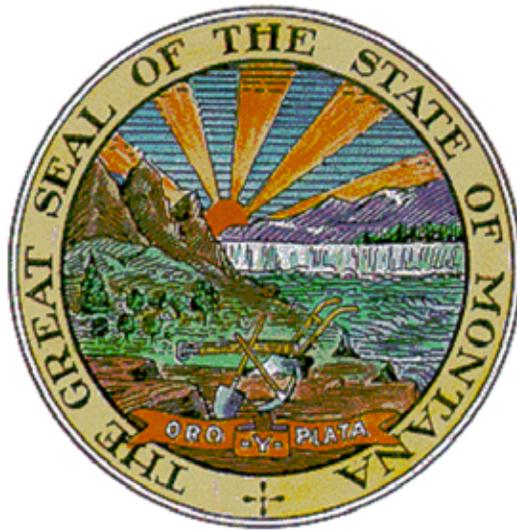


State of Montana
Department of Labor and Industry
Business Standards Division

DEPARTMENT AND BOARD STATUTES RELATING TO THE
PRACTICE OF DENTISTRY



ISSUED BY:

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**TITLE 2
GOVERNMENT STRUCTURE & ADMINISTRATION**

**CHAPTER 15
EXECUTIVE BRANCH OFFICERS AND AGENCIES**

Part 17 – Department of Labor & Industry

2-15-1732. Board of dentistry. (1) There is a board of dentistry.

(2) The board consists of five dentists, one denturist, two dental hygienists, and two public members, one of whom must be a senior citizen. All members are appointed by the governor with the consent of the senate. Each licensed member must be licensed to practice as a dentist, denturist, or dental hygienist in this state, must have actively practiced in this state for at least 5 continuous years immediately before the member's appointment, and must be actively engaged in practice while serving on the board. Each member must be a resident of this state.

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 1, Ch. 48, L. 1935; re-en. Sec. 3115.1, R.C.M. 1935; Sec. 66-901, R.C.M. 1947; amd. and redes. 82A-1602.9 by Sec. 76, Ch. 350, L. 1974; Sec. 82A-1602.9, R.C.M. 1947; amd. Sec. 1, Ch. 316, L. 1979; (4)En. Sec. 1, Ch. 316, L. 1979; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.9; amd. Sec. 1, Ch. 316, L. 1979; amd. Sec. 1, Ch. 244, L. 1981; amd. Sec. 2, Ch. 247, L. 1981; MCA 1979, 2-15-1606; redes. 2-15-1842 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 363, L. 1981; amd. Sec. 11, Ch. 575, L. 1981; amd. Sec. 1, Ch. 524, L. 1987; amd. Sec. 1, Ch. 331, L. 1991; amd. Sec. 13, Ch. 481, L. 1997; Sec. 2-15-1842, MCA 1999; redes. 2-15-1732 by Sec. 221(2), Ch. 483, L. 2001.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies -- emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

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

Denturistry, Title 37, ch. 29.

Nondiscrimination in licensing, 49-3-204.

**TITLE 37
PROFESSIONS AND OCCUPATIONS**

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- 37-1-103. Renumbered 37-1-131.
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- 37-1-317. Practice without license -- investigation of complaint -- injunction
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- 37-1-318. Violation of injunction -- penalty.
- 37-1-319. Rules.
- 37-1-320. Mental intent -- unprofessional conduct.
- 37-1-321 through 37-1-330 reserved.
- 37-1-331. Correctional health care review team.

Part 1

Duties and Authority of Department, Director, and Boards

Part Cross-References

- Contested cases, Title 2, ch. 4, part 6.
- Appointment and qualifications of department heads -- duties, 2-15-111, 2-15-112.
- Allocation for administrative purposes only, 2-15-121.
- Department and boards created, Title 2, ch. 15, part 18.
- Department's duties for Board of Horseracing, 23-4-103.
- Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.

37-1-101. (Temporary) Duties of department. In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

(6) assess the costs of the department to the boards and programs on an

equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

37-1-101. (Effective January 1, 2009) Duties of department. In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary;

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005; amd. Sec. 17, Ch. 11, L. 2007; amd. Sec. 39, Ch. 44, L. 2007; amd. Sec. 1, Ch. 225, L. 2007.

Compiler's Comments

2007 Amendments -- Composite Section: Chapter 11 in (5) near end after "board" inserted "or a program"; in (9)(a) near beginning after "notice to the" inserted "board and to the"; inserted (9)(b) through (9)(d) outlining additional department duties regarding boards; and made minor changes in style. Amendment effective July 1, 2007.

Chapter 44 in introductory clause after "department" deleted "of labor and industry"; and in (8) at end substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

Chapter 225 in (8) substituted "37-1-307(1)(d)" for "37-1-307(1)(e)"; inserted (12) concerning uniform rules for public notice; and made minor changes in style. Amendment effective January 1, 2009.

37-1-102. Renumbered 37-1-121. Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131. Code Commissioner, 1981.

37-1-104. Standardized forms. The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

History: En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

37-1-106. Biennial report. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

37-1-107. Joint meetings -- department duties. (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

(a) have licensees with dual licensure in related professions or occupations;
(b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:

- (i) health care boards;
- (ii) mental health care boards;
- (iii) design boards;
- (iv) therapeutic boards; or
- (v) technical boards; or

(c) have issues of joint concern or related jurisdiction with each other.

(2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

History: En. Sec. 1, Ch. 11, L. 2007.

Compiler's Comments

Effective Date: Section 26, Ch. 11, L. 2007, provided: "[This act] is effective July 1, 2007."

37-1-108 through 37-1-120 reserved.

37-1-121. Duties of commissioner. In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.

37-1-122 through 37-1-129 reserved.

37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

History: En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005; amd. Sec. 7, Ch. 502, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 502 in definition of expired license after "period of" increased 45 days to 46 days; in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

37-1-131. (Temporary) Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money

and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

37-1-131. (Effective January 1, 2009) Duties of boards -- quorum required. (1) A quorum of each board within the department shall:

(a) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(e) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not

have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311.

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005; amd. Sec. 2, Ch. 225, L. 2007; amd. Sec. 8, Ch. 502, L. 2007.

Compiler's Comments

2007 Amendments -- Composite Section: Chapter 225 inserted (6) concerning public notice; and made minor changes in style. Amendment effective January 1, 2009.

Chapter 502 inserted (3) requiring licensees reactivating expired licenses to prove they have met continuing education or certification requirements; in (4)(d) in first sentence after "37-1-306" inserted "or require continued state, regional, or national certification for licensure", in second sentence in two places after "education" inserted "or continued state, regional, or national certification", at beginning inserted exception clause, and after "audit or" substituted "require proof of" for "verify", and in third sentence near middle after "audits" inserted "after the lapsed date" and at end after "requirement" deleted "after the renewal period closes"; and made minor changes in style. Amendment effective October 1, 2007.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive \$50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

37-1-134. Fees commensurate with costs. Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

37-1-135. Licensing investigation and review -- record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

Cross-References

Procurement of services, Title 18, ch. 8.

37-1-136. (Temporary) Disciplinary authority of boards -- injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;

- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

37-1-136. (Effective January 1, 2009) Disciplinary authority of boards -- injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311.

History: En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 3, Ch. 225, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 225 inserted (5) concerning public notice. Amendment effective January 1, 2009.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.

37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under

appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.

37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions. (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist

may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

History: En. Sec. 2, Ch. 271, L. 2003.

37-1-139 and 37-1-140 reserved.

37-1-141. License renewal -- lapse -- expiration -- termination. (1)

The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.

Part 2

Licensure of Criminal Offenders

Part Cross-References

Criminal justice policy -- rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling -- qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001; amd. Sec. 1, Ch. 389, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 389 inserted third sentence regarding an applicant's criminal background; and made minor changes in style. Amendment effective October 1, 2007.

Applicability: Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

Cross-References

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

Part 3

Uniform Professional Licensing and Regulation Procedures

37-1-301. Purpose. The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

History: En. Sec. 1, Ch. 429, L. 1995.

37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

History: En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005; amd. Sec. 9, Ch. 502, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 502 in definition of license at end after "occupation" inserted "regardless of the specific term used for the permission, including permit, certificate, recognition, or registration"; and made minor changes in style. Amendment effective October 1, 2007.

37-1-303. Scope. This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals.

History: En. Sec. 3, Ch. 429, L. 1995; amd. Sec. 40, Ch. 44, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 44 in third sentence after "specified in" substituted "37-1-307(1)(d)" for "37-1-307(1)(e)". Amendment effective October 1, 2007.

