



## Montana Dental Association

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Ladies and Gentlemen:

The Montana Dental Association ("MDA") appreciates the opportunity to comment regarding the reasonable necessity of ARM 24.138.416 and 24.138.2302(1)(j) to protect the public health, safety and welfare pursuant to § 37-1-121(1)(d), MCA. The following comments are submitted in response to the Notice of Public Hearing, MAR Notice No. 24-29-325, regarding the Commissioner's active supervision of the Board of Dentistry.

The MDA submits that ARM 24.138.416 and 24.138.2302(1)(j) are necessary to protect the public health welfare and safety. Both rules support the State of Montana's clearly articulated and affirmatively expressed policy to protect the public health, welfare and safety by: (i) prohibiting denturists from fitting prostheses over dental implants, services for which denturists lack the requisite education, training and experience; and (ii) requiring referral to a dentist before a denturist makes and fits a partial denture. The MDA urges the Commissioner to affirm that these rules support state policy and are reasonably necessary to protect the public health welfare and safety.

The MDA believes that the following considerations, along with other evidence provided to the Commissioner, overwhelmingly demonstrate the necessity of these rules and the significant risks that would be posed to the public health, safety and welfare if the rules were repealed.

As defined by § 37-29-102(2), MCA, "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth. Conventional dentures are removable by the patient who wears them without any special tools and accessories. Implant retained dentures are not "removable" in the commonly understood meaning of that term. Some implant retained dentures are screw retained and require a dentist to unscrew the attachments using specialized instruments. To ensure patient safety, once the denture is in place, future removal of screw retained dentures must be done by a dentist.

**Required treatment planning for patient safety.** Implants and implant supported overdentures require a disciplined approach to treatment planning the entire patient needs, from implant surgery through healing, prosthetic fabrication, prosthetic delivery, early follow up and long-term maintenance. Appropriate treatment options, including a recommendation not to place an overdenture, require an understanding of the patient's jaw anatomy, chewing forces, number of implants required for support, space requirements for different overdenture prosthesis type, prosthesis movement and oral/systemic health considerations critical to a favorable outcome and patient safety. An accurate examination and diagnosis is required so that all appropriate treatment options are presented and considered by the patient. Failure to follow appropriate treatment planning principles could lead to implant failure and destruction of jaw bone which could require extensive surgery, time and cost to correct.

A dentist is qualified to provide proper treatment planning, implementation and aftercare necessary to ensure patient safety. The dentist's qualifications are based on completion of a four- year postgraduate clinical and didactic education provided by a nationally-accredited dental school, completion of nationally- authorized tests of the clinical skill and knowledge of the dental school graduate, and approval by the Montana Board of Dentistry of a license meeting these and other requirements. Denturists lack the education, training, and experience to complete all the procedures necessary to ensure that the patient is protected from harm when a denture is placed over an implant. Due to the limited qualifications of a denturist, the denturist scope of practice allowed under Montana law does not authorize a denturist to place an overdenture.

**Risks associated with various types of dentures placed over implants.** The most common risk associated with dentures placed over implants is "overloading" the implants. Implants are placed under a denture to make them more stable. People who have implants under their denture report higher satisfaction and function after implant placement. This is because the implants resist the chewing forces that normally dislodge a denture and cause it to move around. Resisting chewing forces causes the implants to be loaded with the amount of force generated during chewing. These forces are high and, if not carefully managed by a dentist, can be the main cause of implant failure. Bone loss and permanent injury to patients with overloaded implants are risks that must be avoided. The load on the implants is directly affected by the type of denture placed on them.

The dentist who diagnoses the denture has the knowledge and training to control the amount of force, the angle that the force is applied and the frequency with which the dentures are loaded. Factors that must be considered during the diagnosis are the type of denture (a complete or partial denture, palatless, a bar present, type of implant attachments), the number of implants supporting the denture, the location of the implants (upper or lower jaw) and whether the denture is biting against another denture or natural teeth.

