

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

In the matter of the amendment of)
ARM 24.138.504 approved clinical)
exam criteria for dentists and dental)
hygienists, 24.138.3102 specialty)
advertising, and the adoption of New)
Rule I dental hygienists – temporary)
practice permits)

TO: All Concerned Persons

1. On July 31, 2020, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and adoption of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform by dialing 406-444-4647 (local) or 1-833-681-5958 (toll free) and entering meeting ID 9432427 when directed to do so.

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 July 24, 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:

24.138.504 APPROVED CLINICAL EXAM CRITERIA FOR DENTISTS AND DENTAL HYGIENISTS (1) remains the same.

(2) Dental students who graduate in the year 2020 shall be allowed to substitute the Western Regional Examining Board's manikin-based operative exam in lieu of the patient-based examinations required in (1)(a) and (1)(b). All remaining non-patient-based requirements shall remain in effect. The exception outlined in this section shall expire on December 31, 2020.

(2) through (5) remain the same but are renumbered (3) through (6).

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

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

REASON: The board determined it is reasonably necessary to amend this rule in response to the COVID-19 pandemic. The current rule requires that dental graduates undertake a patient-based clinical examination with skills performed on live patients. The board has increasingly received requests for accommodation regarding patient-based examinations due to the pandemic. The main issues arise from the closure of many testing facilities, delayed regional examinations, and travel restrictions. The declared emergency and the resulting continued delays to new graduates are indefinite in nature. Additionally, the lack of personal protective equipment or PPE further exacerbates the restarting of patient-based examinations. The board concluded that if graduates are not allowed some accommodation, their licensure will be significantly delayed and the number of providers to Montana's citizens unnecessarily limited. The board has determined that allowing graduates to challenge the Western Regional Examination Board (WREB) manikin examination, for the year 2020, will ensure individuals are trained safely and effectively while allowing students to meet their clinical requirements.

24.138.3102 SPECIALTY ADVERTISING (1) through (2)(h) remain the same.

- (i) oral and maxillofacial radiology; ~~and~~
- (j) oral medicine;
- (k) dental anesthesiology; and
- (j) remains the same but is renumbered (l).
- (3) through (5) remain the same.

AUTH: 37-4-205, MCA

IMP: 37-4-205, MCA

REASON: In 2019 the National Commission on Recognition for Dental Specialties and Certifying Boards (NCRDSCB) approved dental anesthesiology as a recognized specialty. Subsequently in 2020, NCRDSCB approved oral medicine as its 11th approved specialty. The board determined it is reasonably necessary to update this rule to align with national standards and to explicitly authorize the use of these specialty designations by practitioners.

4. The proposed new rule is as follows:

NEW RULE I DENTAL HYGIENISTS – TEMPORARY PRACTICE PERMITS

(1) Dental hygienist applicants shall be issued a temporary practice permit under 37-1-305(2), MCA, while waiting to take either their written national examination or their regional clinical examination.

(2) A dental hygienist holding a temporary practice permit may practice only under the direct supervision of a dentist licensed by the state of Montana.

(3) Any advertisement in which the temporary permit holder is named or pictured must state that the individual holds a temporary permit.

(4) Prior to issuance of the temporary practice permit, applicants and their supervising dentist(s) shall consent to the provisions of this rule and 37-1-305(2), MCA, in a signed statement filed with the department.

(5) Temporary permits shall not be available to nonroutine applicants absent board review and determination that issuance of the permit will not endanger the public.

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

IMP: 37-1-131, 37-1-305, 37-1-319, 37-4-402, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule in response to the COVID-19 pandemic. Currently, ARM 24.138.504 requires that dental hygienist graduates undertake a patient-based clinical examination with skills performed on live patients. The board has increasingly received requests for accommodation regarding patient-based examinations due to the pandemic. Additionally, in-state dental hygiene graduates have had their written examinations delayed by approximately six months. The declared emergency and the resulting continued delays to new graduates are indefinite in nature. Additionally, the lack of personal protective equipment or PPE further exacerbates the restarting of patient-based examinations. If graduates are not allowed some accommodation, their licensure will be significantly delayed and the number of providers to Montana's citizens limited.

The board has therefore determined that issuing dental hygiene graduates a temporary practice permit will allow these graduates adequate opportunities to enter the workforce while awaiting licensure. Further, to ensure that individuals are trained safely and effectively, a Montana-licensed dentist must directly supervise all work done under such a temporary practice permit. The board concluded it is necessary to make the duration of the permit contingent upon the graduate taking the first available examination. If the examination is passed a full license shall be issued and if failed, the temporary permit shall expire with immediate effect. This expiration requirement aligns with the parameters of the implemented statute, 37-1-305, MCA, and will protect the public from harm performed by unsuccessful candidates.

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, and must be received no later than 5:00 p.m., August 7, 2020.

6. An electronic copy of this notice of public hearing is available at 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; 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, do not apply.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.504 and 24.138.3102 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.

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/ BRENDA NORDLUND
Brenda Nordlund, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 30, 2020.