

DENTISTRY BOARD LAWS
AS OF THE 2019 LEGISLATIVE SESSION

TITLE 37, CHAPTER 29
DENTURITRY

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CHAPTER 29 DENTURITRY

Chapter Compiler's Comments

Severability: Section 28, I.M. No. 97, approved Nov. 6, 1984, was a severability section.

Chapter Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Chapter Administrative Rules

Title 24, chapter 138, ARM Board of Dentistry.

Part 1 General

37-29-101. Short title. This chapter may be cited as the "Freedom of Choice in Denture Services Act of 1984".

History: En. Sec. 1, I.M. No. 97, approved Nov. 6, 1984.

37-29-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Board" means the state board of dentistry provided for in 2-15-1732.
- (2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.
- (3) "Denturist" means a person licensed under this chapter to engage in the practice of denturistry.
- (4) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.
- (6) "Practice of denturistry" means:
 - (a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or
 - (b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

History: En. Sec. 2, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 524, L. 1987; amd. Sec. 134, Ch. 483, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1987 Amendment: In (1) substituted "board of dentistry" for "board of denturistry" and changed reference to "2-15-1855" to "2-15-1842" (renumbered 2-15-1732).

Preamble: The preamble to Ch. 524, L. 1987, provided: "WHEREAS, Montana Initiative No. 97 created the Board of Denturistry; and

WHEREAS, Chapter 548, Laws of 1985, required the Legislative Audit Committee to conduct a review of the Board of Denturistry and to propose a bill to the 50th Legislature merging the Board of Denturistry and the Board of Dentistry if the Board of Denturistry has not licensed 30 denturists; and

WHEREAS, the Legislative Audit Committee has determined that the Board of Denturistry has not licensed 30 denturists."

Administrative Rules

ARM 24.138.301 Definitions.

Case Notes

Res Judicata for Claims Against Board of Dentistry: When the parties are the same as in a former action, the subject matter is the same, and the issues are the same and relate to the subject matter, the matter is res judicata to subsequent claims. Res judicata bars not only issues that were litigated in a previous action, but also those that could have been litigated in a prior proceeding. *Wiser v. Bd. of Dentistry*, 2011 MT 56, 360 Mont. 1, 251 P.3d 675, followed in *Denturist Ass'n of Mont. v. St.*, 2016 MT 119, 383 Mont. 391, 372 P.3d 466.

Denturists' Due Process Rights Not Violated by Placement Under Board of Dentistry: Denturist plaintiffs contended that the policies, membership, and restrictions imposed on dentistry by the Board of Dentistry was a violation of due process, entitling plaintiffs to a federal claim under 42 U.S.C. 1983. The District Court rejected the claim, and the Supreme Court affirmed. Although the Board was comprised mostly of dentists, under *Friedman v. Rogers*, 440 US 1 (1979), due process does not require that a regulatory board equally represent all professions subject to that board's regulations, nor is there a constitutional right for a profession to be regulated by a board that is sympathetic to the commercial practice of that profession. Additionally, under *Zinermon v. Burch*, 494 US 113 (1990), to determine whether a procedural due process violation has occurred, the adequacy of the state's process must be examined for constitutionality. Here, plaintiffs did not show that administrative procedures afforded to them were inadequate, and in fact, they did not avail themselves of the process available to them. Plaintiffs' failure to exhaust the administrative process precluded relief by judicial review. Thus, the due process claim failed, and absent a constitutional claim, the 42 U.S.C. 1983 claim failed as well. *Wiser v. St.*, 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Partial Denture Rule Not Violative of Denturists' Right to Pursue Employment: Denturist plaintiffs challenged the rule of the Board of Dentistry, promulgated pursuant to 37-29-403, requiring dentist referrals before denturists may perform partial denture work, on grounds that the rule violated the constitutional right of denturists to pursue employment. Relying on *Wadsworth v. St.*, 275 M 287, 911 P2d 1165 (1996), plaintiffs contended that they had a fundamental right to practice dentistry free of regulation. Although *Wadsworth* did demonstrate plaintiffs' fundamental right to pursue dentistry as a profession, it did not mean that denturists have a right to practice dentistry free of all regulations. The partial denture rule does not bar dentistry, and plaintiffs may pursue their profession as long as their patient obtains a dentist referral. Although a person does have a fundamental right to pursue employment, one does not have the right to practice a profession free of state regulation promulgated to protect the public welfare. The Supreme Court declined to apply strict scrutiny review, and plaintiffs' employment infringement argument failed. *Wiser v. St.*, 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Rule Requiring Dentist Referrals Prior to Performance of Partial Denture Work by Denturists Not Violative of Right of Privacy: Denturist plaintiffs challenged the rule of the Board of Dentistry, promulgated pursuant to 37-29-403, requiring dentist referrals before denturists may perform partial denture work, on grounds that the rule violated the private right of patients to seek the medical professional of their choice. The District Court upheld the constitutionality of the rule, and on appeal, the Supreme Court affirmed. Although the Supreme Court affirmed the right of an individual to obtain and reject medical treatment in *Armstrong v. St.*, 1999 MT 261, 296 M 361, 989 P2d 364 (1999), that general rule does not translate into a fundamental right of a patient to obtain medical care free of regulation. The state may exercise its police power to regulate for the health and safety of its citizens, and that power often implicates individual rights. However, when the rights affected are not fundamental, the state need demonstrate only a rational basis for the regulation rather than a compelling state interest. Plaintiffs did not argue whether the partial denture rule was rationally related to a legitimate state interest, and absent a showing of a fundamental right, the privacy argument failed. *Wiser v. St.*, 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