The number of implants makes a significant difference in the amount of force applied to the implants. Because overloading is the most common complication, forces applied to implants are critical considerations. Two implants under a lower denture are the most common type of implant supported denture. This set up allows the denture to rock or "teeter-totter" on the implants. Imagine a line drawn between the implants. This line is the fulcrum. When pressure is applied, one side moves down and the other side moves up, like a teeter-totter. A set up like this is favorable for implant success because it allows the soft tissue to be the load bearing area. When more than two implants are present under a denture, the fulcrum disappears. In this situation, when pressure is applied to one side, it does not move

down. Instead, very high force is applied to the implants, greatly increasing the risk of overloading and failure. The denture behaves like a diving board, bending and generating very high stress on the implants. These high forces are a risk to patient safety as they cause bone loss and permanent damage to the hard and soft tissues of the mouth. Only the dentist can diagnose the patient's condition and plan accordingly.

**The location of the implant affects its success.** Bone quality and density vary in different areas of the mouth. Some areas of the mouth are dense and can handle more stress from implants being loaded. Other areas are soft in comparison and cannot handle those same forces. Improper planning with regard to the location in the mouth can lead to permanent tissue damage and bone loss.

The shape and size of a patient's jaw are important factors to consider with an implant supported overdenture. The volume and shape of the jaws dictates the type of overdenture prosthesis a patient can have. Heavy force factors in chewing and bruxism (clenching and grinding) impact safety of the patient.

**"Mini" implants.** Mini implants are not adequate to provide long term stability and their design requires most to be under function (stress) immediately, thus greatly increasing complication rates. Mini implants with their small thread design are less stable initially than standard size implants, acting more like a nail than a screw. Long term stability is also lacking due to the greatly reduced surface area in a mini implant over a standard diameter implant. The greater the amount of bone in contact with the implant, the greater the osseointegration and the better suited to deal with stress applied to the implant.

**A bar under the denture affects patient care.** The bar supports the denture the same way multiple implants support the denture. Because the jaws are curved, the bar will not be in a straight line; therefore no fulcrum will be present allowing the denture to rock. A dentist must diagnose the individual needs of a patient who is a candidate for a bar under a denture. The use of a bar actually combines both a fixed prosthetic procedure and a removable procedure. The bar is permanently attached to the implants, while the denture is removable from the bar. The correct number of implants and in the right position must be determined by the dentist to ensure a strong foundation to avoid overloading the implants. The correct diagnosis helps minimize the risk of causing permanent tissue damage.

**An Informed patient decision.** Upon considering multiple diagnostic factors, the dentist is qualified and able to develop and present the patient with a comprehensive treatment plan, including the range of clinical risks involved in the treatment and the performance of an implant – retained denture over time. A denturist does not have adequate training to provide the patient with this critical information.

**Denturists are not qualified to monitor the effect of implant retained dentures on patient health and safety.** Most importantly, the denturist cannot provide necessary aftercare following the procedures and monitoring of the patient's dental health. The very heavy force from the denture landing on the implant from normal chewing and other oral functions and the bone loss that can occur from periodontal or other disease or damage to the teeth can cause the implant to fail, potentially resulting in serious injury to the patient. Many problems with implants can be corrected with early detection. X-rays at regular intervals and proper diagnosis of those x-rays by a dentist can show early signs of bone loss or tissue destruction. The dentist can then identify any problem and make changes that allow less load on

the implants. Regular appointments with a dentist for x-rays and evaluation are an absolute requirement for a patient to prevent serious and permanent damage from an implant that is failing.

Under the scheme proposed by denturists, there is no assurance of any aftercare by a qualified healthcare provider once the denturist has placed an overdenture. There is no accountability for aftercare by the denturist for the patient's health and safety. If these rules were repealed, the denturist could only complete one part of several complex functions required to place the implant-retained denture. The lack of assurance of aftercare is a serious flaw in any decision to repeal or amend these rules.