37-1-304. Licensure of out-of-state applicants -- reciprocity. (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

History: En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

37-1-306. Continuing education. A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

History: En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)

History: En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005; amd. Sec. 2, Ch. 389, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 389 in (2) near middle after "information" inserted "as defined in 44-5-103" and at end after "practice" inserted "but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5"; inserted (3) allowing a board to obtain criminal history

record information; inserted (4) regarding fingerprinting, background check information, and payment of fees; and made minor changes in style. Amendment effective October 1, 2007.

Applicability: Section 3, Ch. 389, L. 2007, provided: "[This act] applies to applications for licensure submitted on or after [the effective date of this act]." Effective October 1, 2007.

Contingent Termination -- Request for Federal Exemptions: Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 95] [61-5-107];

(e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

History: En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

37-1-309. Notice -- request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

History: En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

37-1-310. Hearing -- adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

History: En. Sec. 10, Ch. 429, L. 1995.

37-1-311. (Temporary) Findings of fact -- order -- report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

37-1-311. (Effective January 1, 2009) Findings of fact -- order -- report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the

required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

History: En. Sec. 11, Ch. 429, L. 1995; amd. Sec. 4, Ch. 225, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 225 substituted (2) concerning report of suspension for former text that read: "(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public." Amendment effective January 1, 2009.

37-1-312. Sanctions -- stay -- costs -- stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed \$1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

History: En. Sec. 12, Ch. 429, L. 1995.

37-1-313. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: En. Sec. 13, Ch. 429, L. 1995.

37-1-314. Reinstatement. A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an

examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 14, Ch. 429, L. 1995.

37-1-315. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 15, Ch. 429, L. 1995.

37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent,

protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

History: En. Sec. 16, Ch. 429, L. 1995.

37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties. (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than \$250 or more than \$1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

History: En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch.

402, L. 1999.

37-1-318. Violation of injunction -- penalty. A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 18, Ch. 429, L. 1995.

37-1-319. Rules. A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

History: En. Sec. 19, Ch. 429, L. 1995.

Cross-References

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

37-1-320. Mental intent -- unprofessional conduct. A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

History: En. Sec. 7, Ch. 492, L. 2001.

37-1-321 through 37-1-330 reserved.

37-1-331. Correctional health care review team. (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service

professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

History: En. Sec. 2, Ch. 375, L. 1999.

CHAPTER 2

GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 -- Dispensing of Drugs

- 37-2-101. Definitions.
- 37-2-102. Practices declared unlawful between drug companies and medical practitioners.
- 37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
- 37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.
- 37-2-105. Duty of county attorneys.
- 37-2-106. Existing ownership of pharmacy.
- 37-2-107. Civil penalty for unreadable prescription.
- 37-2-108 through 37-2-110 reserved.
- 37-2-111. Repealed.

Part 2 -- Nonliability for Peer Review

- 37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations.

Part 3 -- Miscellaneous Provisions

- 37-2-301. Duty to report cases of communicable disease.
- 37-2-302. Gunshot or stab wounds to be reported.
- 37-2-303. Immunity from liability.
- 37-2-304 through 37-2-310 reserved.
- 37-2-311. Report to department of justice by physician.
- 37-2-312. Physician's immunity from liability.
- 37-2-313 and 37-2-314 reserved.
- 37-2-315. Direct billing for anatomic pathology services.

Part 1

Dispensing of Drugs

Part Cross-References

Pharmacy, Title 37, ch. 7.

Dangerous drugs, Title 45, ch. 9.
Model Drug Paraphernalia Act, Title 45, ch. 10.
Controlled substances, Title 50, ch. 32.

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(3) "Drug" has the same meaning as provided in 37-7-101.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" has the same meaning as provided in 37-7-101.

(8) "State" means the state of Montana or any political subdivision of the state.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989; amd. Sec. 2, Ch. 388, L. 2001; amd. Sec. 17, Ch. 467, L. 2005.

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under

37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.

37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

History: En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989; amd. Sec. 1, Ch. 445, L. 1991; amd. Sec. 57, Ch. 418, L. 1995; amd. Sec. 86, Ch. 546, L. 1995; amd. Sec. 1, Ch. 125, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 125 in (2)(f) near beginning substituted "contraceptives, other than mifepristone" for "oral contraceptives"; and made minor changes in style. Amendment effective October 1, 2007.

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

Cross-References

Duty of Attorney General to supervise County Attorneys, 2-15-501.
Duties of County Attorneys generally, Title 7, ch. 4, part 27.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).
Injunctions generally, Title 27, ch. 19.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

Cross-References

Store license for pharmacy, 37-7-321.

37-2-107. Civil penalty for unreadable prescription. (1) A medical practitioner may not issue a written prescription, to be delivered to a patient or pharmacy, in such a manner that the name of the drug, the dosage, the instructions for use, the printed name or other identifying letters or numbers unique to the medical practitioner, and, if required, the federal drug enforcement agency identifying number cannot be read by a registered pharmacist licensed to practice in this state.

(2) Any person may file a complaint alleging a violation of subsection (1) with the board that licensed the medical practitioner who issued the prescription. The board may investigate the complaint and take any action and impose any sanction allowed by the statutes relating to the board and rules adopted by the board. Each board licensing a medical practitioner shall adopt rules to implement this section.

(3) The board may refer the complaint to the county attorney of the county in which the prescription was issued, whether or not the board itself has taken any action or imposed any sanction. A county attorney may not file an action alleging a violation of subsection (1) unless a complaint has been referred to the county attorney by the medical practitioner's licensing board.

(4) A medical practitioner who violates subsection (1) is guilty of a civil offense and may be punished by a civil penalty of not more than \$500 for each prescription.

History: En. Sec. 1, Ch. 436, L. 2005.

37-2-108 through 37-2-110 reserved.

37-2-111. Repealed. Sec. 75, Ch. 492, L. 2001.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

Part 2

Nonliability for Peer Review

Part Cross-References

Libel and slander, Title 27, ch. 1, part 8.
Montana Medical Legal Panel created, 27-6-104.
Licensing investigation and review -- record access, 37-1-135.
Reporting obligations of physicians, Title 37, ch. 3, part 4.
Health care information, Title 50, ch. 16.

37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations. (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

Part 3

Miscellaneous Provisions

Part Cross-References

Doctor-patient privilege, 26-1-805.

Libel and slander, Title 27, ch. 1, part 8.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Communicable disease defined, 50-1-101.

Powers of Department relating to communicable diseases, 50-1-202.

Report of exposure to infectious disease, Title 50, ch. 16, part 7.

Report of exposure to infectious disease -- immunity from liability, 50-16-704.

Revocation, suspension, or cancellation of driver's license, Title 61, ch. 5, part 2.

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person who the physician or other practitioner believes has a communicable disease or a disease declared reportable by the department of public health and human services, the physician or other practitioner shall immediately report the case to the local health officer. The report must be in the form and contain the information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, must be paid to

the county treasurer of the county in which the violation occurs.

History: (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987; amd. Sec. 58, Ch. 418, L. 1995; amd. Sec. 87, Ch. 546, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.

37-2-304 through 37-2-310 reserved.

37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient.

History: En. Sec. 1, Ch. 126, L. 1983; amd. Sec. 1, Ch. 419, L. 1991.

37-2-312. Physician's immunity from liability. Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to 37-2-311 except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to 37-2-311.

History: En. Sec. 2, Ch. 126, L. 1983.

37-2-313 and 37-2-314 reserved.

37-2-315. Direct billing for anatomic pathology services. (1) A clinical laboratory or physician providing anatomic pathology services for a patient may

present a bill or demand for payment for services furnished by the laboratory or physician only to the following entities:

- (a) the patient;
- (b) the patient's insurer or other third-party payor;
- (c) the health care facility ordering the services;
- (d) a referring laboratory, other than a laboratory in which the patient's physician or other practitioner of the healing arts has a financial interest; or
- (e) a state or federal agency or the agent of that agency, on behalf of the patient.

(2) Except as provided in subsection (5), a physician or other practitioner of the healing arts licensed pursuant to Title 37 may not directly or indirectly bill or charge for or solicit payment for anatomic pathology services unless those services were provided personally by the physician or other practitioner or under the direct supervision of a physician providing that supervision for the purposes of 42 U.S.C. 263a.

