

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

In the matter of the amendment of )  
ARM 24.138.301 definitions, )  
24.138.402 fees, 24.138.403 )  
mandatory certification, 24.138.406 )  
dental auxiliary functions, 24.138.419 )  
dental hygienist limited prescriptive )  
authority, 24.138.502 dentist license )  
by examination, 24.138.503 dental )  
hygienists license by examination, )  
24.138.505 dentist license by )  
credentials, 24.138.506 dental )  
hygienist license by credentials, )  
24.138.507 dentist specialist license )  
by credentials, 24.138.508 dental )  
hygiene local anesthetic certification, )  
24.138.509 dental hygiene limited )  
access permit, 24.138.511 denturist )  
license requirements, 24.138.512 )  
denturist internship, 24.138.514 )  
converting inactive to active status, )  
24.138.525 reactivation of expired )  
license, 24.138.2105 reporting )  
procedures, 24.138.2301 dentist and )  
dental hygienist unprofessional )  
conduct, 24.138.2302 denturist )  
unprofessional conduct, 24.138.3223, )  
24.138.3225, and 24.138.3229 )  
anesthesia standards and continuing )  
education; the adoption of New Rule I )  
approved clinical exam criteria for )  
dentists and dental hygienists, New )  
Rule II denturist scope of practice – )  
dentures over implants; and the repeal )  
of 24.138.510 denturist examination )

TO: All Concerned Persons

1. On October 2, 2019, at 9:30 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 no later than 5:00 p.m., on September 25, 2019, 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](mailto:dlibsdden@mt.gov) (board's e-mail).

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

24.138.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) through (5) remain the same.

(6) "General supervision," for the purpose of ARM 24.138.406, means the provision of allowable functions by dental auxiliaries provided to a current patient of record, 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.

(6) through (9) remain the same but are renumbered (7) through (10).

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-29-201, MCA

IMP: 37-1-131, 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

REASON: See REASON for ARM 24.138.406. Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.138.402 FEE SCHEDULE (1) through (5) remain the same.

~~(6) Jurisprudence reexamination fee~~ \_\_\_\_\_ 40

(7) through (17) remain the same but are renumbered (6) through (16).

AUTH: ~~37-1-131~~, 37-1-134, 37-4-205, 37-4-340, 37-4-341, 37-4-405, 37-29-201, MCA

IMP: 37-1-134, 37-1-141, 37-4-301, ~~37-4-307~~, 37-4-340, 37-4-341, 37-4-402, 37-4-405, 37-29-303, MCA

REASON: During a rule review, staff observed that the licensure rules had not been reviewed or updated in over ten years. Staff recommended several amendments to update to current examination standards and application procedures. The board is amending this rule to eliminate the reexamination fee for the Montana jurisprudence examination to align with standardized department policy and application procedures. Because this fee has not been charged to any applicant nor generated any revenue in the last five years, its elimination will result in no fiscal impact.

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.

24.138.403 MANDATORY CERTIFICATION (1) and (2) remain the same.

(3) Licensees shall affirm the expiration date of the CPR, ACLS, or PALS card on the renewal. The board may audit a licensee for compliance of a current CPR, ACLS, or PALS card in addition to the random CE audit every three-year reporting period. An active licensee who practices without a current CPR, ACLS, or PALS card may be subject to ~~disciplinary action by the board~~ administrative suspension.

(4) remains the same.

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

IMP: 37-1-131, 37-1-321, 37-29-201, 37-29-401, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address confusion from licensees and audit staff regarding certification audits run in conjunction with the random CE audit every three-year reporting period. This will standardize the audit requirement, create efficiencies within the audit unit, and conform with the administrative suspension statutes and procedures.

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

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) ~~Allowable functions for a dental auxiliary practicing~~ Dental auxiliaries may work under the direct supervision of a licensed dentist ~~per ARM 24.138.301 shall include dental procedures as allowed by board rule and subject to (2), in which~~ if the auxiliary:

- (a) ~~the auxiliary~~ was instructed and qualified to perform in a dental assisting program accredited by the Commission on Dental Accreditation or its successor; or
- (b) ~~the auxiliary~~ was instructed and trained by a licensed dentist; or
- (c) ~~the auxiliary~~ was instructed and trained in a board-approved continuing education course.

