "specializing," or "practice limited to" unless the licensee has met the board standards for specialization as set forth in ARM 24.138.3101 and 24.138.3103 and the branch of dentistry advertised as a specialty branch of dentistry is sanctioned as a specialty branch of dentistry by ~~(1)~~ (2).

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

~~(4)~~ (5) A Montana licensed dentist listing or advertising the dentist's services under any dental category that is a specialty recognized by the ~~American Dental Association~~ National Commission on Recognition for Dental Specialties and Certifying Boards must clearly disclose within the licensee's individual advertisement that the services are provided by a general dentist. Any general disclosure or disclaimer made by the advertiser or not located within the specific licensee's advertisement does not comply with this requirement.

AUTH: 37-4-205, MCA

IMP: 37-4-205, MCA

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., January 8, 2019.

5. 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.

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

dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.304, 24.138.3101, and 24.138.3102 will not significantly and directly impact small businesses.

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

9. 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 November 27, 2018.