(3) The following entities are not required to reimburse a physician for a bill or charge made in violation of this section:

- (a) a patient;
- (b) an insurer;
- (c) a health care facility; or
- (d) another third-party payor.

(4) This section does not require an assignment of benefits for anatomic pathology services.

(5) This section does not prohibit billing between laboratories, other than laboratories in which the patient's physician or other practitioner of the healing arts has a financial interest, for anatomic pathology services in instances requiring that a sample be sent to a specialist at another laboratory.

(6) This section does not prohibit a clinical laboratory or physician providing anatomic pathology services for a patient from presenting a bill or demand for payment for those services or presenting separate bills or demands for payment to a payor when allowed by this section.

(7) The licensing entity for a physician or other practitioner of the healing arts licensed pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section.

(8) As used in this section, the following definitions apply:

- (a) "Anatomic pathology services" means:
 - (i) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;
 - (ii) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;
 - (iii) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;
 - (iv) subcellular pathology and molecular pathology; or
 - (v) blood bank services performed by a pathologist.
- (b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from

the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in 50-5-101.

(d) "Insurer" includes a disability insurer, a health services corporation, a health maintenance organization, and a fraternal benefit society.

(e) "Patient" has the meaning provided in 50-16-504.

(f) "Physician" has the meaning provided in 37-3-102.

History: En. Sec. 1, Ch. 266, L. 2005.

CHAPTER 4

DENTISTRY AND DENTAL HYGIENE

Part 1 -- General

37-4-101. Definitions -- practice of dentistry.

37-4-102. Designations constituting prima facie evidence of practicing dentistry.

37-4-103. Exemptions.

37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative -- restrictions.

Part 2 -- Board of Dentistry

37-4-201. Official seal -- organization -- subpoena power -- screening panel.

37-4-202. Meetings -- notice -- records.

37-4-203. Repealed.

37-4-204. Affiliation with national association authorized -- delegates.

37-4-205. Rulemaking.

Part 3 -- Licensing

37-4-301. Qualifications -- fees.

37-4-302. Recognition of dental schools and dental hygiene schools.

37-4-303. Repealed.

37-4-304. Repealed.

37-4-305. Repealed.

37-4-306. Repealed.

37-4-307. Notice of name and address change -- local fees prohibited.

37-4-308 through 37-4-310 reserved.

37-4-311. Rehabilitation.

37-4-312. Report of incompetence or unprofessional conduct.

37-4-313. Compelling licensee evaluation.

37-4-314. Immunity of person providing information.

- 37-4-315 through 37-4-320 reserved.
- 37-4-321. Repealed.
- 37-4-322. When publishing professional cards not unprofessional conduct.
- 37-4-323. Repealed.
- 37-4-324. Repealed.
- 37-4-325. Witness fees and mileage.
- 37-4-326. Acts constituting misdemeanors.
- 37-4-327. Practicing dentistry without license -- penalty.
- 37-4-328. Duty of county attorney -- jurisdiction of justices' courts -- injunction.
- 37-4-329 through 37-4-339 reserved.
- 37-4-340. Volunteer work -- licensure -- fee waiver -- rules.

Part 4 -- Dental Hygienists and Auxiliary Personnel

- 37-4-401. Practice of dental hygiene.
- 37-4-402. License -- examination.
- 37-4-403. Repealed.
- 37-4-404. Repealed.
- 37-4-405. Dental hygienist to practice under supervision of licensed dentist - exceptions -- definitions.
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- 37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon.
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Part 5 -- Regulatory Provisions

- 37-4-501. Work order for construction or repair of appliances.
- 37-4-502. Restrictions on advertising and solicitation.
- 37-4-503. Identification of dentures.
- 37-4-504 through 37-4-510 reserved.
- 37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia.
- 37-4-512 through 37-4-514 reserved.
- 37-4-515. Hospital admissions -- patient histories and examinations.

Chapter Cross-References

- Professional service corporations, Title 35, ch. 4.
- General provisions relating to health care practitioners, Title 37, ch. 2.
- Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.
- Dentistry, Title 37, ch. 29.
- Validity of consent to medical treatment, Title 41, ch. 1, part 4.
- Dentist to report child abuse, 41-3-201.
- Duty of dentist to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1

General

37-4-101. Definitions -- practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1732.

(b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(c) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.

(e) (i) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia.

(ii) The term does not include a nitrous oxide and oxygen mixture or any other anesthetic administered to produce conscious sedation.

(2) Except for the provisions of 37-4-104, a person is practicing dentistry under this chapter if the person:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to the person, any other person, or any agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in 37-4-104;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or

physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S." or "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that the person can perform or will attempt to perform dental operations or render a diagnosis in connection with dental operations; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 363, L. 1981; amd. Sec. 1, Ch. 518, L. 1985; amd. Sec. 1, Ch. 151, L. 1997; amd. Sec. 113, Ch. 483, L. 2001.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Except for the provisions in 37-4-104, appending the word "dentist" or the letters "D.D.S.", "D.M.D.", or similar letters to a person's name on a door or a sign, in a printed or published form, or in any other type of advertisement is prima facie evidence that the person is engaged in the practice of dentistry and is subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912; amd. Sec. 2, Ch. 151, L. 1997.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or to a dental surgeon employed by the United States government or to a legally licensed health care practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member's teaching functions. This chapter does not prevent students from performing dental procedures under the

supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of dentistry under the conditions and limitations defined by Title 37, chapter 29. The provisions of this chapter do not apply to a person engaged in the lawful practice of dentistry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(8) This chapter does not require licensure of the following individuals while engaged in the practice of dentistry, as provided in 37-4-101:

(a) students of an accredited commission on dental accreditation (CODA) dental hygiene program or school who are candidates for a dental hygiene degree and who practice dental hygiene without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of an accredited CODA dental hygiene program or school;

(b) students of an accredited CODA program or school who are candidates for a D.D.S. or D.M.D. degree and who practice dentistry without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a dentist licensed in Montana or a demonstrator or teacher who is a faculty member of a CODA dental program or school; or

(c) dental residents who have received a D.D.S. or D.M.D. degree from a CODA-accredited school and who are engaged in advanced education in dentistry at a dental school, hospital, or public health facility that offers the type of advanced program designed to meet accreditation requirements established by CODA. A dental resident may perform all clinical services within the advanced education program in which the dental resident is enrolled if the services are provided by the sponsoring institution and are authorized by the program supervisor. A dental resident who is not licensed in Montana may not engage in private practice or assess fees for clinical services rendered.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350,

L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979; amd. Sec. 24, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 151, L. 1997; amd. Sec. 8, Ch. 230, L. 1999; amd. Sec. 1, Ch. 67, L. 2003; amd. Sec. 24, Ch. 126, L. 2005.

37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative -- restrictions. (1) For the purpose of selling or otherwise disposing of a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided.

(2) A personal representative may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care;

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(c) allow any person other than a dentist to supervise and control the selection, compensation, terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;

(d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist or the dentist's practice; or

(e) limit or define the scope of services offered by the dentist.

(3) For the purposes of this section:

(a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered to a patient;

(b) "disabled" has the same meaning as provided for the term "permanently and totally disabled" in 15-30-111; and

(c) "personal representative" of the estate of a deceased dentist has the same meaning as provided for the term in 72-1-103.

(4) The 12-month period provided for in subsection (1) begins when:

(a) the personal representative of the estate of a deceased dentist files a verified copy of the death certificate of the deceased with the department; or

(b) the personal representative of the disabled dentist files a verified copy of a document signed by a licensed physician that attests to the dentist's disability.

History: En. Sec. 5, Ch. 151, L. 1997.

Part 2

Board of Dentistry

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies and hearings officer to issue subpoenas, 2-4-104, 2-4-611.

Public records, Title 2, ch. 6.

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

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1732.

Preservation of records, Title 22, ch. 3, part 2.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to keep records and provide facilities, 37-1-101.
Licensing investigation and review -- record access, 37-1-135.
Disrupting meeting as disorderly conduct, 45-8-101.

37-4-201. Official seal -- organization -- subpoena power -- screening panel. (1) (a) The board shall adopt an official seal of its own design and shall employ the seal to authenticate the board's acts and records.

(b) The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board.

(c) Any member of the board may administer oaths and affirmations, and the board may hear testimony and subpoena witnesses with respect to matters relating to the duties imposed upon the board by law.

(2) The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-4-311.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903; amd. Sec. 2, Ch. 60, L. 2005.

Cross-References

Oaths, Title 1, ch. 6.