(2) Dental auxiliaries may work under the general supervision of a licensed dentist per ARM 24.138.301 if the auxiliary holds a certified dental assistant certification from the dental assisting national board.

~~(2) (3) A dental auxiliary will be allowed to working under the direct supervision of a licensed dentist per ARM 24.138.301 may perform the following dental procedures including, but not limited to:~~

- (a) making radiographic exposures as prescribed by the supervising dentist; ~~and~~
- (b) through (o) remain the same.

(4) Dental auxiliaries holding a certified dental assistant certification from the dental assisting national board and working under the general supervision of a licensed dentist per ARM 24.138.301 are prohibited from performing the following functions:

- (a) initiating, adjusting, and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide by a licensed dentist;
- (b) applying silver diamine fluoride agents;
- (c) placing and removing rubber dams;
- (d) placing and removing matrices;
- (e) polishing amalgam restorations;

(f) placing pit and fissure sealants; and

(g) applying topical anesthetic agents.

~~(3)~~ (5) Dental auxiliaries performing any intraoral procedure must be under the direct supervision of a licensed dentist, or an auxiliary holding a certified dental assistant certification from the dental assisting national board may work under the general supervision of a licensed dentist. No dentist shall allow any dental auxiliary to perform the following:

(a) through (k) remain the same.

(l) air polishing; or

(m) prophylaxis as ~~per~~ defined in ARM 24.138.301.

~~(4)~~ (6) Dentists shall ~~refrain from delegating~~ not delegate to dental auxiliaries any duties or responsibilities regarding patient care that cannot be delegated to dental auxiliaries under 37-4-408, MCA, and board rules.

(5) and (6) remain the same but are renumbered (7) and (8).

~~(7)~~ (9) ~~It shall be the responsibility of the~~ The employing dentist ~~to~~ shall verify that a dental auxiliary's qualifications ~~are in compliance~~ comply with the statutes and rules of the ~~Board of Dentistry~~ board.

~~(8)~~ (10) A dentist licensed to use or direct the use of an x-ray producing device must assure that the radiation source under the dentist's jurisdiction is used only by individuals competent to use it, as per ARM 37.14.1003. Only a licensed dentist ~~is allowed to~~ may prescribe radiation dosage and exposure.

~~(a)~~ The dental auxiliary ~~A dental auxiliary~~, under the direct supervision of a licensed dentist, ~~will qualify to~~ may expose radiographs only if the auxiliary:

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

~~(b)~~ (ii) has been certified in dental radiology ~~by the U.S.~~ as a result of military experience; or

~~(c)~~ (iii) has successfully completed a board-approved radiology written examination. ~~The written examination must be passed prior to the dentist allowing the auxiliary to expose radiographs.~~

(b) Dental auxiliaries holding a certified dental assistant certification from the dental assisting national board may expose radiographs under the general supervision of a licensed dentist.

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

~~(9)~~ ~~A list of board-approved examinations will be kept on file in the board office.~~

~~(10)~~ ~~The board will accept documentation of (8)(a) through (d) as certification for radiographic exposure.~~

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

IMP: 37-4-408, MCA

REASON: The 2019 Montana Legislature enacted Chapter 157, Laws of 2019 (Senate Bill 157), an act providing for dentists' general supervision of dental auxiliaries who have attained the dental assisting national board (DANB) certification. The bill was signed by the Governor and became effective on April 18, 2019, and is codified at 37-4-408, MCA. The board is adding (2) to implement the legislation and specifically address when auxiliaries may work under a dentist's

general supervision. At this same time, the board determined it is reasonably necessary to amend this rule throughout for accuracy, consistency, simplicity, better organization, and ease of use for the reader.

Following the statutory change, the board referred the discussion of the specific functions the DANB-certified dental auxiliaries may perform under general supervision to the board's rules committee. The committee met on May 16, 2019, and recommended several rule changes which the full board considered on June 7, 2019. After discussion, the board concluded that to adequately protect public health and safety, it is reasonably necessary to require that auxiliaries perform certain functions under a dentist's direct supervision, even if the auxiliary holds a DANB certification. Therefore, the board is amending (3) and adding (4) to specify the procedures that DANB-certified auxiliaries may not perform under general supervision and may only perform under direct supervision by a dentist.

