

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.138.508 dental anesthetic)
certification, 24.138.509 dental)
permits, and 24.138.2106)
exemptions - continuing education)

TO: All Concerned Persons

1. On July 16, 2009, the Board of Dentistry (board) published MAR Notice No. 24-138-66 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1068 of the 2009 Montana Administrative Register, issue no. 13.

2. On November 12, 2009, the board published a notice extending the comment period at page 2091 of the 2009 Montana Administrative Register, Issue no. 21.

3. On August 11, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the extended November 16, 2009, deadline.

4. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

Comments 1 and 2 pertain to ARM 24.138.508:

COMMENT 1: One commenter stated that requiring written verification of an applicant's experience in administering local anesthetic agents could create unforeseen problems in certification and suggested the board allow the verification be done by the applicants themselves.

RESPONSE 1: Following discussion, the board agreed with the commenter and is amending the rule accordingly.

COMMENT 2: A commenter stated that an applicant should not be required to reapply for exceeding the six-month application period and should be allowed a reasonable time to respond to board requests.

RESPONSE 2: The board notes that the six-month application period is consistent with current application processes and is not an absolute deadline for applicants. Staff will continue to work with any applicant trying to complete an application but nearing the end of the six-month period.

Comments 3 through 16 pertain to ARM 24.138.509:

COMMENT 3: Several commenters opposed adding the Paris Gibson Education Center (center) as a board-accepted additional public health facility for limited access permit (LAP) practice. The commenters asserted that dental offices are within walking distance of the center and in a safe neighborhood. The commenters stated that there is no issue with access to dental care for the center and offering LAP services may confuse students and their families into thinking they will receive a full diagnosis and complete dental care. A commenter opined that ten dentists practice within a half-mile of the center, six of them are Medicaid providers, and three of those are accepting new Medicaid patients.

RESPONSE 3: The board notes that 37-4-405(5)(c), MCA, allows limited access permit holders to provide dental hygiene services to patients who are unable to receive regular dental care due to age, infirmity, disability, or financial constraints. The board concluded that the statute does not limit LAP services based upon access to dental care or location of or patient proximity to a dental office.

COMMENT 4: One commenter asserted that because LAP services may only be provided to patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care, the board lacks the statutory authority to allow LAP services at the center. The commenter stated there has been no proof that the student population at the center has difficulty gaining access to dental care and believes that the center's students are not "unable to receive regular dental care." The commenter also stated that the local Community Health Care Center (CHCC) provides dental care for low income and uninsured patients.

RESPONSE 4: The board received additional documentation during the extended comment period and since this comment was submitted. Following consideration of the additional information, the board concluded that at a minimum, there exists a financial constraint on the young mothers and their children who are the population of the center. The board notes that documentation indicates the population may also be limited in getting regular dental care by age and infirmity. The board also notes that the CHCC does not offer or provide any regular preventative dental hygiene services.

COMMENT 5: A commenter stated that the major national pediatric health organizations advise that children have a "dental home" so that dental care is provided or supervised by qualified child dental health specialists.

RESPONSE 5: The board acknowledges the need for a dental home, but concluded that a LAP holder is an important part of this setting. Further, the LAP dental hygienist may only provide the limited dental hygiene services as outlined in 37-4-405(4), MCA.

COMMENT 6: One commenter stated that there has been no need shown for dental services by the students at the center. The commenter also questioned whether the center's students have been screened and how the dental hygienist proposing LAP services at the center gained access to the public schools.

RESPONSE 6: The board determined that both the documentation from the center's principal and the letter from a Great Falls pediatrician showed a need for LAP services at the center. The board cannot respond to questions regarding the screening of students or access to the public schools as they are beyond the board's knowledge.

COMMENT 7: A commenter stated that schools were intentionally left out of the enacting legislation for LAP services and that the center is a school.

RESPONSE 7: The board notes that 37-4-405, MCA, only lists programs and facilities at which LAP services may be performed, but does not specifically prohibit or exclude any type of location. The board is authorized under the statute to identify by rule other acceptable facilities and programs.

COMMENT 8: Three commenters stated that 38% of the students at Paris Gibson Education Center qualify for free lunch and are in a household at or below 130% of the poverty level. In comparison, 14% of the students at C.M. Russell High School and 20% at Great Falls High School qualify for free lunch.

RESPONSE 8: The board appreciates all comments made during the board's rulemaking projects.

COMMENT 9: One commenter supported the amendment stating that it would support the goals of the 2006 State of Oral Health in Montana report for the prevention of oral disease.

RESPONSE 9: The board appreciates all comments made during the board's rulemaking projects.

COMMENT 10: A commenter supported adding the center as a LAP site to offer dental hygiene preventative services to the highest risk families in the community. The commenter noted that these families have parents who are age 15 through 24 with children from infants through age three.

RESPONSE 10: The board appreciates all comments made during the board's rulemaking projects.

COMMENT 11: Two commenters supported LAP services at the center because such services would help educate the at-risk families who do not usually seek dental care except in emergency situations for pain relief.

RESPONSE 11: The board appreciates all comments made during the board's rulemaking projects.

COMMENT 12: Two commenters pointed out that the City County Health Department does not currently offer routine prophylactic dental cleaning, so center students cannot obtain preventative dental hygiene services there. One commenter stated that CCHD staff members do not routinely see new patients due to the overwhelming patient load.

RESPONSE 12: The board appreciates all comments made during the board's rulemaking projects.

COMMENT 13: Three commenters noted that, even though the center's students qualify for Healthy Montana Kids Plus (Medicaid), only six or seven Great Falls dentists are shown on the DPHHS web site as accepting new Medicaid patients. One commenter further stated that only three actually will accept new patients (two on the list take only hospital cases and two are the same entity).

RESPONSE 13: The board appreciates all comments made during the board's rulemaking projects.

COMMENT 14: One commenter suggested that allowing LAP services at the center would help reduce tax payer costs associated with having to send children to the nearest pediatric dentist in Helena.

RESPONSE 14: The board appreciates all comments made during the board's rulemaking projects.

COMMENT 15: A commenter stated that 59% of children between 100-199% of the federal poverty level have not seen a dentist in the past year. The commenter also noted that the current State of Oral Health in Montana report shows that 40.8% of all pregnant women did not receive dental care during their pregnancies.

RESPONSE 15: The board appreciates all comments made during the board's rulemaking projects.

COMMENT 16: A commenter asked if the board had canvassed the current LAP facilities to determine what services have been provided, where, when, and by whom.

RESPONSE 16: The board has not surveyed current LAP facilities or programs but acknowledges that such information could be beneficial.

5. The board has amended ARM 24.138.509 and 24.138.2106 exactly as proposed.

6. The board has amended ARM 24.138.508 with the following changes, stricken matter interlined, new matter underlined:

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT CERTIFICATION (1) through (3)(e) remain as proposed.

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

(4) and (5) remain as proposed.

BOARD OF DENTISTRY
PAUL SIMS, DDS, PRESIDENT

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 1, 2010