37-29-103. Association with dentists permitted. A licensed denturist may enter into any lawful agreement with a dentist regarding fees, compensation, and business association.

History: En. Sec. 19, I.M. No. 97, approved Nov. 6, 1984.

Case Notes

Use of Declaratory Judgment to Settle Question of Business Association Between Dentist and Denturist Improper — Dismissal for Failure to State Claim and Exhaust Administrative Remedies:

Brisendine, a licensed dentist, presented to the Board of Dentistry a proposal stating his desire to enter into a business association with a dentist regarding fees and compensation. The Board issued a letter stating that it was considering the proposal but that such association would probably constitute the illegal practice of dentistry. The Board further threatened sanctions against Brisendine if he went forward with his proposal, but no final decision was ever issued by the Board. Brisendine sought a declaratory judgment and injunctive relief in District Court, requesting a decision on whether the business association was legal. The District Court dismissed the complaint for failure to present a justiciable controversy. On appeal, the Supreme Court affirmed, holding that use of a declaratory judgment at this stage of the proceedings constituted an attempt to seek an advisory opinion and an unwarranted intrusion into the Board's regulatory authority. The Supreme Court noted that Brisendine could seek a declaratory judgment from the Board without subjecting his license to suspension or revocation and that dismissal of the motion for declaratory judgment was proper because Brisendine had not exhausted his administrative remedies. *Brisendine v. St.*, 253 M 361, 833 P2d 1019, 49 St. Rep. 444 (1992), distinguished in *Ridley v. Guar. Nat'l Ins. Co.*, 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997).

37-29-104. Health insurance policies to include dentist services. Notwithstanding any provision of any policy of insurance covering health, whenever such policy provides for reimbursement for any service that is within the lawful scope of practice of a dentist, the insured under such policy is entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed dentist.

History: En. Sec. 18, I.M. No. 97, approved Nov. 6, 1984.

Cross-References

Insurance contract — policy provisions, Title 33, ch. 15, part 3.

Dentists performing services common to medicine and dentistry, 33-30-1011.

37-29-105. Applicability of other law. To the extent that they do not conflict with the provisions of this chapter, the provisions of chapter 1 of this title and Title 2, chapters 4 and 15, apply to the powers and duties of the department and the board.

History: En. Sec. 12, Ch. 548, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Allocation of boards for administrative purposes, 2-15-121.