**Need to refer a partial denture patient to a dentist.** The referral of the patient by a denturist to a licensed dentist before the denturist places a partial denture is absolutely necessary, as only the dentist can diagnose the patient's oral health and any disease or other conditions that may endanger the patient's health. Without the prior referral, the denturist may place the patient at risk for complications for conditions the denturist cannot detect or cannot diagnose (See the following discussion regarding legal aspects of the rules.)

After considering these factors, MDA has concerns about the serious risks to patient health and safety that will result if either of these rules is repealed or amended and therefore opposes any change to the rules. Further, any restraint of trade that results from these rules is a direct consequence of the state's obligation to protect the health and safety of the public. The Legislature has adopted statutes that articulate this obligation as public policy. The Legislature has delegated responsibility to the Board of Dentistry to implement this policy as it affects the limited scope of practice allowed to denturists.

**There is no legal basis for the denturists' claims that the rules are inconsistent with Montana state policy.** The Denturist Association of Montana ("DAM") has submitted legal arguments to the Commissioner advocating for repeal of Rule J. DAM argues that denturist education is adequate to allow them to safely provide implant-retained denture services to patients. DAM's argument is lacking in any detail with respect to the actual processes, considerations and risks entailed in such treatment, and fails to demonstrate that denturists are able to safely provide these services.

Significantly, DAM simply repeats the same argument that has been repeatedly rejected by the Montana Supreme Court. DAM argues that Rule J is inconsistent with the scope of practice authorized by the Freedom of Choice in Denture Services Act and, therefore, invalid. As the Montana Supreme Court noted in *Denturist Association of Montana v. State*, 2016 MT 119, the denturists' claims that Rule J was invalid because it conflicts with statute has been decided against the denturists and such claims are *res judicata*. *Denturist Association of Montana*, ¶¶ 4-6, 15-16.

Interestingly, DAM's proposed rule approach (set forth in the October 16, 2017 Memorandum from DAM counsel Nathan Bilyeu) provides for referral to a dentist. However, the proposal fails to assure the appropriate degree of involvement of a licensed dentist in the process of diagnosing, making, fitting, monitoring and follow-up necessary to assure the health, welfare and safety of patients. In addition, the proposed education requirements are inadequate in light of the factors, considerations and risks involved, as described above.

Similarly, with respect to ARM 24.138.416 (dentist referral for partial dentures), the Montana Attorney General and the Montana Supreme Court have rejected the denturists' claim that § 37-29-403 allows

denturists discretion to determine whether a referral to a dentist is necessary, and that the rule mandate for a referral in all cases is therefore invalid. *Christenot v. State*, 272 Mont. 396, 401, 901 P.2d 545, 548, citing 44 Op. Att'y Gen. No. 36 (1992).

The Montana Supreme Court has determined that both rules are valid implementations of the underlying statutory provisions. The pending litigation in *Denturist Association of Montana v. State* relates to only one count, not previously addressed, *i.e.*, whether the Board has violated § 37-131(1)(a)(ii), MCA. Based on the Montana Supreme Court's determination that the Board has acted legitimately upon the serious public health, safety and welfare concerns and considerations addressed above, MDA believes that the Board will prevail in this litigation as it has in prior cases.

### Conclusion

For the reasons discussed above, fitting dentures over an implant requires the education, training and experience of a licensed dentist. The requirement for a denturist to refer a patient to a dentist prior to placing a partial denture is beyond doubt. The Board has enacted ARM 24.138.416 and 24.138.2302(1)(j) to protect the public health, safety and welfare pursuant to § 37-1-121(1)(d), MCA. To the extent these rules restrain the ability of denturists to perform these services, such restraints are justified as reasonable and necessary measures to protect the public. Because the rules support and implement the state's clearly articulated and affirmatively expressed policies and are necessary to protect the public health, welfare and safety, MDA believes that the Commissioner should affirm the Board's adoption and continuing enforcement of the rules.

Sincerely,



Dr. Kevin L Rencher  
President

Cc: Montana Board of Dentistry  
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