The amendments to (10) are reasonably necessary to remove redundant provisions and address the exposure of radiographs by DANB-certified auxiliaries pursuant to SB 157. The board is striking old (9) and (10) because the provisions are outdated and no longer comport with current procedures.

24.138.419 LIMITED PRESCRIPTIVE AUTHORITY – QUALIFICATIONS – ALLOWABLE PERCENTAGES OF TOPICAL AGENTS (1) and (2) remain the same.

(3) Allowable percentages of prescribed agents are:

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

(v) prophylactic paste – 1.25 percent; ~~and~~

(vi) fluoride paste – 5 percent; ~~and~~

(vii) silver diamine fluoride – 38 percent.

(b) and (c) 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

REASON: The 2017 Montana Legislature passed Senate Bill 120, an act allowing licensed dental hygienists limited prescriptive authority for fluoride agents, oral anesthetics, and nonsystemic oral antimicrobials. During the 2017 rulemaking process to implement the bill, a public comment suggested the board add 38 percent silver diamine fluoride to the proposed new rule. The board was unable to make the substantive change in the final rule notice and set the suggestion for discussion at a future board meeting.

The board discussed the matter in several public meetings and considered materials submitted by both proponents and opponents of the proposed change. After extensive dialogue, the board concluded that silver diamine fluoride is a topical fluoride agent that can be safely and effectively used by appropriately trained dental hygienists when applied with the percentage specified for preventing the deterioration of dental caries. The board determined that the possible benefits to the public health from allowing licensed hygienists to apply silver diamine fluoride significantly outweigh the potential risks and is amending the rule accordingly.

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.

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION

(1) through (3) remain the same.

(4) Application material remains valid for ~~six months~~ one year from the time it is received in the office. ~~If the jurisprudence examination has not been successfully passed within six months, the application will be considered incomplete and a new application and fees must be submitted.~~

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

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

REASON: The board is amending this rule, ARM 24.138.503, 24.138.506, and 24.138.508 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.

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

(d) verification of graduation from a dental hygiene school accredited by the American Dental Association Commission on Dental Accreditation, or its successor. Verification must consist of an original dental hygiene school transcript ~~and a diploma~~. The board may accept a letter from the dean of the school of dental hygiene, program director, or dean's equivalent attesting to the program of study, and that graduation status was attained to process the application; however, a license will not be issued until the transcript is received in the board office;

(e) through (3) remain the same.

(4) Application material remains valid for ~~six months~~ one year from the time it is received in the office. ~~If the jurisprudence examination has not been successfully passed before the end of six months, the application will be considered incomplete and a new application and fees must be submitted.~~

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

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

REASON: The board is amending (1)(d) to create efficiencies in the licensing process as, generally, diplomas are not issued for months after a student graduates and licensing staff must track the application to ensure the diploma was eventually received. Additionally, unlike official transcripts received directly from an educational institution, diplomas may be readily copied and altered.

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

(e) provides evidence that the applicant ~~is currently~~ has been engaged in the practice of clinical, direct patient care dentistry at least six months prior to the date of application and ~~has been~~ can demonstrate actively practicing within the last five years immediately preceding application, for a total accumulation of 3000 hours of experience as demonstrated by any or all of the following:

(i) through (f) remain the same

(g) submits certificates of attendance proving the applicant has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a license in this state. Courses submitted must meet board approvals as defined in ARM 24.138.2102 and pursuant to ARM 24.138.2105(2);

(h) through (3) remain the same.

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 correct inefficiencies in processing dentistry applications by recognizing that applicants may have breaks in practice immediately preceding application that do not bear on the applicant's competency to practice. The board determined that six months would be a reasonable time frame during which an applicant could cease practice, but still maintain the sharpness of skill needed to safely practice upon licensure.

The board is striking the subsection from (1)(g) to align with the reorganization and renumbering of ARM 24.138.2105 in this notice.

#### 24.138.506 DENTAL HYGIENIST LICENSURE BY CREDENTIALS

(1) through (3) remain the same.

(4) Application material remains valid for ~~six months~~ one year from the time it is received in the office. ~~If the jurisprudence examination has not been successfully passed within six months the application will be considered incomplete and a new application and fees must be submitted.~~

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

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

#### 24.138.507 DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS

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

(f) submits certificates of attendance proving the applicant has completed at least 60 hours of continuing education related to clinical dentistry in the three years immediately preceding application for a Montana license. Courses submitted must meet continuing education requirements as defined in board rule and pursuant to ARM 24.138.2105(2);

(g) through (2) remain the same.