Part 2 Board of Dentistry

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-29-201. Board powers and duties. The board has the following powers and duties:

- (1) determination of the qualifications of applicants for licensure under this chapter;
- (2) administration of examinations for licensure under this chapter;
- (3) collection of fees and charges prescribed in this chapter;
- (4) issuance, suspension, and revocation of licenses for the practice of dentistry under the conditions prescribed in this chapter; and
- (5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to form and display of licenses, license examination format, criteria and grading of examinations, and disciplinary standards for licensees.

History: En. Sec. 10, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 548, L. 1985; amd. Sec. 88, Ch. 429, L. 1995; amd. Sec. 35, Ch. 109, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 109 in (5) at end after "licensees" deleted "and inspection of denturistry premises and facilities"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 429 in (5), before "form", deleted "license applications" and after "facilities" deleted "and investigation of complaints"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1985 Amendment: In (2) after "examinations", deleted "and determination of a passing grade"; and inserted (5) referring to adoption of rules.

Sunset Review: Chapter 548, L. 1985 (HB 649), provided for review of the operations of the Board of Denturistry (merged with Board of Dentistry by Ch. 524, L. 1987) by the Legislative Audit Committee. For the text of the sunset provision see compiler's comments at Title 37, ch. 29, part 3.

Statement of Intent: The statement of intent attached to Ch. 548, L. 1985, provided: "This bill is for a major revision of Initiative 97, the Denturistry Practice Act. The bill delegates new authority to the new board of denturistry [merged with Board of Dentistry by Ch. 524, L. 1987] and clarifies some delegations of authority contained in the initiative. A statement of intent is therefore required for this bill.

It is the intent of section 1 of the bill that the governor have authority to implement staggered terms of board members during the appointing process.

It is the intent of section 4 of the bill that the board of denturistry [merged with Board of Dentistry by Ch. 524, L. 1987] have general authority to adopt rules for the implementation and enforcement of the act, including specific authority to adopt rules regarding license applications, license examinations, criteria for grading examinations, disciplinary standards for licensee, inspection of premises and facilities used in the practice of the profession, and investigation of complaints.

It is the intent of section 6 of the bill that the board have authority to modify fees set by the initiative and to set and modify additional fees.

It is the intent of section 7 of the bill that the board have authority to alter license renewal dates by rule.

It is the intent of section 8 of the bill that the board have authority to define "unprofessional conduct" of licensees by rule, for the purpose of establishing license discipline conduct standards."

Administrative Rules

ARM 24.138.415 Ninety-day guarantee required by denturists.

ARM 24.138.519 Grounds for denial of license.

Attorney General's Opinions

Board of Dentistry Not to Reconsider Licensing Decisions of Board of Denturistry: Administrative agencies enjoy only those powers specifically conferred upon them by statute. They possess no common-law powers, and implied powers are limited only to those necessary for the effective exercise and discharge of powers and duties expressly conferred. Therefore, when the Board of Denturistry had no power to reconsider its licensing decisions, the Board of Dentistry, having succeeded to the functions of the Board of Denturistry, may not reconsider a prior decision of the Board of Denturistry to issue a denturist's license. 43 A.G. Op. 33 (1989).

37-29-202. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 8, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 548, L. 1985.

37-29-203. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 9, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 548, L. 1985.

Part 3 Licensing

Part Compiler's Comments

Sunset Review: Section 16, Ch. 548, L. 1985, provided: "Sunset review by audit committee — provisions for possible merger. (1) The legislative audit committee shall review the operations of the board of dentistry [merged with Board of Dentistry by Ch. 524, L. 1987] under the criteria of 2-8-112 and 2-8-113 and the additional criterion of whether the board has licensed a sufficient number of denturists to be a viable agency. The legislative audit committee shall, if the board has not licensed 30 denturists who are practicing in Montana by October 1, 1986, or if the board has otherwise failed to demonstrate its fiscal viability, and may in any event, prepare a bill for the 50th legislature to merge the board of dentistry with the board of dentistry [merged by Ch. 524, L. 1987].

(2) If the legislative audit committee proposes a merger under subsection (1), it shall provide that the board of dentistry consist of four dentists, one dental hygienist, one dentist, and two lay persons, one of whom must be a senior citizen representative."

