

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.138.402 fee schedule, 24.138.504) PROPOSED AMENDMENT
approved clinical exam criteria for)
dentists and dental hygienists, and)
24.138.508 dental hygiene local)
anesthetic agent certification)

TO: All Concerned Persons

1. On November 30, 2021, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/87244228772>
Meeting ID: 872 4422 8772, Passcode: 700769
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 872 4422 8772, Passcode: 700769

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

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 November 23, 2021, 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:

- 24.138.402 FEE SCHEDULE (1) remains the same.
- (2) Credentialing fee for dentists ~~500~~ 250
- (3) through (5) remain the same.
- (6) Active renewal fee for dentists ~~306~~ 225
- (7) Active renewal fee for dental hygienists ~~140~~ 110
- (8) Active renewal fee for denturists ~~200~~ 150
- (9) Inactive renewal fee for dentists ~~153~~ 112

- (10) Inactive renewal fee for dental hygienists 70 55
- (11) Inactive renewal fee for denturists 400 75
- (12) through (16) remain the same.

AUTH: 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, 37-4-340, 37-4-341, 37-4-402, 37-4-405, 37-29-303, MCA

REASON: In providing administrative services to the board, department staff discovered that the board's cash balance is nearing two times its appropriation. Following a fee structure analysis, the board determined it is reasonably necessary to amend this rule and reduce fees to maintain compliance with 17-2-302, MCA. For the current renewal cycle beginning January 1, 2022, all renewal fees will be abated by 50%. Moving forward, the board is reducing renewal fees between 25% to 30%, starting in 2023. Additionally, the board is reducing the dentist credentialing application fee by 50% to align the fee more closely with work involved to process current credentialing applications. The board estimates the decrease in renewal fees will affect approximately 1,882 licensees, both active and inactive:

- DENTISTS: 862 Active, 18 Inactive
- DENTAL HYGIENISTS: 964 Active, 17 Inactive
- DENTURISTS: 21 Active

These changes will result in a revenue reduction of approximately \$199,000 by June 30, 2022. The corresponding reduction in renewal fees permanently by 25% to 30% beginning in fiscal year 2023 will, over five years, reduce the board's cash balance by \$338,000 and leave the board with \$501,400 in ending cash for fiscal year 2026. When weighed against expected expenses, this reduction will place the board in a more stable position to continuously keep one year's worth of cash on hand. The board and department will continue to monitor cash reserves in a fiscally prudent manner while maintaining its current level of operations.

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

(2) Dental students who graduate during the state of emergency declared in the Governor of Montana's Executive Order 2-2020 or in the ~~year-2024~~ years 2021 and 2022 shall be allowed to substitute a board-approved 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 December 31, ~~2024~~ 2022.

(3) and (3)(a) remain the same.

(b) Dental hygiene students who graduate during the state of emergency declared in the Governor of Montana's Executive Order 2-2020, or in the ~~year-2024~~ years 2021 and 2022, shall be allowed to substitute a board-approved manikin-based examination in lieu of a patient-based clinical examination. The exception outlined in this section shall expire on December 31, ~~2024~~ 2022.

(4) through (6) remain the same.

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

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

REASON: Since this rule was last amended in May 2021, the board received numerous inquiries regarding the lack of consideration for clinical examination candidates who test beyond 2021 due to the pandemic. Similarly, the continued testing progression of the dental industry is away from human-based patient testing. While the board recognizes the challenges of patient-based testing, it concluded that testing of psychomotor skills is a necessary component of producing competent applicants. The board has studied and heard presentations on the sufficiency of manikin-based examinations, tested manikin-based examinations, and reviewed their psychometrics as presented. After considering these factors, the board determined it is reasonably necessary to amend this rule to allow graduates through 2022 to utilize a manikin-based examination while the board further studies the requirements moving forward.

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT CERTIFICATION (1) remains the same.

(2) Application for local anesthetic certification by examination shall ~~be made on an application form and must~~ include the following:

(a) verification of successful passage of a board-approved local anesthetic examination, that includes a written and clinical component, within the last five years;

(b) through (d) remain the same.

(3) Application for a local anesthetic certificate by credentialing shall ~~be made on an application provided by the board and shall~~ include the following:

(a) ~~verification of successful passage of a board-approved local anesthetic examination more than five years ago~~ proof of completion in coursework and training regarding the administration of local anesthetic agents;

(b) through (f) remain the same.

(4) ~~An applicant who wishes to convert an inactive status local anesthesia certification in conjunction with the conversion of an inactive dental hygiene license shall:~~

(a) ~~verify passage of a board-approved local anesthetic examination;~~

(b) ~~submit an application provided by the board;~~

(c) ~~submit a copy of the applicant's current CPR, ACLS, or PALS card;~~

(d) ~~copies of any local anesthetic agent license held in other states; and~~

(e) ~~written verification from a supervising dentist that the applicant has practiced administering local anesthetic agents within the last five years.~~

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

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

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

REASON: In recent years, the board has seen a higher-than-average number of dental hygienist applicants who are wanting to transfer their prior out-of-state endorsements for local anesthesia when seeking Montana licensure. Current rules require that hygienists have passed a local-anesthesia-specific written and clinical

examination. With the pattern of increased mobility, hygienist candidates are having to test on skills which they have practiced in another state. Regulations across the country vary from requiring an examination to including the ability to administer local anesthesia as inherent to a dental hygiene license. The majority of jurisdictions require some coursework and training to administer these agents. The board concluded it is reasonably necessary to amend this rule to allow applicants to be qualified to administer local anesthetic agents without an express examination. To protect the public, the board is further amending the rule to require education and training in administration in addition to proof of a verifiable pattern of safety when granting this credentialing certificate.

Following staff recommendations, the board is striking (4) regarding the conversion of inactive anesthetic certification to active as unnecessary. The board notes that inactive status is a licensure status for primary licenses to practice and do not apply to endorsements. Additionally, changing from inactive to active licensure status does not require the licensed hygienist to "reprove" the ability to administer local anesthetics. Other changes will streamline and simplify the rule for ease of use.

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., December 3, 2021.

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 24.138.504 and 24.138.508 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.402 will significantly and directly impact small businesses. The group of small businesses likely affected are dental offices that have fewer than 50 full-time employees. Based upon its knowledge, the board finds that most, if not all, dental offices that operate in-state qualify as small businesses under this rubric. The board finds that the impact will allow small businesses to maintain excess funds or have cash available which would normally be remitted to the board for renewal fees. The board has not considered any alternative options to the fee reduction as it does not adversely affect licensees.

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.

9. Department staff has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY
LESLIE HAYES, DDS
PRESIDENT

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

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 26, 2021.