

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 |
| 24.138.206 dental hygienist               | ) | PROPOSED AMENDMENT AND      |
| committee, 24.138.301 definitions,        | ) | ADOPTION                    |
| 24.138.406 functions for dental           | ) |                             |
| auxiliaries, 24.138.502 initial licensure | ) |                             |
| of dentists by examination,               | ) |                             |
| 24.138.503 initial licensure of dental    | ) |                             |
| hygienists by examination,                | ) |                             |
| 24.138.2302 unprofessional conduct        | ) |                             |
| for denturists, and the adoption of       | ) |                             |
| New Rule I denturist scope of practice    | ) |                             |
| – dentures over implants                  | ) |                             |

TO: All Concerned Persons

1. On February 7, 2020, 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 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 no later than 5:00 p.m., on January 30, 2020, to advise us of the nature of the accommodation that you need. Please contact Kevin Bragg, 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:

24.138.206 DENTAL HYGIENIST COMMITTEE (1) remains the same.

(2) The committee shall meet ~~at least once a year and~~ as needed to review issues pertaining to dental hygienists and make recommendations to the full board.

AUTH: 37-4-205, MCA

IMP: 37-4-205, MCA

REASON: In reviewing the requirements for standing committees, the board noticed that a specific requirement for a yearly meeting existed for the hygienist committee, although the committee did not always have business to discuss. The board is amending this rule to minimize costs to licensees that result from a required meeting

and to create uniform committee standards.

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

(1) and (2) remain the same.

(3) "Certified dental assistant" is a dental auxiliary who has successfully completed all of the following exams and holds current certification from the Dental Assisting National Board:

(a) general chairside assisting (GC);

(b) radiation health and safety (RHS); and

(c) infection control (ICE).

(3) through (10) remain the same but are renumbered (4) through (11).

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: The 2019 Montana Legislature enacted Chapter 157, Laws of 2019 (Senate Bill 157), an act revising the supervision requirements for dental auxiliaries/assistants who have the dental assisting national board (DANB) certification. While the bill is codified at 37-4-408, MCA, the legislature did not define the criteria for DANB certification in statute. DANB currently offers multiple exams and certifications such as "certified orthodontic assistant," which could be misunderstood to be a type of "certified dental assistant." To prevent any confusion, the board determined it is reasonably necessary to amend this rule and clarify that a DANB certified dental assistant will have successfully taken the three exams listed.

To implement the bill and allow auxiliaries to work under general supervision while ensuring adequate public protection, the board concluded that certified dental assistants must maintain current certification. The statute now requires that DANB certified assistants "hold[s]" certification, which the board interprets to mean maintains current certification, not simply being certified at a point in time. Since 37-4-408, MCA, allows DANB certified auxiliaries to practice, in certain circumstances, with less supervision by a dentist than a non-DANB certified auxiliary, the board believes that the continued education and training required for an auxiliary to maintain certification is necessary to help the auxiliary maintain the skills needed to safely treat dental patients. As a result, to implement the legislation and protect public safety, the board is amending this rule to clarify what constitutes DANB dental assistant certification and specify that DANB certification must be maintained by the auxiliary/assistant to continue practicing under general supervision. The board determined that providing a definition of a certified dental assistant in this rule is more efficient than continued explanations in ARM 24.138.406. The clarification is necessary since the board allows for non-certified auxiliaries to perform certain functions as well and no specific definition of a certified auxiliary exists.

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 ~~shall include dental procedures as allowed by board rule and subject to (2), in which~~ per ARM 24.138.301 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) A certified dental assistant may work under the general supervision of a licensed dentist per ARM 24.138.301.

~~(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 as referenced in (12); and

(b) remains the same.

(c) taking impressions for study ~~or working~~ casts;

(d) through (o) remain the same.

(4) A certified dental assistant working under the general supervision of a licensed dentist per ARM 24.138.301 is 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; and

(f) applying topical anesthetic agents.