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-29-301. License to practice required. A person shall hold a license for the practice of dentistry in order to perform the following acts:

- (1) engaging or offering to engage in the practice of dentistry; or
- (2) use in connection with the person's name the word or letters "denturist", "L.D.", or any other words, letters, abbreviations, or insignia implying that the person is engaged in the practice of dentistry.

History: En. Sec. 3, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 16, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 at beginning deleted "After April 1, 1985"; deleted former (2) that read: "(2) The practice of dentistry within the context of this chapter requires that all work except cast frame work be performed at the address shown on the dentist's license"; and made minor changes in style. Amendment effective October 1, 1999.

37-29-302. Exceptions. The provisions of this chapter do not apply to:

- (1) a person interning under the direct supervision of a licensed dentist as required by 37-29-303(2), provided that a dentist may not supervise more than one intern at any one time;
 - (2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana;
- or
- (3) a student of dentistry in pursuit of clinical studies under a school program or internship as required by 37-29-303.

History: En. Sec. 4, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 158, Ch. 42, L. 1997.

37-29-303. Application for license. Upon application and payment of the appropriate fee, the board shall issue a license to practice dentistry to any applicant who meets the following criteria and scores a passing grade on the examination for licensure:

(1) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies, including cardiopulmonary resuscitation; and

(2) documentation that the applicant:

(a) has completed 1 year of internship under the direct supervision of a licensed dentist; or

(b) has 3 years of experience as a dentist under licensure in another state or Canada.

History: En. Sec. 11, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 5, Ch. 548, L. 1985; amd. Sec. 1, Ch. 245, L. 1991; amd. Sec. 89, Ch. 429, L. 1995.

Compiler's Comments

1997 Amendment: Chapter 42 in (3), after "37-29-303", deleted "(2)"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment: Chapter 429 in middle of introductory clause, after "meets", deleted "one of"; deleted former (1) that read: "(1)(a) Applications for persons engaged in the practice of dentistry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:

(i) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and

(ii) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.

(b) Subsection (1)(a) must be applied retroactively to permit qualification of license applicants initially qualified and applying prior to the appointment and qualification of the original board under this chapter and section 27 of I.M. No. 97"; deleted former (2) providing requirements for applications filed on or after April 1, 1985; deleted (3) that read: "(3) A dentist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of dentistry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed, attesting to 5 years' practice under the certificate of license. However, no applicant may be licensed under the provisions of this subsection unless the state or territory in which he is licensed or certified extends a like privilege to dentists licensed by the state of Montana to practice dentistry. The board may enter into reciprocal relations with those states or territories whose laws are compatible with this chapter"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (2)(b)(i), near beginning, reduced from 2 years to 1 year the internship period for dentist.

1985 Amendment: Renumbered former (1)(a) and (1)(b) as (1)(a)(i) and (1)(a)(ii); inserted (1)(b) referring to retroactive application; and in (3) in last sentence, before "states", deleted "boards in".

Initiative Internal Reference: The reference in subsection (1)(b) to sec. 27 of Initiative Measure No. 97 has been left in that form because sec. 27, I.M. No. 97, was not codified. It provided for appointment to the initial board of dentistry and for the terms of office of initial board members. The initial board was confirmed by the Senate on April 9, 1985. (Sec. 10, Ch. 548, L. 1985, amended sec. 27, I.M. No. 97. For text, see Ch. 548, L. 1985.)

Administrative Rules

ARM 24.138.511 Dentist application requirements.

37-29-304. Repealed. Sec. 127, Ch. 467, L. 2005.
History: En. Sec. 13, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 6, Ch. 548, L. 1985; amd. Sec. 33, Ch. 492, L. 1997; amd. Sec. 29, Ch. 224, L. 2003.

37-29-305. Repealed. Sec. 127, Ch. 467, L. 2005.
History: En. Sec. 12, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 159, Ch. 42, L. 1997; amd. Sec. 17, Ch. 230, L. 1999.

37-29-306. Licensing. (1) A denturist license is valid for a period established by department rule. A denturist shall submit proof that the denturist holds a current cardiopulmonary resuscitation card.