37-4-202. Meetings -- notice -- records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Board proceedings are open to public inspection unless a privacy issue is involved.

(4) Money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of money received and disbursements made by the department.

History: (1), (3) thru (5)En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2)En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 524, L. 1987; amd. Sec. 15, Ch. 481, L. 1997; amd. Sec. 14, Ch. 492, L. 2001.

37-4-203. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3); amd. Sec. 5, Ch. 363, L. 1981; amd. Sec. 8, Ch. 474, L. 1981.

37-4-204. Affiliation with national association authorized -- delegates. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send delegates to the meetings of the association.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920; amd. Sec. 6, Ch. 363, L. 1981; amd. Sec. 9, Ch. 474, L. 1981; amd. Sec. 1, Ch. 349, L. 1983.

37-4-205. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act. Rules adopted under this section may include but are not limited to the following subjects:

(1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

(2) advertising by a licensed dentist including:

(a) the use of false, deceptive, or misleading advertising;

(b) the use of information concerning fees, areas of practice, specialization, personal background, and quality of service in advertising; and

(c) the use of warnings and disclaimers in advertising.

History: En. Sec. 2, Ch. 349, L. 1983; amd. Sec. 3, Ch. 518, L. 1985.

Cross-References

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

Unfair trade practices and consumer protection, Title 30, ch. 14.

Part 3

Licensing

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.

37-4-301. Qualifications -- fees. Applicants for licensure shall submit an application that must include, when required:

(1) certification of successful completion of the national board examination;

(2) certification of successful completion of a regional board examination;

(3) three affidavits of good moral character;

(4) a certificate of graduation from a board-approved dental school; and

(5) an application fee.

History: En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979; amd. Sec. 3, Ch. 349, L. 1983; amd. Sec. 1, Ch. 62, L. 1987; amd. Sec. 12, Ch. 224, L. 2003; amd. Sec. 32, Ch. 467, L. 2005.

37-4-302. Recognition of dental schools and dental hygiene schools. In determining what constitutes a recognized dental college, the board shall be guided by the standards, canons, and practices required for recognition by the commission on dental accreditation. In determining what constitutes a recognized dental hygiene school, the board shall recognize only those dental hygiene schools

accredited by the commission on dental accreditation or its successor as designated by the United States department of education or the council on post-secondary accreditation, or both.

History: En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924; amd. Sec. 1, Ch. 66, L. 1991.

37-4-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1); amd. Sec. 1, Ch. 66, L. 1981; amd. Sec. 4, Ch. 345, L. 1981.

37-4-304. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.

37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2); amd. Sec. 5, Ch. 345, L. 1981.

37-4-307. Notice of name and address change -- local fees prohibited. (1) Each dentist shall give the board notice of any change in name, address, or status within 10 days of the change.

(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979; amd. Sec. 6, Ch. 345, L. 1981; amd. Sec. 7, Ch. 363, L. 1981; amd. Sec. 4, Ch. 349, L. 1983; amd. Sec. 28, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 1997; amd. Sec. 9, Ch. 230, L. 1999; amd. Sec. 9, Ch. 271, L. 2003; amd. Sec. 33, Ch. 467, L. 2005.

37-4-308 through 37-4-310 reserved.

37-4-311. Rehabilitation. The board shall establish a protocol for the referral to a board-approved rehabilitation program for licensees subject to the jurisdiction of the board who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

History: En. Sec. 1, Ch. 358, L. 1997; amd. Sec. 13, Ch. 224, L. 2003.

37-4-312. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensee, professional standards review organization, the Montana dental association or any component society of the association, and any other person may report to the board any information that the licensee, organization, association, society, or person has that appears to show that a licensee is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical

illness of a licensee may be reported to the appropriate personnel of the program endorsed by the board under 37-4-311 in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that the program personnel recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

History: En. Sec. 2, Ch. 358, L. 1997; amd. Sec. 14, Ch. 224, L. 2003.

37-4-313. Compelling licensee evaluation. The board has the right to compel an evaluation of a licensee, after notice to the licensee and a hearing if requested by the licensee, based on information reported pursuant to 37-4-312. The evaluation must be conducted at a facility authorized to conduct evaluations under a program referred to in 37-4-311.

History: En. Sec. 3, Ch. 358, L. 1997.

37-4-314. Immunity of person providing information. A person, organization, association, society, or health care facility that in good faith provides information to the state board of dentistry pursuant to 37-4-312 is not subject to suit for civil damages as a result of providing the information.

History: En. Sec. 4, Ch. 358, L. 1997.

37-4-315 through 37-4-320 reserved.

37-4-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979; amd. Sec. 8, Ch. 363, L. 1981; amd. Sec. 2, Ch. 62, L. 1987; amd. Sec. 44, Ch. 83, L. 1989.

37-4-322. When publishing professional cards not unprofessional conduct. (1) It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree or the word "dentist" and giving office location, hours, and telephone numbers. If he limits his practice to a specialty he may so announce it or he may announce his absence from or his return to practice in the same manner.

(2) A dentist may publish a list of his fees, but such listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979.

37-4-323. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.

37-4-324. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.

37-4-325. Witness fees and mileage. (1) Each witness who shall appear by order of the board or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, his fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear and 1 day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board or a member thereof or referee as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M. 1947, 66-915.

Cross-References

Mileage allowed witnesses, 2-18-503, 2-18-504.

Witness fees, Title 26, ch. 2, part 5.

37-4-326. Acts constituting misdemeanors. A person, company, or association is guilty of a misdemeanor and upon conviction shall be punished with a fine of not less than \$50 or more than \$200 or by imprisonment for not more than 6 months in the county jail or both if the person, company, or association:

(1) sells, barter, or offers to sell or barter a diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchases or procures by barter a diploma, certificate, or transcript with the intent of using the diploma, certificate, or transcript as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating dental practice;

(3) with fraudulent intent, alter in a material regard a diploma, certificate, or transcript;

(4) use or attempt to use a diploma, certificate, or transcript that has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in the office the required certificate for the current period of licensed practice; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to the board the names and addresses of all persons practicing or assisting in

the practice of dentistry in the office of the person, company, or association at any time within 60 days prior to the notice, together with a sworn statement showing under and by what license or authority the person, company, or association and the employee are and have been practicing dentistry, but the affidavit may not be used as evidence against the person, company, or association in any proceeding under this section.

History: En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918; amd. Sec. 7, Ch. 492, L. 1997.

Cross-References

Willfully defined, 1-1-204.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-4-327. Practicing dentistry without license -- penalty. (1) Except as provided in 37-4-101 through 37-4-104 and this section, a person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a license to practice dentistry from the department entitling the person to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury in excess of the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter must be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 557, L. 1987; amd. Sec. 4, Ch. 151, L. 1997; amd. Sec. 25, Ch. 126, L. 2005.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-4-328. Duty of county attorney -- jurisdiction of justices' courts -- injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justice's courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.

Cross-References

Duties of Attorney General, 2-15-501.
Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Criminal jurisdiction of Justices' Courts, 3-10-303.
Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards -- injunctions, 37-1-136.

37-4-329 through 37-4-339 reserved.

37-4-340. Volunteer work -- licensure -- fee waiver -- rules. (1) A retired or nonpracticing dentist or dental hygienist may apply for a license to practice dentistry or dental hygiene for the purpose of providing services to indigent or uninsured patients in underserved or critical need areas. An applicant for licensure under this subsection (1) may be required by the board to establish that the applicant is competent to practice before the board grants the applicant a license.

(2) It is not within the scope of a license issued to a dentist or dental hygienist under this section to provide services for remuneration.

(3) If a person is eligible for licensure under the provisions of subsection (1) and the person applies for a license prior to July 1, 2004, the person's renewal fees and late fees accrued since the person's license lapsed are waived. The board may adopt rules providing that renewal fees and late fees or a portion of those fees may be waived for eligible persons applying for licensure under this section after July 1, 2004.

(4) The board may adopt rules setting forth licensing requirements, fees, and other rules necessary to implement any other provisions of this section.

History: En. Sec. 2, Ch. 67, L. 2003.

Part 4

Dental Hygienists and Auxiliary Personnel

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Duty of Department to administer and grade examinations, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review -- record access, 37-1-135.
Exemptions from physician's licensing requirements, 37-3-103.
Practice of healing arts not practice of medicine, 37-3-103(1)(n).
Limitations on administration of general anesthetics, 37-4-511.