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

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

REASON: The board is striking the subsection from (1)(f) to align with the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT CERTIFICATION (1) through (4) remain the same.

(5) The application remains valid for ~~six months~~ one year from the time it is received in the office. ~~If not completed within six months, the application will be considered incomplete and a new application and fee must be submitted.~~

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

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

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

(e) provides certificates of attendance of completion of 12 additional continuing education credits for the three-year cycle reporting period immediately preceding LAP application pursuant to ARM 24.138.2105~~(2)~~; and

(f) through (5) remain the same.

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

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

REASON: The board is amending this rule to align with terminology changes and the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.511 DENTURIST APPLICATION LICENSE REQUIREMENTS

~~(1) Each applicant shall submit a completed application.~~

~~(2) The application fee and required documentation must include:~~

(1) Denturist license applicants must submit a completed application, required fees, and documentation that demonstrates:

~~(a) official transcripts from all colleges or educational institutions sent directly to the board office by the college or institution;~~

(a) successful passage of:

~~(b) (i) certification of successful passage of a board-approved written denturist examination approved by the board;~~

~~(c) (ii) certification of successful passage of a board-approved clinical/practical denturist examination approved by the board; and~~

(iii) the board jurisprudence examination with a grade of at least 75 percent;

~~(d) verification of written test scores sent directly to the board office from the testing agency;~~

~~(e) verification of clinical/practical test scores sent directly to the board office from the testing agency;~~

~~(f) (b) documentation that the applicant has completed completion of formal training of not less than two years;~~

(i) at an educational institution as set forth in 37-29-303, MCA;

~~(g) documentation that the school is an educational institution accredited by a national or regional accrediting agency recognized by the Montana state Board of~~

Regents; and

~~(h) (ii) documentation that the under a curriculum that includes those the courses set forth in 37-29-303, MCA;~~

~~(c) completion of a clinical internship of at least one year, but no more than two years, under the direct supervision of a licensed dentist;~~

~~(i) a copy of a diploma from a recognized school as stated in 37-29-303, MCA;~~

~~(j) remains the same but is renumbered (d).~~

~~(k) (e) a copy of a current CPR, ACLS, or PALS card; and~~

~~(l) affidavits from three persons not related to the candidate regarding the candidate's good moral character;~~

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

~~(n) jurisprudence examination fee; and~~

~~(o) application fee.~~

~~(3) Applicant shall submit a copy of the board approved intern application including intern reports, showing internship clinical training, which are signed by the monitoring licensed dentist.~~

~~(4) The board may require application materials to be updated prior to the applicant taking the jurisprudence examination.~~

~~(5) Applicants must successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to the issuance of a license.~~

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

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

REASON: During a review of the rules, staff observed that the dentist licensure rules had not been reviewed or updated in over ten years. Staff recommended several amendments to update the rules to current examination standards and application procedures. The board determined it is reasonably necessary to amend this rule and repeal ARM 24.138.510 to accurately represent current application processes and further facilitate initial licensure of dentists in Montana.

The board is striking (2)(l) to no longer require affidavits regarding good moral character. The board concluded that adequate information to demonstrate character is obtained through the application's disciplinary/criminal history questions and the results of each applicant's National Practitioner Data Bank (NPDB) self-query.

The board is further amending this rule to remove provisions for the internship application process, following staff review of all applications and licensure requirements. Noting that applicants must complete a one-year internship under the direct supervision of a licensed dentist, pursuant to the training and content standards of ARM 24.138.512, the board concluded it is unnecessary to approve individual internships or continually monitor intern progress throughout the internship period. Applicants and supervisors will be required to attest to successful completion of the internship requirement as part of the application process.

Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, and amend this rule for accuracy, consistency, simplicity, better organization, and ease of use.

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

24.138.512 DENTURIST INTERN INTERNSHIP ~~(1) To be eligible for internship, the applicant must have completed all requirements for licensure set forth in 37-29-303(1), MCA.~~

(1) Denturist applicants must complete a clinical internship of at least one year, but no more than two years, under the direct supervision of a licensed denturist.