(2) An application must be submitted on a form furnished by the department. Each application must include all other documentation necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. An application must be accompanied by the appropriate fees.

History: En. Sec. 14, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 7, Ch. 548, L. 1985; amd. Sec. 49, Ch. 83, L. 1989; amd. Sec. 2, Ch. 245, L. 1991; amd. Sec. 90, Ch. 429, L. 1995; amd. Sec. 34, Ch. 492, L. 1997; amd. Sec. 37, Ch. 271, L. 2003; amd. Sec. 81, Ch. 467, L. 2005.

Compiler's Comments

2005 Amendment: Chapter 467 in (1) at end of first sentence after "rule" deleted "and expires on the date set by department rule", deleted former second sentence that read: "A renewal license must be issued upon timely payment of the renewal fee and the submission of proof of continued qualification for licensure", and deleted former fourth sentence that read: "The license must bear on its face the address where the licensee's denturist services will be performed"; in (2) in first sentence after "submitted on" substituted "a form" for "forms approved by the board and"; deleted former (3) that read: "(3) This section may not be interpreted to conflict with 37-1-138"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 271 inserted (3) to provide that this section may not be interpreted to conflict with 37-1-138. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1997 Amendment: Chapter 492 in (1), in first sentence, substituted "established by department rule" for "of 1 year"; and made minor changes in style. Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable [sic] public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [now Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 429 in (1), at end of first sentence, inserted "and expires on the date set by department rule", substituted second sentence concerning timely payment of renewal fee and submission of proof of continued qualification for licensure for former text that read: "A renewal license

must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours of continuing education, which may include programs sponsored by an educational institution, state denturist licensing board, or a recognized denturist organization. Subject matter must be pertinent to denturistry as enumerated in 37-29-305(3). Approval of acceptable hours of continuing education must be made by the board. The board may approve, in one action, all the courses presented by a particular organization if the board is satisfied that the courses presented by that organization meet the requirements of this section. Hours pertain to clock hours actually attended by the licensee", and deleted seventh sentence that read: "A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued"; deleted (3) that read: "(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under this chapter"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (1) substituted fourth and fifth sentences regarding Board approval of hours and courses of continuing education for former fourth sentence that read: "Requests for approval of continuing education programs must be made to the board, providing sufficient outline of the program on which the board may base its determination".

1989 Amendment: In (1) substituted "state denturist licensing board" for "state denturist board".

1985 Amendment: In (1) at beginning inserted "After March 1, 1985"; in (2), deleted former first sentence that read: "Licensure applications must be received by the department on or before April 1 preceding the July examination" and deleted former last sentence that read: "Applications received after April 1 will be held over for examination the following year"; and inserted (3) allowing Board to alter future renewal dates.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative Rules

ARM 24.138.510 Denturist examination.

37-29-307 through 37-29-310 reserved.

37-29-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 8, Ch. 548, L. 1985.

37-29-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, I.M. No. 97, approved Nov. 6, 1984.

37-29-313. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, I.M. No. 97, approved Nov. 6, 1984.

37-29-314 through 37-29-320 reserved.

37-29-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 22, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 9, Ch. 548, L. 1985.

Part 4 Regulation

37-29-401. Standards of conduct and practice. Each denturist shall comply with the following standards of practice:

- (1) Each licensed denturist shall carry a current cardiopulmonary resuscitation card.
- (2) Teeth and materials used must meet American dental association standards.
- (3) Nonmetal full dentures must be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 6, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 18, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 deleted former (1) through (7) that read: "(1) There shall be at least three separate rooms:

- (a) a reception room;
 - (b) an operatory room; and
 - (c) a laboratory.
- (2) The operatory room must have a sink and cuspidor with running water and a disposal system.
- (3) There must be a sterilization unit and cold disinfectant in every office to insure the protection of the public. Each denturist shall take care to use proper sterilization and sanitation techniques in all phases of his work.
- (4) Floors, walls, ceilings, and benches must be kept in a sanitary condition.
- (5) Every patient must have a separate and clean bib and a disposable cup.
- (6) Every denturist shall wear a clean and professional garment.
- (7) Every denturist shall wash his hands with germicidal or antiseptic soap and water in the presence of each patient"; deleted former (9) and (10) that read: "(9) Adequate and conveniently located toilet facilities must be provided within the building.
- (10) A complete record of each patient must be kept"; and made minor changes in style.
- Amendment effective October 1, 1999.