(5) A certified dental assistant working under the general supervision of a licensed dentist may place pit and fissure sealants following an in-person comprehensive oral examination or periodic examination within the preceding 30 days.

~~(3)~~ (6) Dental auxiliaries performing any intraoral procedure must be under the direct supervision of a licensed dentist, except that a certified dental assistant may work under the general supervision of a licensed dentist.

(7) No dentist shall allow any dental auxiliary to perform the following:

(a) through (f) remain the same.

(g) taking final impressions of the involved arch for crowns, bridges, implant prosthesis, partial dentures, ~~or complete dentures~~, orthodontic appliances, sleep apnea appliances, or bruxism appliances;

(h) through (k) remain the same.

(l) air polishing; or

(m) prophylaxis as per defined in ARM 24.138.301.

~~(4)~~ (8) 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 (9) and (10).

~~(7)~~ (11) 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)~~ (12) A dentist licensed to use or direct the use of an x-ray producing device must assure ensure 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 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) A certified dental assistant 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.~~

(13) Proof of current certification must be readily available for review by the public or the board upon request.

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

IMP: 37-4-408, MCA

REASON: In September of 2019, the board published MAR Notice No. 24-138-76 containing proposed changes to this rule to implement Senate Bill 157. After considering the comments and concerns regarding the proposed changes, the board did not proceed with any amendments to this rule in that notice, but instead discussed the concerns and suggestions at the December 6, 2019 full board meeting.

Senate Bill 157 revised the supervision requirements for DANB certified assistants but did not specifically provide the functions allowed under general supervision of a licensed dentist, nor any prohibited functions. Following consideration of comments in MAR Notice No. 24-138-76, the board is now amending this rule to implement the bill by clarifying both allowable and forbidden functions for DANB certified assistants working under general supervision. The board is adding (4)(a) through (f) to clearly delineate the functions the board concluded are outside the expertise of a DANB certified assistant and prohibited under general supervision.

The board is adding (5) to recognize that DANB certified assistants may place pit and fissure sealants for patients with a recent comprehensive or periodic oral examination. This amendment ensures public safety while acknowledging that DANB certified assistants are skilled enough to undertake this procedure in conjunction with a diagnosis from a licensed dentist.

While reviewing and amending this rule, the board determined it is reasonably necessary to amend (7)(g) to clarify those functions prohibited for all dental

auxiliaries. The amendments recognize the complexity of creating certain impressions and devices while ensuring proper fit and safety. The board is amending (12)(a)(ii) to ensure the rule includes all types of relevant military experience that may qualify an auxiliary to expose radiographs. It is reasonably necessary to amend (12)(b) to align with the new definition in ARM 24.138.301 that requires DANB certified assistants to have completed the radiographical requirement to expose patients to radiation. Non-certified assistants' completion of the RHS course is optional. The board is adding (13) to specify that proof of DANB certification must be available for patient and board review. In discussing the requirement, the board decided to impose the least restrictive alternative to actual board registration to better streamline regulation while ensuring adequate public safety.

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION

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

~~(c) affidavits from three persons not related to the candidate, of the candidate's good moral character;~~

(d) through (i) remain the same but are renumbered (c) through (h).

(2) through (4) remain the same.

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

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

REASON: While reviewing the rules, staff observed that the dentist and dental hygienist licensure rules had not been updated to current processes. The board agreed and is amending this rule and ARM 24.138.503 to no longer require good moral character affidavits. The board concluded that adequate information to demonstrate character is obtained through the application's disciplinary/criminal history questions, the results of each applicant's National Practitioner Data Bank (NPDB) self-query, and Professional Background Information Services (PBIS) background checks. The changes will align with current standardized application procedures and facilitate initial licensure of dentists and hygienists.

24.138.503 INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION

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

~~(c) affidavits from two persons not related to the candidate, of the candidate's good moral character;~~

(d) through (i) remain the same but are renumbered (c) through (h).

(2) through (4) remain the same.