~~(2) A denturist intern is a person engaged in a clinical training program under the direct supervision of a Montana licensed denturist.~~

~~(a) (2) Such training program shall~~ At a minimum, the internship must consist of 2000 clock hours of training and performance in at least the following fields of practice as follows:

(a) 36 hours minimum in:

- ~~(i) patient charting; 36 hours minimum~~
- ~~(ii) operatory sanitation; 36 hours minimum~~
- ~~(iii) oral examination; 36 hours minimum~~
- ~~(iv) impressions, preliminary and final (pour models, custom trays); 36 hours minimum~~

(v) processing (wax up, flask boil out, packing, grind-polish); and

(vi) delivery-post adjustment;

(b) 12 hours minimum in:

- ~~(v) (i) bite registrations; 12 hours minimum~~
- ~~(vi) (ii) articulations; 12 hours minimum~~
- ~~(vii) (iii) set ups; and 12 hours minimum~~
- ~~(viii) (iv) try ins; 12 hours minimum~~
- ~~(ix) processing (wax up, flask boil out, packing, grind-polish) 36 hours minimum~~
- ~~(x) delivery-post adjustment 36 hours minimum~~
- ~~(b) processed relines (one plate - one unit) 24 units~~

(c) 48 hours minimum in:

- ~~(c) (i) tooth repairs; and 48 hours minimum~~
- ~~(d) (ii) broken or fractured plates or partials; and 48 hours minimum~~
- ~~(d) 24 units of processed relines (one plate - one unit).~~

~~(3) An intern shall file a monthly report with the board, on a form and attested to by the intern's supervising denturist. The report shall state the number of hours or units completed in each field of practice identified in (2).~~

(4) (3) No Per 37-29-302, MCA, a licensed denturist may not supervise more than one intern at any one time interns than is reasonable and appropriate to provide the necessary internship skill needed for licensure.

~~(5) Each intern shall be provided a separate work station in the laboratory area, containing standard dentistry equipment, i.e., lathe, torch, and storage space. Operatory facilities and other equipment will be shared with the intern. The necessary hand tools shall be provided by the intern.~~

(6) (4) No intern may practice once the internship has been completed until after successful passage of the clinical examination and the applicant has met all

other requirements for licensure. Upon completion of an internship, an applicant may not practice until obtaining a denturist license from the board.

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

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

REASON: Following a review of the rules, staff recommended several amendments to align with statutory parameters regarding the one-year internship requirement per 37-29-302 and 37-29-303, MCA. The board is amending this rule to reorganize, simplify, and update to current processes, and clearly delineate the hourly standards of the one-year internship. The hourly requirements are not changing.

The board determined it is reasonably necessary to amend this rule to permit denturist applicants to complete the one-year internship requirement under supervising denturists who are duly licensed in other states or jurisdictions. Due to the large size and rural nature of Montana, the relatively small number of Montana licensed denturists, and the fact that the currently approved denturist school(s) are located in other state(s), the board concluded that limiting supervisors to only Montana licensees is not necessary to ensure qualified denturist applicants.

The board is removing the requirement that denturist interns submit monthly progress reports during the pendency of an internship. Noting that applicants must complete a one-year internship under the direct supervision of a licensed denturist, pursuant to the content standards of this rule, the board concluded it is unnecessary to continually monitor intern progress throughout the year. Applicants and supervisors will be required to attest to successful completion of the internship requirement as part of the application process.

The board is amending (3) to align with 37-29-302, MCA, which limits licensed denturists to supervising only a single denturist intern at any one time.

The board is striking (5) because while the board prescribes the training content of a qualifying internship, the board concluded that it is up to the supervising denturist and intern to determine adequate and appropriate facilities and equipment.

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

#### 24.138.514 CONVERTING FROM INACTIVE TO ACTIVE STATUS

(1) through (3)(c) remain the same.

(d) certificates of attendance of continuing education pursuant to ARM

24.138.2105(2) as follows:

(i) through (4)(b) remain the same.

(c) certificates of attendance of continuing education pursuant to ARM

24.138.2105(2) as follows:

(i) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-319, MCA

REASON: The board is striking the subsection from (3)(d) and (4)(c) to align with the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.525 REACTIVATION OF AN EXPIRED LICENSE (1) through (1)(b) remain the same.