37-29-402. Prohibitions. No licensed denturist may:

- (1) extract or attempt to extract teeth;
- (2) initially insert immediate dentures in the mouth of the intended wearer;
- (3) diagnose or treat any abnormalities, except that a licensed denturist may apply tissue conditioning agents;
- (4) recommend any prescription drug for any oral or medical disease; or
- (5) construct or fit orthodontic appliances.

History: En. Sec. 5, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 245, L. 1991.

Compiler's Comments

1991 Amendment: In (3), after "abnormalities", inserted "except that a licensed denturist may apply tissue conditioning agents".

Administrative Rules

ARM 24.138.2302 Unprofessional conduct for denturists.

Case Notes

Res Judicata for Claims Against Board of Dentistry: When the parties are the same as in a former action, the subject matter is the same, and the issues are the same and relate to the subject matter, the matter is res judicata to subsequent claims. Res judicata bars not only issues that were litigated in a previous action, but also those that could have been litigated in a prior proceeding. *Wiser v. Bd. of Dentistry*, 2011 MT 56, 360 Mont. 1, 251 P.3d 675, followed in *Denturist Ass'n of Mont. v. St.*, 2016 MT 119, 383 Mont. 391, 372 P.3d 466.

37-29-403. Procedure for making and fitting partial denture. (1) Prior to making and fitting a partial denture, a denturist shall:

- (a) formulate a study model of the intended denture;
- (b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

History: En. Sec. 15, Ch. 548, L. 1985; amd. Sec. 91, Ch. 429, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 429 deleted (3) that read: "(3) A denturist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in 37-29-311."

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

Administrative Rules

ARM 24.138.416 Prior referral for partial dentures.

Case Notes

Denturists' Due Process Rights Not Violated by Placement Under Board of Dentistry: Denturist plaintiffs contended that the policies, membership, and restrictions imposed on dentistry by the Board of Dentistry was a violation of due process, entitling plaintiffs to a federal claim under 42 U.S.C. 1983. The District Court rejected the claim, and the Supreme Court affirmed. Although the Board was comprised mostly of dentists, under *Friedman v. Rogers*, 440 US 1 (1979), due process does not require that a regulatory board equally represent all professions subject to that board's regulations, nor is there a constitutional right for a profession to be regulated by a board that is sympathetic to the commercial practice of that profession. Additionally, under *Zinermon v. Burch*, 494 US 113 (1990), to determine whether a procedural due process violation has occurred, the adequacy of the state's process must be examined for constitutionality. Here, plaintiffs did not show that administrative procedures afforded to them were inadequate, and in fact, they did not avail themselves of the process available to them. Plaintiffs' failure to exhaust the administrative process precluded relief by judicial review. Thus, the due process claim failed, and absent a constitutional claim, the 42 U.S.C. 1983 claim failed as well. *Wiser v. St.*, 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Partial Denture Rule Not Violative of Denturists' Right to Pursue Employment: Denturist plaintiffs challenged the rule of the Board of Dentistry, promulgated pursuant to this section, requiring dentist referrals before denturists may perform partial denture work, on grounds that the rule violated the constitutional right of denturists to pursue employment. Relying on *Wadsworth v. St.*, 275 M 287, 911 P2d 1165 (1996), plaintiffs contended that they had a fundamental right to practice dentistry free of regulation. Although *Wadsworth* did demonstrate plaintiffs' fundamental right to pursue dentistry as a profession, it did not mean that denturists have a right to practice dentistry free of all regulations. The partial denture rule does not bar dentistry, and plaintiffs may pursue their profession as long as their patient obtains a dentist referral. Although a person does have a fundamental right to pursue employment, one does not have the right to practice a profession free of state regulation promulgated to protect the public welfare. The Supreme Court declined to apply strict scrutiny review, and plaintiffs' employment infringement argument failed. *Wiser v. St.*, 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Rule Requiring Dentist Referrals Prior to Performance of Partial Denture Work by Denturists Not Violative of Right of Privacy: Denturist plaintiffs challenged the rule of the Board of Dentistry, promulgated pursuant to this section, requiring dentist referrals before denturists may perform partial denture work, on grounds that the rule violated the private right of patients to seek the medical professional of their choice. The District Court upheld the constitutionality of the rule, and on appeal, the Supreme Court affirmed. Although the Supreme Court affirmed the right of an individual to obtain and reject medical treatment in *Armstrong v. St.*, 1999 MT 261, 296 M 361, 989 P2d 364 (1999), that general rule does not translate into a fundamental right of a patient to obtain medical care free of regulation. The state may exercise its police power to regulate for the health and safety of its citizens, and that power often implicates individual rights. However, when the rights affected are not fundamental, the state need demonstrate only a rational basis for the regulation rather than a compelling state interest. Plaintiffs did not argue whether the partial denture rule was rationally related to a legitimate state interest, and absent a showing of a fundamental right, the privacy argument failed. *Wiser v. St.*, 2006 MT 20, 331 M 28, 129 P3d 133 (2006).