37-4-401. Practice of dental hygiene. The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing defines and authorizes, and that may be performed under general supervision of a licensed dentist. The practice of dental hygiene also includes and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents only under the direct supervision and authorization of a licensed dentist. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

- (1) diagnosis, treatment planning, and prescription;
- (2) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;
- (3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;
- (4) prescription for drugs or medications or work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part); amd. Sec. 5, Ch. 349, L. 1983; amd. Sec. 1, Ch. 449, L. 1985; amd. Sec. 2, Ch. 66, L. 1991.

37-4-402. License -- examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided by rules adopted under 37-1-319, a person may not engage in the practice of dental hygiene or practice as a dental hygienist in this state until the person has passed an examination approved by the board under rules adopted by the board and has been issued a license by the department.

(3) An applicant for licensure shall submit an application that must include, when required:

- (a) certification of successful completion of the national board written examination;
- (b) certification of successful completion of a regional board practical examination;
- (c) two affidavits of good moral character;
- (d) a certificate of graduation from a board-approved dental hygiene school;

and

- (e) an application fee.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part), 66-923(3); amd. Sec. 4, Ch. 337, L. 1979; amd. Sec. 6, Ch. 349, L. 1983; amd. Sec. 2, Ch. 449, L. 1985; amd. Sec. 29, Ch. 429, L. 1995; amd. Sec. 15, Ch. 224, L. 2003; amd. Sec. 34, Ch. 467, L. 2005.

37-4-403. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5); amd. Sec. 7, Ch. 345, L. 1981.

37-4-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4); amd. Sec. 8, Ch. 345, L. 1981; amd. Sec. 7, Ch. 349, L. 1983; amd. Sec. 3, Ch. 66, L. 1991.

37-4-405. Dental hygienist to practice under supervision of licensed dentist -- exceptions -- definitions. (1) A licensed dental hygienist may:

(a) with the permission of the supervising dentist, practice in the office of a licensed and actively practicing dentist under the general supervision of a licensed dentist; or

(b) provide dental hygiene preventative services in a public health facility under the general supervision of a licensed dentist or, subject to the provisions of subsection (4), under public health supervision.

(2) A dental hygienist may give instruction in oral hygiene without the direct supervision or general supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

(3) For the purposes of this section, the following definitions apply:

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment, except the administration of local anesthesia, by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

(c) "public health facility" means:

(i) federally qualified health centers; federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b; nursing homes; extended care facilities; home health agencies; group homes for the elderly, disabled, and youth; head start programs; migrant worker facilities; local public health clinics and facilities; public institutions under the department of public health and human services; and mobile public health clinics; and

(ii) other public health facilities and programs identified by the board under subsection (6); and

(d) "public health supervision" means the provision of limited dental hygiene preventative services without the prior authorization or presence of a licensed dentist in a public health facility.

(4) (a) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services that include removal of deposits and stains from the surfaces of teeth, the application of topical fluoride, polishing restorations, root planing, placing of sealants, oral cancer screening, exposing radiographs, and charting of services provided.

(b) A licensed dental hygienist practicing under public health supervision may not provide dental hygiene preventative services that include local anesthesia, denture soft lines, temporary restorations, or any other service prohibited under 37-4-401.

(c) A licensed dental hygienist practicing under public health supervision shall provide:

(i) for the referral to a licensed dentist of any patient needing treatment outside the scope of practice authorized for a licensed dental hygienist under this subsection (4); and

(ii) treatment based upon medical and dental health guidelines adopted by rule by the board.

(5) (a) A dental hygienist practicing under public health supervision shall obtain a limited access permit from the board.

(b) The board shall adopt rules:

(i) defining the qualifications necessary to obtain a limited access permit; and

(ii) providing a process for obtaining a limited access permit.

(c) The provision of services under a limited access permit is limited to patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care.

(6) The board may identify, by rule, other public health facilities and programs, in addition to those listed in subsection (3)(c), at which services under a limited access permit may be provided.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979; amd. Sec. 9, Ch. 363, L. 1981; amd. Sec. 4, Ch. 66, L. 1991; amd. Sec. 1, Ch. 172, L. 2003.

37-4-406. Notice of name and address change -- local fees prohibited. (1) Each dental hygienist shall give the board notice of any change in name, address, or status within 10 days of the change.

(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979; amd. Sec. 9, Ch. 345, L. 1981; amd. Sec. 8, Ch. 349, L. 1983; amd. Sec. 30, Ch. 429, L. 1995; amd. Sec. 8, Ch. 492, L. 1997; amd. Sec. 10, Ch. 230, L. 1999; amd. Sec. 10, Ch. 271, L. 2003; amd. Sec. 35, Ch. 467, L. 2005.

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

37-4-408. Auxiliary personnel -- employment, duties, and limitations. A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist, except that this section may not be construed to allow the board by rule to permit a licensed dentist to delegate to any auxiliary personnel prophylaxis or any of the duties prohibited to dental hygienists under 37-4-401. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of a licensed dentist.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1; amd. Sec. 9, Ch. 349, L. 1983; amd. Sec. 5, Ch. 66, L. 1991; amd. Sec. 15, Ch. 492, L. 2001; amd. Sec. 26, Ch. 126, L. 2005.

Part 5

Regulatory Provisions

Part Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of his license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3).

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 5, Ch. 493, L. 1979.

37-4-504 through 37-4-510 reserved.

37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia. (1) No person engaged in the practice of dentistry or oral surgery may perform any dental or surgical procedure upon another person if a general anesthetic is administered unless such anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).

(3) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under light general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and demonstrated a satisfactory level of proficiency as established by the board.

(4) No person engaged in the practice of dentistry or oral surgery may administer a general anesthetic to any other person unless he satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of

dentistry for training in the administration of general anesthesia and in the treatment of the complications thereof. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).

(5) The facility in which general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under general anesthesia, and to treat the complications that may arise from general anesthesia.

History: En. Sec. 2, Ch. 518, L. 1985.

37-4-512 through 37-4-514 reserved.

37-4-515. Hospital admissions -- patient histories and examinations.

(1) For purposes of this section, "oral surgeon" means a dentist who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accreditation body approved by the United States office of education.

(2) A qualified oral surgeon who is a member of the medical staff of a hospital and who admits a patient to the hospital for oral or maxillofacial surgery may take the history and perform a physical examination of the patient if the patient has no known medical problems.

(3) This section does not affect hospital staff privileges of any hospital and may not be construed to require that any specific privilege, including taking a history or performing a physical examination, be extended or not extended to any oral surgeon.

History: En. Sec. 1, Ch. 313, L. 1987.

CHAPTER 29

DENTURITRY

Part 1 -- General

- 37-29-101. Short title.
- 37-29-102. Definitions.
- 37-29-103. Association with dentists permitted.
- 37-29-104. Health insurance policies to include denturist services.
- 37-29-105. Applicability of other law.

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Part 4 -- Regulation

- 37-29-401. Standards of conduct and practice.
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- 37-29-411. Injunction.
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Chapter Cross-References

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

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.

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.

37-29-104. Health insurance policies to include denturist 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 denturist, the insured under such policy is entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist.

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, disciplinary standards for licensees, and inspection of dentistry premises and facilities.

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.

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 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 "dentist", "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.

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.

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 dentist license is valid for a period established by department rule. A dentist shall submit proof that the dentist 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.

Cross-References

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

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.

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.

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.

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.

37-29-405. Advertising restrictions. No person may represent or hold himself out to the public as a denturist or as practicing dentistry unless licensed under this chapter.

History: En. Sec. 14, Ch. 548, L. 1985.

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.

**TITLE 50
HEALTH AND SAFETY**

CHAPTER 16

HEALTH CARE INFORMATION

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- 50-16-1010 through 50-16-1012 reserved.
- 50-16-1013. Civil remedy.

Chapter Cross-References

- Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.
- Right of privacy, Art. II, sec. 10, Mont. Const.
- Duty to report cases of communicable disease, 37-2-301.

Gunshot or stab wounds to be reported, 37-2-302.
Immunity from liability, 37-2-303.
Report to Department of Justice by physician, 37-2-311.
Physician's immunity from liability, 37-2-312.

Part 1

General Provisions

50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of public health and human services.

History: En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114; amd. Sec. 107, Ch. 418, L. 1995; amd. Sec. 284, Ch. 546, L. 1995.

50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of public health and human services, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person who furnishes information under subsection (1) is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of a person whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or the person's legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115; amd. Sec. 108, Ch. 418, L. 1995; amd. Sec. 285, Ch. 546, L. 1995.