(c) proof of CE pursuant to ARM 24.138.2105(2) as follows:

(i) through (iii) remain the same.

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

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

REASON: The board is striking the subsection from (1)(c) to align with the reorganization and renumbering of ARM 24.138.2105 in this notice.

24.138.2105 CONTINUING EDUCATION - AUDIT REPORTING PROCEDURES (1) (2) Continuing education CE credits may not be carried over from one three-year cycle reporting period to another.

(2) (3) Licensees are required to keep a ~~certificate~~ certificates or other documentation of ~~attendance of continuing education completed~~ CE and ~~make this available~~ provide the documentation to the board if ~~so requested~~ upon request. The ~~certificate or document of attendance shall include at a minimum:~~

(a) ~~licensee name;~~

(b) ~~course title;~~

(c) ~~course date;~~

(d) ~~presenter or sponsor; and~~

(e) ~~number of credit hours earned.~~

(3) (1) Licensees shall affirm their understanding of the recurring duty to comply with continuing education (CE) requirements as a part of annual and compliance with continuing education requirements with the license renewal.

(4) (5) ~~Failure of licensee to produce certificates of attendance of required continuing education may result in disciplinary action. Following an audit failure, the licensee will be afforded a one-year period to gain the appropriate continuing education requirements. If compliance is not attained, disciplinary action pursuant to 37-1-312, MCA, will be taken. Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next reporting period.~~

(5) (4) The department will conduct a random audit of the licensees every three-year cycle. The audit shall include ten percent of active dentists, ten percent of active dental hygienists, and ten percent of active denturists. The board may randomly audit up to 50 percent of renewed licensees' CE hours.

AUTH: 37-1-131, 37-1-319, 37-4-205, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule to align with and facilitate the department's standardized renewal, administrative suspension, and audit procedures, and to streamline and reorganize the rule for better organization and

ease of use for the reader. The board is amending the title to better represent the content.

Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

The board is amending (4) to allow flexibility in conducting random CE audits. Currently, the board randomly audits ten percent of all renewed licensees for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is amending (5) to specify that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes. Further, it is reasonably necessary to remove the one-year CE audit grace period to align with standardized audit procedures that allow licensees a minimum of 85 days to cure any audit deficiencies. Additional extensions are no longer necessary.

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.

24.138.2301 UNPROFESSIONAL CONDUCT FOR DENTISTS AND DENTAL HYGIENISTS (1) through (1)(k) remain the same.

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

AUTH: 37-1-319, 37-4-205, 37-4-408, MCA

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

REASON: The board determined it is reasonably necessary to amend this rule to implement the board's determination that acts of substantiated sexual misconduct should be explicitly recognized as unprofessional conduct. While sexual misconduct was already implicitly recognized as being sanctionable, clarifying this in rule is in keeping with the norms of the profession for dentists, hygienists, and denturists and will further facilitate the board's ability to discipline licensees for such acts.

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

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS

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

~~(j) fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant; and~~

(j) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice of dentistry; and

(k) remains the same.

AUTH: 37-1-136, 37-1-319, 37-29-201, MCA

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

REASON: In 2018, as a result of litigation, the board agreed to revise ARM 24.138.2302(1)(j) which provides that "fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant" by a denturist is unprofessional conduct. After reconsideration, the board determined it is reasonably necessary to amend this rule and adopt NEW RULE II in this notice. The new rule recognizes that denturists can safely fit dentures over implants under the supervision of a dentist.

The board determined it is reasonably necessary to add (1)(j) to implement the board's determination that acts of substantiated sexual misconduct should be explicitly recognized as unprofessional conduct. While sexual misconduct was already implicitly recognized as being sanctionable, clarifying this in rule is in keeping with the norms of the profession for dentists, hygienists, and denturists and will further facilitate the board's ability to discipline licensees for such acts.

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

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

(ii) precordial or pretracheal stethoscope ~~or~~ and capnography used to monitor respiratory rate;

(iii) through (2)(b)(ii) remain the same.

(iii) a precordial or pretracheal stethoscope ~~or~~ and capnography used to continually monitor respiration; and

(iv) through (4) remain the same.