Administrative Rule Valid — Referral to Dentist Mandatory: Plaintiffs failed to make a clear showing that a Board of Dentistry's rule requiring referral to a dentist prior to a denturist starting services added provisions not envisioned by the Legislature. The District Court erred when it declared the rule invalid. An administrative agency's interpretation of a statute under its domain is presumed to be controlling. *Christenot v. St.*, 272 M 396, 901 P2d 545, 52 St. Rep. 749 (1995). See also *Hawley v. Bd. of Oil & Gas Conserv.*, 2000 MT 2, 297 M 467, 993 P2d 677, 57 St. Rep. 5 (2000).

Attorney General's Opinions

Referral to Dentist Necessary Prior to Making and Fitting Partial Denture: A denturist has no discretion with respect to referral of a patient under this section. Therefore, a denturist must refer a patient to a dentist prior to making, fitting, or reconstructing a partial denture. 44 A.G. Op. 36 (1992).

37-29-404. Guarantee. Denturist services must be unconditionally guaranteed for a period of not less than 90 days.

History: En. Sec. 20, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 524, L. 1987; amd. Sec. 19, Ch. 230, L. 1999.

Compiler's Comments

1999 Amendment: Chapter 230 deleted former (1) regarding posting of notice and form of notice (see 1999 Session Law for former text); and made minor changes in style. Amendment effective October 1, 1999.

1987 Amendment: In notice provision of (1) substituted "board of dentistry" for "board of denturistry".

Preamble: The preamble to Ch. 524, L. 1987, provided: "WHEREAS, Montana Initiative No. 97 created the Board of Denturistry; and

WHEREAS, Chapter 548, Laws of 1985, required the Legislative Audit Committee to conduct a review of the Board of Denturistry and to propose a bill to the 50th Legislature merging the Board of Denturistry and the Board of Dentistry if the Board of Denturistry has not licensed 30 denturists; and

WHEREAS, the Legislative Audit Committee has determined that the Board of Denturistry has not licensed 30 denturists."

Administrative Rules

ARM 24.138.415 Ninety-day guarantee required by denturists.

37-29-405. Advertising restrictions. A person may not represent or hold out to the public that the person is a denturist or is practicing denturistry unless licensed under this chapter.

History: En. Sec. 14, Ch. 548, L. 1985; amd. Sec. 1396, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

37-29-406 through 37-29-410 reserved.

37-29-411. Injunction. When it appears to the board that any person, firm, or corporation is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the court may enjoin the person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 11, Ch. 548, L. 1985.

37-29-412. Violation and penalty. Violation of any provision of this chapter constitutes a misdemeanor and upon conviction is punishable by a fine of not less than \$100 or more than \$1,000 or by imprisonment for not more than 6 months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 21, I.M. No. 97, approved Nov. 6, 1984.