Part 2

Professional Review Committees

50-16-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical

ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

History: En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304; amd. Sec. 1, Ch. 359, L. 2001; amd. Sec. 5, Ch. 396, L. 2003; amd. Sec. 124, Ch. 467, L. 2005; amd. Sec. 25, Ch. 519, L. 2005.

50-16-202. Committees to have access to information. It is in the interest of public health and patient medical care that health care facility committees have access to the records and other health care information relating to the condition and treatment of patients in the health care facility to study and evaluate for the purpose of evaluating matters relating to the care and treatment of patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out these purposes, any health care facility and its agents and employees may provide medical records or other health care information relating to the condition and treatment of any patient in the health care facility to any utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of the health care facility.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part); amd. Sec. 2, Ch. 359, L. 2001.

50-16-203. Committee health care information and proceedings confidential and privileged. All records and health care information referred to in 50-16-202 are confidential and privileged to the committee and the members of the committee as though the health care facility patients were the patients of the members of the committee. All proceedings, records, and reports of committees are confidential and privileged.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part); amd. Sec. 3, Ch. 359, L. 2001.

Cross-References

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-204. Restrictions on use or publication of information. A utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility may use or publish health care

information only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither a committee nor the members, agents, or employees of a committee shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of a committee, but a committee and its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and may not disclose or reveal the name of any health care facility patient.

History: En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302; amd. Sec. 4, Ch. 359, L. 2001.

50-16-205. Data confidential -- inadmissible in judicial proceedings.

All data is confidential and is not discoverable or admissible in evidence in any judicial proceeding. However, this section does not affect the discoverability or admissibility in evidence of health care information that is not data as defined in 50-16-201.

History: En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303; amd. Sec. 5, Ch. 359, L. 2001.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Part 3

Confidentiality of Health Care Information (Repealed)

50-16-301. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 1, Ch. 578, L. 1979.

50-16-302. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 2, Ch. 578, L. 1979.

50-16-303. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 6, Ch. 578, L. 1979.

50-16-304. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 8, Ch. 578, L. 1979.

50-16-305. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 7, Ch. 578, L. 1979.

50-16-306 through 50-16-310 reserved.

50-16-311. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 3, Ch. 578, L. 1979; amd. Sec. 1, Ch. 725, L. 1985.

50-16-312. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 4, Ch. 578, L. 1979.

50-16-313. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 4, Ch. 578, L. 1979.

50-16-314. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 5, Ch. 578, L. 1979.

Part 4

Health Information Center (Repealed)

50-16-401. Repealed. Sec. 1, Ch. 66, L. 1987.

History: En. Sec. 1, Ch. 628, L. 1983.

Part 5

Uniform Health Care Information

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

50-16-501. Short title. This part may be cited as the "Uniform Health Care Information Act".

History: En. Sec. 1, Ch. 632, L. 1987.

50-16-502. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in ensuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

(6) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., require health care providers subject to that legislation to provide significant privacy protection for health care information and the provisions of this part are no longer necessary for those health care providers; and

(7) because the provisions of HIPAA do not apply to some health care providers, it is important that these health care providers continue to adhere to this part.

History: En. Sec. 2, Ch. 632, L. 1987; amd. Sec. 6, Ch. 396, L. 2003.

50-16-503. Uniformity of application and construction. This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

History: En. Sec. 3, Ch. 632, L. 1987.

50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

- (a) statutory, regulatory, fiscal, medical, or scientific standards;
- (b) a private or public program of payments to a health care provider; or
- (c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

- (a) authorized by law to evaluate health care services; and
- (b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(13) "Reasonable fee" means the charge, as provided for in 50-16-540, for duplicating, searching for, or handling recorded health care information.

History: En. Sec. 4, Ch. 632, L. 1987; amd. Sec. 2, Ch. 300, L. 1999; amd. Sec. 7, Ch. 396, L. 2003.

Cross-References

Government health care information -- definition of health care information, 50-16-602.

50-16-505. Limit on applicability. The provisions of this part apply only to a health care provider that is not subject to the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

History: En. Sec. 8, Ch. 396, L. 2003.

50-16-506 through 50-16-510 reserved.

50-16-511. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

History: En. Sec. 21, Ch. 632, L. 1987.

50-16-512. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at"

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

History: En. Sec. 18, Ch. 632, L. 1987.

50-16-513. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

History: En. Sec. 22, Ch. 632, L. 1987.

Cross-References

Records and reports required of health care facilities -- confidentiality, 50-5-106.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

50-16-514 through 50-16-520 reserved.

50-16-521. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

History: En. Sec. 19, Ch. 632, L. 1987.

50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him.

History: En. Sec. 20, Ch. 632, L. 1987; amd. Sec. 1, Ch. 657, L. 1989.

50-16-523 and 50-16-524 reserved.

50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529, 50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

History: En. Sec. 5, Ch. 632, L. 1987; amd. Sec. 2, Ch. 657, L. 1989; amd. Sec. 8, Ch. 519, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Gunshot or stab wounds -- reporting by health care practitioners, 37-2-302.

Release of information by physician concerning minor, 41-1-403.

Records and reports required of health care facilities -- confidentiality, 50-5-106.

Confidentiality under Tumor Registry Act, 50-15-704.

Unauthorized divulgence of serological test information, 50-19-108.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

Records of chemically dependent persons, intoxicated persons, and family members, 53-24-306.

50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

- (a) be in writing, dated, and signed by the patient;
- (b) identify the nature of the information to be disclosed; and
- (c) identify the person to whom the information is to be disclosed.
- (4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

History: En. Sec. 6, Ch. 632, L. 1987; amd. Sec. 3, Ch. 300, L. 1999.

Cross-References

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-527. Patient authorization -- retention -- effective period -- exception -- communication without prior notice for workers' compensation purposes. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise provided by law.

(5) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (4) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

History: En. Sec. 7, Ch. 632, L. 1987; amd. Sec. 13, Ch. 333, L. 1989; amd. Sec. 1, Ch. 480, L. 1999; amd. Sec. 5, Ch. 464, L. 2003.

50-16-528. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been

provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

History: En. Sec. 8, Ch. 632, L. 1987.

50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider;

(8) to an official of a penal or other custodial institution in which the patient is detained; and

(9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual.

History: En. Sec. 9, Ch. 632, L. 1987; amd. Sec. 3, Ch. 657, L. 1989; amd. Sec. 6, Ch. 544, L. 1991.

Cross-References

- Duty of mental health professionals to warn of violent patients, 27-1-1102.
- Nonliability for peer review, 37-2-201.
- Pharmacists not liable for peer review, 37-7-1101.
- Release of information by physician concerning minor, 41-1-403.
- Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.
- Confidentiality of records concerning mental illness, 53-21-166.

50-16-530. Disclosure without patient's authorization. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

- (1) directory information, unless the patient has instructed the health care provider not to make the disclosure;
- (2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;
- (3) to federal, state, or local law enforcement authorities to the extent required by law;
- (4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;
- (5) in response to a request of the office of victims services for information under 53-9-104(2)(b);
- (6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536;
- (7) pursuant to 50-16-712; or
- (8) to the state medical examiner or a county coroner for use in determining cause of death. The information is required to be held confidential as provided by law.

History: En. Sec. 10, Ch. 632, L. 1987; amd. Sec. 1, Ch. 68, L. 1989; amd. Sec. 2, Ch. 396, L. 1995; amd. Sec. 1, Ch. 101, L. 2001; amd. Sec. 2, Ch. 124, L. 2001.

50-16-531. Immunity of health care providers pursuant to written authorization -- form required. A health care provider who discloses health care information within the possession of the provider, including health care information from another provider, is immune from any civil cause of action by the patient or the patient's heirs or successors in interest that is based upon delivery to the patient or the patient's designee of health care information concerning the patient that is contained in the health care provider's patient file if the information is disclosed in accordance with a written authorization using the following language:

"All health care information in your possession, whether generated by you or by any other source, may be released to me or to(named person) for(purpose of the disclosure). This release is subject to revocation at any time. The revocation is effective from the time it is communicated to the health care provider. If not revoked, the release terminates in accordance with 50-16-527.

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.....
(Signature of patient)"

History: En. Sec. 1, Ch. 469, L. 1993.

50-16-532 through 50-16-534 reserved.

50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(j);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

(j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or a similar federal law.

(2) This part does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding in which disclosure is otherwise prohibited by law.