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

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

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS

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

(c) ~~failure~~ failing to maintain an office(s) in sanitary condition consistent with current accepted sterilization and disinfection protocols for treatment rooms,

sterilization and laboratory areas, or operating under unsanitary conditions after a warning from the board;

(d) through (i) remain the same.

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

~~(k) (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~~

~~(l) (k) failure failing to respond to correspondence from the board, or failure failing to comply with final orders of the board; and~~

(l) making and fitting dentures over dental implants in violation of board rules.

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 strike (1)(j) which provides that a dentist "fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant" is unprofessional conduct. After reconsideration and multiple discussions, the board proposed in September of 2019 to amend this rule and adopt a new rule in MAR Notice No. 24-138-76. After considering the comments and concerns received on the proposed changes, the board did not proceed at that time with any amendments to this rule and did not adopt the new rule. The board instead discussed the concerns and suggestions at the December 6, 2019 full board meeting and decided to proceed with the changes in this notice.

The board is adopting NEW RULE I to recognize that denturists can safely fit dentures over implants with a written referral from a licensed dentist among other requirements. To align with the provisions of NEW RULE I, the board determined it is reasonably necessary to amend this rule by striking (1)(j) and adding (1)(l) to establish that it is unprofessional conduct for a dentist to make and fit dentures over implants in violation of the requirements in board rules.

4. The proposed new rule is as follows:

NEW RULE I DENTURIST SCOPE OF PRACTICE – DENTURES OVER

IMPLANTS (1) A dentist may make and fit dentures over implants under the following conditions:

(a) the fitting must be performed after written referral from a Montana-licensed dentist;

(b) the dentist may not refer directly for implant placement;

(c) the denture must be fully soft-tissue supported; and

(d) the denture must be manually removable without tools.

(2) A dentist may not cut, surgically remove, or surgically reduce any tissue or natural teeth in the process of making and fitting an implant-retained denture.

(3) A dentist may not fit or adjust any abutment or otherwise adjust any appurtenance to a dental implant, except on the denture itself.

(4) A dentist may reline or rebase the original implant-retained denture.

AUTH: 37-1-131, 37-29-201, MCA  
IMP: 37-1-131, 37-29-102, 37-29-103, MCA

REASON: In 2018, as a result of litigation, the board agreed to revise ARM 24.138.2302(1)(j). After extensive consideration, a public hearing, and receiving significant public comment in MAR Notice No. 24-138-76, the board is proposing to adopt NEW RULE I. This new rule recognizes that denturists can safely fit dentures over implants if a treating dentist first examined the denture candidate to ensure that the implants are stable enough to support a denture. The board determined that, to ensure the safety of this process, a medical diagnosis from a dentist is first required to begin a referral. The board also determined that a denturist can safely fit a denture over an implant first deemed in stable condition by a dentist if the denture itself is not a fixed denture, but is soft-tissue supported and manually removable. The board determined that (2) is necessary to clarify that only a dentist can safely cut tissue or natural teeth as part of the fitting process, because any necessary cutting would first require a medical diagnosis. The board also concluded that only a treating dentist can safely adjust an abutment prior to fitting the denture because of possible concerns regarding over-torquing the abutment, and possible resulting damage to the underlying bone structure. Finally, the board determined that a denturist can safely reline or rebase a denture, which the denturist initially fitted, because such a reline or rebase would not necessarily require additional consultation from the treating dentist if the patient was otherwise receiving needed care and maintenance for the supporting implants from their treating dentist. The board is proposing NEW RULE I to allow denturists to work with a patient's treating dentist when making and fitting dentures over implants to help ensure public safety while expanding accessibility for Montana consumers.

5. 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., February 14, 2020.

6. An electronic copy of this notice of public hearing is available at [dentistry.mt.gov](http://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.

7. 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.

8. 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 and on December 4, 2019, by e-mail.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.206, 24.138.301, 24.138.406, 24.138.502, 24.138.503, and 24.138.2302 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).

10. Kevin Bragg, Executive Officer, 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/ THOMAS K. LOPACH  
Thomas K. Lopach, Interim Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 7, 2020.