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

IMP: 37-1-131, 37-4-101, 37-4-205, 37-4-408, 37-4-511, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.138.3225 pertaining to monitoring and facility standards to align with the 2016 American Dental Association guidelines for the use of sedation and general anesthesia by dentists. The current rule language was based on the 2007 and 2012 guidelines. Generally accepted standards of safety in the practice now require a dentist anesthesiologist have a capnograph available during procedures.

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

24.138.3225 FACILITY STANDARDS (1) through (1)(f) remain the same.

(g) a precordial or pretracheal stethoscope ~~or~~ and capnograph;

(h) through (2)(a) remain the same.

(b) precordial or pretracheal stethoscope ~~or~~ and capnograph;

(c) through (3) remain the same.

AUTH: 37-1-131, 37-4-205, MCA  
IMP: 37-1-131, 37-4-101, 37-4-511, MCA

24.138.3229 REQUIREMENTS FOR ANESTHESIA CONTINUING EDUCATION IN ANESTHESIA ~~(1) All dentists holding permits to provide deep sedation/general anesthesia must submit certificates of attendance of having attended a minimum of 20 hours of continuing education every three-year cycle pursuant to ARM 24.138.2105(2).~~

~~(2) All dentists holding permits to provide moderate sedation must submit certificates of attendance of having attended a minimum of 12 hours of continuing education every three-year cycle pursuant to ARM 24.138.2105(2).~~

~~(3) (2) The education Acceptable CE must be in one or more of the following fields:~~

~~(a) through (f) remain the same.~~

~~(g) advanced cardiac life support, up to a maximum of eight hours of continuing education.~~

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

~~(5) (1) All anesthesia Anesthesia permit holders shall affirm their understanding of and compliance with continuing education the recurring duty to comply with anesthesia-specific CE requirements on the annual license renewal. Anesthesia-specific CE is in addition to CE required for the underlying dentist license.~~

~~(a) Deep sedation/general anesthesia - 20 hours every three-year reporting period.~~

~~(b) Moderate sedation - 12 hours every three-year reporting period.~~

~~(6) (5) Failure of licensee to produce records of required continuing education may result in disciplinary action. Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next reporting period.~~

~~(7) (4) A random audit of licensees will be conducted in The board may randomly audit up to 50 percent of renewed licensees' CE hours every three-year eyele reporting period. Licensees must provide CE documentation upon request to the board.~~

AUTH: 37-1-131, 37-1-319, ~~37-4-205~~, MCA  
IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is amending this rule to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and to streamline and reorganize the rule for better organization and ease of use. The board is amending the title to better represent the content.

Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE required at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures by having licensees with mandatory CE affirm an understanding of the requirement and the potential of being audited for compliance.

The board is amending (4) to allow flexibility in conducting random CE audits. Currently, the board randomly audits ten percent of all renewed licensees for each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is amending (5) to specify that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

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 proposed new rules are as follows:

NEW RULE I APPROVED CLINICAL EXAM CRITERIA FOR DENTISTS AND DENTAL HYGIENISTS (1) Starting January 1, 2020, for the purposes of licensure, a dentist applicant shall verify successful passage of a board-approved clinical practical exam to include the following components:

(a) patient-based operative exam, to include one direct posterior class II composite and any one of the following:

- (i) direct posterior class II composite; or
- (ii) direct posterior class II amalgam; or
- (iii) direct anterior class III composite;
- (b) patient-based periodontal exam;
- (c) non-patient-based endodontics exam, to include:

- (i) anterior access;
- (ii) posterior access; and
- (iii) obturation of one canal;

(d) comprehensive treatment planning computer-based exam that is scored by calibrated examiners; and

(e) non-patient-based prosthodontics exam.

(2) Starting January 1, 2020, for the purposes of licensure, a dental hygienist applicant shall verify successful passage of a board-approved patient-based clinical practical exam to include the following:

(a) clinical competency and patient competency with the following components:

- (i) pocket depth;
- (ii) recession;
- (iii) calculus detection and removal; and
- (iv) intraoral and extraoral assessment.

(3) For the purpose of a local anesthetic permit a dental hygienist applicant shall verify successful passage of a board-approved written and patient-based clinical practical exam to include:

(a) the Western Regional Examining Board (WREB) or board-approved local anesthetic exam.