History: En. Sec. 11, Ch. 632, L. 1987; amd. Sec. 4, Ch. 657, L. 1989; amd. Sec. 9, Ch. 396, L. 2003; amd. Sec. 24, Ch. 504, L. 2003.

Cross-References

Government health care information -- legal proceedings, 50-16-605.

50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized

representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History: En. Sec. 12, Ch. 632, L. 1987; amd. Sec. 5, Ch. 657, L. 1989; amd. Sec. 44, Ch. 16, L. 1991; amd. Sec. 4, Ch. 300, L. 1999; amd. Sec. 25, Ch. 504, L. 2003.

50-16-537 through 50-16-539 reserved.

50-16-540. Reasonable fees allowed. A reasonable fee for providing health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed \$15 for searching and handling recorded health care information.

History: En. Sec. 1, Ch. 300, L. 1999.

50-16-541. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

- (a) make the information available to the patient for examination, without charge, during regular business hours or provide a copy, if requested, to the patient;
- (b) inform the patient if the information does not exist or cannot be found;
- (c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;
- (d) if the information is in use or unusual circumstances have delayed

handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee for each request, not to exceed the fee provided for in 50-16-540, for providing the health care information and is not required to provide copies until the fee is paid.

History: En. Sec. 13, Ch. 632, L. 1987; amd. Sec. 5, Ch. 300, L. 1999.

50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information is data, as defined in 50-16-201, that is compiled and used solely for utilization review, peer review, medical ethics review, quality assurance, or quality improvement;

(e) the health care information might contain information protected from disclosure pursuant to 50-15-121 and 50-15-122;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian has not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the information subject to disclosure.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), the provider shall permit examination and copying of the record by the patient's spouse, adult child, or parent or guardian or by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

History: En. Sec. 14, Ch. 632, L. 1987; amd. Sec. 6, Ch. 657, L. 1989; amd. Sec. 19, Ch. 515, L. 1995; amd. Sec. 6, Ch. 359, L. 2001.

50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

History: En. Sec. 15, Ch. 632, L. 1987.

50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

History: En. Sec. 16, Ch. 632, L. 1987.

50-16-545. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the fee provided for in 50-16-540, for distributing corrected or amended information or the statement of disagreement, unless the provider's error

necessitated the correction or amendment.

History: En. Sec. 17, Ch. 632, L. 1987; amd. Sec. 6, Ch. 300, L. 1999.

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty. (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year, or both.

History: En. Sec. 23, Ch. 632, L. 1987.

Cross-References

Government health care information -- penalty, 50-16-611.

Unauthorized divulgence of serological test information, 50-19-108.

50-16-552. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

History: En. Sec. 24, Ch. 632, L. 1987.

50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

History: En. Sec. 25, Ch. 632, L. 1987.

Part 6

Government Health Care Information

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

50-16-601. Short title. This part may be cited as the "Government Health Care Information Act".

History: En. Sec. 1, Ch. 481, L. 1989.

50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) (a) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

History: En. Sec. 2, Ch. 481, L. 1989; amd. Sec. 109, Ch. 418, L. 1995; amd. Sec. 286, Ch. 546, L. 1995.

Cross-References

Uniform health care information -- definition of health care information, 50-16-504.

50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or the entity's authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202 or if the health care information is to be presented as evidence in a court proceeding involving child abuse pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a

district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part.

History: En. Sec. 3, Ch. 481, L. 1989; amd. Sec. 10, Ch. 391, L. 2003; amd. Sec. 26, Ch. 504, L. 2003.

Cross-References

Uniform health care information, Title 50, ch. 16, part 5.

50-16-604. Secondary release of health care information. Information released pursuant to 50-16-603 may not be released by the person or entity it is released to unless the release conforms to the requirements of 50-16-603.

History: En. Sec. 4, Ch. 481, L. 1989.

50-16-605. Judicial, legislative, and administrative proceedings -- testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7).

History: En. Sec. 5, Ch. 481, L. 1989; amd. Sec. 27, Ch. 504, L. 2003.

Cross-References

Uniform health care information -- when available by compulsory process, 50-16-535.

50-16-606. Correlation with Uniform Health Care Information Act. Health care information in the possession of a local board, local health officer, or the department because a health care provider employed by any of these entities provided health care to a patient, either individually or at a public health center or other publicly owned health care facility, is subject to the Uniform Health Care Information Act and not subject to this part.

History: En. Sec. 1, Ch. 432, L. 1991.

Cross-References

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

50-16-607 through 50-16-610 reserved.

50-16-611. Penalty. A person who knowingly violates the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

History: En. Sec. 6, Ch. 481, L. 1989.

Cross-References

Uniform health care information -- criminal penalty, 50-16-551.

Part 7

Report of Exposure to Infectious Disease

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.
Duty to report cases of communicable disease, 37-2-301.
Duty to report cases of sexually transmitted diseases, 50-18-106.

50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying an emergency services provider of exposure.

(4) "Emergency services organization" means a public or private organization that provides emergency services to the public.

(5) "Emergency services provider" means a person employed by or acting as a volunteer with an emergency services organization, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(6) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(7) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(8) "Infectious disease" means human immunodeficiency virus infection, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and any other disease capable of being transmitted through an exposure that has been designated by department rule.

(9) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this part and by rule.

(10) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

History: En. Sec. 1, Ch. 390, L. 1989; amd. Sec. 1, Ch. 476, L. 1993; amd. Sec. 110, Ch. 418, L. 1995; amd. Sec. 287, Ch. 546, L. 1995; amd. Sec. 13, Ch. 93, L. 1997; amd. Sec. 1, Ch. 146, L. 1999.

50-16-702. Notification of exposure to infectious disease -- report of exposure to disease. (1) (a) If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the form required by department rule to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. The designated officer shall submit the completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider. Submission of the form to the health care facility is an indication that the emergency services provider was exposed and a verification that the designated officer and the emergency services provider believe that the emergency services provider was exposed.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control and prevention, then submission of the form to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of the report of exposure from a designated officer, the health care facility shall notify the designated officer in writing whether or not a determination has been made that the patient has or does not have an infectious disease. If a determination has been made and the patient has been found:

(i) to have an infectious disease, the information required by 50-16-703 must be provided by the health care facility;

(ii) to not have an infectious disease, the date on which the patient was transported to the health care facility must be provided by the health care facility.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall, within 48 hours after the determination was made, notify the designated officer and the department of that fact. The notice to the department must include the name of the emergency services organization that transported the patient to the health care facility. The department shall, within 24 hours after receiving the notice, notify the designated officer of the emergency services provider who transported the patient.

(3) A designated officer who receives the notification from a health care facility required by 50-16-703(2) or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with an airborne infectious disease.

History: En. Sec. 2, Ch. 390, L. 1989; amd. Sec. 7, Ch. 544, L. 1991; amd. Sec. 2, Ch. 476, L. 1993; amd. Sec. 2, Ch. 146, L. 1999.

50-16-703. Notification of precautions after exposure to infectious disease. (1) After a patient is transported to a health care facility and if a physician determines that the transported patient has an infectious disease, the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made.

(2) If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702, the health care facility shall provide the notification required by subsection (3) orally within 48 hours after the time of diagnosis and in writing within 72 hours after diagnosis to the designated officer of each emergency services organization known to the health care facility to have provided emergency services to the patient prior to or during transportation to the health care facility.

(3) The notification must state the disease to which the emergency services provider was exposed, the appropriate medical precautions and treatment that the exposed person needs to take, the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility.

History: En. Sec. 3, Ch. 390, L. 1989; amd. Sec. 3, Ch. 476, L. 1993; amd. Sec. 3, Ch. 146, L. 1999.

50-16-704. Confidentiality -- penalty for violation -- immunity from liability. (1) The name of the person diagnosed as having an infectious disease may not be released to anyone, including the emergency services provider who was exposed, nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider, except as required by this part, by department rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful.

History: En. Sec. 5, Ch. 390, L. 1989; amd. Sec. 4, Ch. 476, L. 1993; amd. Sec. 4, Ch. 146, L. 1999.

Cross-References

Physician's immunity from liability, 37-2-312.

50-16-705. Rulemaking authority. The department shall adopt rules to:

- (1) define what constitutes an exposure to an infectious disease;
- (2) specify the infectious diseases subject to this part;
- (3) specify the information about an exposure that must be included in a report of exposure;
- (4) specify recommended medical precautions and treatment for each infectious disease subject to this part; and
- (5) specify recordkeeping and reporting requirements necessary to ensure compliance with the notification requirements of this part.

