



Montana Department of
LABOR & INDUSTRY

To: Economic Affairs Interim Committee
From: Judy Bovington, Department of Labor and Industry
Date: October 25, 2019
Re: Proposed New Rule II, Denturist Scope of Practice- Dentures Over Implants, MAR Notice No. 24-138-76

This memo sets out a brief summary of the recent procedural history of the regulation of denturists' scope of practice regarding placing dentures over dental implants. This is the background that led to the currently proposed New Rule II being considered by the Economic Affairs Interim Committee.

In December 2013 the Denturist Association of Montana, filed a case in district court challenging the Board of Dentistry's regulation of denturists' ability to place dentures over dental implants. Their complaint challenged Administrative Rule of Montana 24.138.2302(1)(j) (Rule J), which makes "fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant" a form of unprofessional conduct for a denturist. Specifically, a denturist can be subject to discipline, up to revocation of their license, for fitting dentures over implants. The district court granted summary judgment, which was appealed to the Montana Supreme Court. In May 2016, the Court remanded the case to the District Court for trial on the issue.

After remand, in 2017, the Board's administrative rule, was the subject of the recently developed process of "active supervision" as mandated by the U.S. Supreme Court's 2015 decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. Sections 37-1-121(1)(d) and 37-1-122, MCA, provide the framework for the process of active supervision and the authority to the Department to review actions of professional licensing boards. In the first such instance after enactment of these laws, the Department's Commissioner considered the arguments supporting and opposing Rule J. In December of 2017, the Commissioner issued his decision upholding the validity of Rule J.

After the Commissioner's decision in 2018, the Denturist Association's case restarted before the District Court after the stay which had allowed the active supervision process to run its course was lifted. During preparation for trial, the Denturist Association and the Board of Dentistry, discussed settlement of the case which resulted in the Board of Dentistry voting to accept settlement. The settlement was signed by August 19, 2018. Pursuant to the agreement, and in exchange for dismissal of the district court case, the Board of Dentistry agreed to reconsider and replace Rule J within 18 months of a court order accepting the settlement. The District Court soon after issued an order accepting the settlement and dismissing the case.

In compliance with the terms of the settlement, the Board of Dentistry met in January of 2019 and voted to proceed with the language of New Rule II as replacement language for Rule J. New Rule II would permit denturists to fit dentures over implants so long as the denture is at least partially soft-tissue borne, is manually removable by the individual wearing the denture, and the fitting is done under the direct supervision of a licensed dentist. Publication of the proposal was

delayed in order to include it in a general rulemaking package by the Board. On September 6, 2019, the Board of Dentistry published MAR Notice 24-138-76 which includes, among other proposed rule changes, New Rule II-Denturist Scope of Practice – Dentures over Implants.

On October 2, 2019, the Board held a hearing for the public to offer verbal testimony and/or provide written comments on the rules contained in MAR Notice No. 24-138-76. The Board accepted public comment until 5 p.m. on October 4, 2019. Now that the comment period has passed, Department staff will compile all comments for the Board of Dentistry to consider in a public meeting currently scheduled for November 6, 2019 at 4 p.m.