(4) The board may review applications from applicants who have taken a clinical practical examination that does not meet the above criteria as nonroutine for licensure.

(5) This rule shall not apply to dentist or dental hygienist applicants applying by credentialing.

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

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

REASON: In 2014, the board became aware that some board-approved regional clinical exam agencies were implementing clinical exams with optional exam sections such as periodontics and/or prosthodontics. The board also wanted to address non-patient-based clinical exams such as the objective structured clinical exam that is common in Canada and has been adopted by other U.S. states. Some states also allow licensure based on a one-year post graduate residency in lieu of a clinical exam. In 2017, the board established the clinical exam review committee to research these issues and research how other states have dealt with them. In 2018, the committee forwarded draft rule language to the board. Following discussion and revisions, the board is now proposing NEW RULE I to address the identified dentist and dental hygienist clinical examination issues.

The board is adopting this new rule following a determination that the safe practice of dentistry in Montana requires that relatively inexperienced dental school graduates prove holistic competence in core elements of routine dental procedures prior to licensure. Dentist and dental hygienist applicants can be licensed to practice in Montana either through credentialing or examination. The board concluded that exam applicants should reasonably be expected to demonstrate competence by testing routine procedures, including a variety of fillings and core periodontal, endodontics, and prosthodontic procedures. Because credentialing applicants require a minimum of 3000 hours of practice for dentists and 1000 for dental hygienists for licensure, it can be reasonably expected they have performed these procedures during their years of experience. The board determined that any additional burden these requirements may impose on exam applicants will be relatively minimal, while the requirements will help protect public health and safety by requiring that applicants demonstrate hands-on competence in procedures they are likely to perform prior to licensure.

NEW RULE II DENTURIST SCOPE OF PRACTICE – DENTURES OVER IMPLANTS (1) It is within the scope of practice of a denturist to fit dentures over implants under the following conditions:

(a) the fitting must be performed under the direct supervision of a Montana-licensed dentist;

(b) the denture must be at least partially soft-tissue-borne; and

(c) the denture must be manually removable by the wearer.

(2) "Direct supervision" means treatment by a licensed denturist provided with the intent and knowledge of a licensed dentist and while the dentist is on the premises.

(3) A denturist fitting a denture over dental implants who is not in compliance with this rule may be subject to discipline for unprofessional conduct.

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

IMP: 37-1-131, 37-29-102, 37-29-103, MCA

REASON: In September 2018, as a result of litigation settlement, the board agreed to replace ARM 24.138.2302(1)(j) that prohibits denturists from fitting dentures on or over dental implants with a new rule allowing the practice and created with input from all stakeholders. The parties intended the new rule to be in place within 18 months of the agreement.

The board's rules committee reviewed similar regulations in the five other U.S. states that license and regulate the practice of dentistry and forwarded their draft rule language to the full board. On June 7, 2019, the board reviewed, discussed, and accepted the committee's suggested new rule. Therefore, the board is adopting this new rule to recognize that denturists can safely fit dentures over implants under the supervision of a dentist. Because of the unacceptably high risk of damage to teeth and jaws from the pressure of fitting dentures, the board concluded that safe practice requires a denturist's fitting of dentures over implants be overseen by a dentist on the premises and available as needed.

5. The rule proposed to be repealed is as follows:

24.138.510 DENTURIST EXAMINATION

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

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

REASON: During a review of the rules, staff observed that the denturist licensure rules had not been reviewed or updated in over ten years and recommended several amendments to update to current examination standards and application procedures. The board is repealing this rule to represent current application processes and further facilitate initial licensure of denturists in Montana. All relevant provisions are relocated to ARM 24.138.511.

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., October 4, 2019.

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 May 14, 2019, by telephone.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.301, 24.138.402, 24.138.403, 24.138.406, 24.138.419, 24.138.502, 24.138.503, 24.138.505, 24.138.506, 24.138.507, 24.138.508, 24.138.509, 24.138.511, 24.138.512, 24.138.514, 24.138.525, 24.138.2105, 24.138.2301, 24.138.2302, 24.138.3223, 24.138.3225, and 24.138.3229 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 Rules I and II 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 24.138.510 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. Bradley Jones, board attorney, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY  
AIMEE AMELINE, DDS  
PRESIDENT

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

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

Certified to the Secretary of State August 27, 2019.