History: En. Sec. 4, Ch. 390, L. 1989; amd. Sec. 5, Ch. 476, L. 1993; amd. Sec. 5, Ch. 146, L. 1999.

Cross-References

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

50-16-706 through 50-16-710 reserved.

50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease. (1) The health care facility and the emergency services organization shall develop internal procedures for implementing the provisions of this part and department rules.

(2) The health care facility must have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of this part and the rules promulgated under this part and shall provide the names of the designated officer and the alternate to the department.

(4) The emergency services organization shall name a designated officer and an alternate and shall provide their names to the department.

History: En. Sec. 7, Ch. 476, L. 1993; amd. Sec. 6, Ch. 146, L. 1999.

50-16-712. Notification to mortuary personnel -- exposure to infectious disease. (1) A coroner, a health care facility, or a health care provider, as defined in 50-16-1003, shall disclose information regarding the status of a deceased individual with regard to an infectious disease to personnel from a mortuary licensed under Title 37, chapter 19, at the time of transfer of the dead body or as soon after transfer as possible. The information must include whether the

individual had an infectious disease at the time of death and the nature of the infectious disease.

(2) The mortuary personnel who receive the information provided in subsection (1) may not disclose the information except for purposes related directly to the preparation and disposition of the dead body.

History: En. Sec. 1, Ch. 396, L. 1995.

Part 8

Health Care Information Privacy Requirements for Providers Subject to HIPAA

50-16-801. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., provide significant privacy protection for health care information with respect to health care providers subject to HIPAA;

(3) for health care providers subject to the health care information privacy protections of HIPAA, the applicability of the provisions of Title 50, chapter 16, part 5, relating to health care privacy is unnecessary and may result in significant practical difficulties;

(4) it is in the best interest of the citizens of Montana to have certain requirements, with respect to the use or release of health care information by health care providers, that are more restrictive than or additional to the health care privacy protections of HIPAA.

History: En. Sec. 15, Ch. 396, L. 2003.

50-16-802. Applicability. This part applies only to health care providers subject to the health care information privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

History: En. Sec. 16, Ch. 396, L. 2003.

50-16-803. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Health care" means care, services, or supplies provided by a health care provider that are related to the health of an individual. Health care includes but is not limited to the following:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to an individual's physical or mental condition; or

(b) the sale or dispensing of any drug, device, equipment, or other item in accordance with a prescription.

(2) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(3) "Health care information" means any information, whether oral or recorded in any form or medium, that:

(a) is created or received by a health care provider;

(b) relates to the past, present, or future physical or mental health or condition of an individual or to the past, present, or future payment for the provision of health care to the individual; and

(c) identifies or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(5) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(7) "Reasonable fee" means the charge, as provided for in 50-16-816, for duplicating, searching for, or handling recorded health care information.

History: En. Sec. 17, Ch. 396, L. 2003.

50-16-804. Representative of deceased patient's estate. A personal representative of a deceased patient's estate may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person.

History: En. Sec. 18, Ch. 396, L. 2003.

50-16-805. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes. (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

History: En. Sec. 19, Ch. 396, L. 2003.

50-16-806 through 50-16-810 reserved.

50-16-811. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(i);

(h) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(i) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or similar federal law.

(2) This part does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

History: En. Sec. 20, Ch. 396, L. 2003.

50-16-812. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-811(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-811(1)(h), the person seeking compulsory process or discovery shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-811 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-811(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-811(1)(h), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-811 identified in the certification provides an appropriate basis for the use of compulsory process or discovery. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. If access to requested health care information is denied by the health care provider, the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes that the information should be protected from disclosure.

(4) When access to health care information is denied, the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information

pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-816, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-811 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History: En. Sec. 21, Ch. 396, L. 2003.

50-16-813 through 50-16-815 reserved.

50-16-816. Reasonable fees. Unless prohibited by federal law, a reasonable fee for providing copies of health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed \$15 for searching and handling recorded health care information.

History: En. Sec. 22, Ch. 396, L. 2003.

50-16-817. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A disciplinary or punitive action may not be taken against a health care provider or the provider's employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(4) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of \$5,000, exclusive of any pecuniary loss.

(5) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(6) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

(7) A health care provider who relies in good faith upon certification pursuant to 50-16-812 is considered to have received reasonable assurances and is not liable for disclosures made in reliance on that certification.

History: En. Sec. 23, Ch. 396, L. 2003.

50-16-818. Good faith. A person authorized to act as a health care representative for an individual with respect to the individual's health care information shall act in good faith to represent the best interests of the individual.

History: En. Sec. 24, Ch. 396, L. 2003.

Part 9 reserved

Part 10

AIDS Education and Prevention

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.
Uniform health care information, Title 50, ch. 16, part 5.

50-16-1001. Short title. This part may be cited as the "AIDS Prevention Act".

History: En. Sec. 1, Ch. 614, L. 1989.

50-16-1002. Statement of purpose. (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

History: En. Sec. 2, Ch. 614, L. 1989.

50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state or who is licensed, certified, or otherwise authorized by the laws of another state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise

mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.

(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(11) "Local board" means a county, city, city-county, or district board of health.

(12) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(14) "Person" means an individual, corporation, organization, or other legal entity.

(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(17) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(18) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

History: En. Sec. 3, Ch. 614, L. 1989; amd. Sec. 1, Ch. 544, L. 1991; amd. Sec. 111, Ch. 418, L. 1995; amd. Sec. 288, Ch. 546, L. 1995; amd. Sec. 1, Ch. 197, L. 1997; amd. Sec. 2, Ch. 524, L. 1997.

50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases. It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable diseases, including sexually transmitted diseases, by adopting the most currently accepted public health practices with regard to testing, reporting, partner notification, and disease intervention. Nothing in this section is intended to prohibit the department from allowing testing for HIV infection to be performed and reported without identification of the subject of the test. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

History: En. Sec. 1, Ch. 524, L. 1997.

Cross-References

Disclosure of communicable diseases, 50-16-603.

Sexually transmitted diseases, Title 50, ch. 18.

50-16-1005 and 50-16-1006 reserved.

50-16-1007. Testing -- counseling -- informed consent -- penalty. (1) An HIV-related test may be ordered only by a health care provider and only after receiving the informed consent of:

(a) the subject of the test;

(b) the subject's legal guardian;

- (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated;
 - (ii) there is no legal guardian;
 - (iii) there are medical indications of an HIV-related condition; and
 - (iv) the test is advisable in order to determine the proper course of treatment of the subject; or
 - (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:
 - (i) the subject is in a hospital; and
 - (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.
- (2) When a health care provider orders an HIV-related test, the provider also certifies that informed consent has been received prior to ordering an HIV-related test.
- (3) Before the subject of the test gives informed consent, the health care provider ordering the test or the provider's designee shall give pretest counseling to:
 - (a) the subject;
 - (b) the subject's legal guardian;
 - (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated; and
 - (ii) there is no guardian; or
 - (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:
 - (i) the subject is in the hospital; and
 - (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.
- (4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.
- (5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, after giving informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.
- (6) At the time that the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.
- (7) If a test is performed as part of an application for insurance, the insurance company shall obtain the informed consent in writing and ensure that:
 - (a) negative results can be obtained by the subject or the subject's representative upon request; and
 - (b) positive results are returned to the health care provider designated by the subject or the subject's representative.
- (8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.
- (9) Subsections (1) through (6) do not apply to:
 - (a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;
 - (b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;
 - (c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;
(ii) there are medical indications of an HIV-related condition;
(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702 has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection (10), "informed consent" means an agreement that is freely executed, either orally or in writing, by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of \$1,000 or imprisonment for up to 6 months, or both.

History: En. Sec. 4, Ch. 614, L. 1989; amd. Sec. 2, Ch. 544, L. 1991; amd. Sec. 6, Ch. 476, L. 1993; amd. Sec. 3, Ch. 524, L. 1997.

50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty. (1) Prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both.

History: En. Sec. 5, Ch. 614, L. 1989; amd. Sec. 3, Ch. 544, L. 1991.

Cross-References

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure. (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a

manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(3) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1 year, or both.

History: En. Sec. 6, Ch. 614, L. 1989; amd. Sec. 4, Ch. 544, L. 1991; amd. Sec. 10, Ch. 396, L. 2003.

50-16-1010 through 50-16-1012 reserved.

50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of \$5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of \$20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

History: En. Sec. 7, Ch. 614, L. 1989; amd. Sec. 5, Ch. 544, L. 1991.

Cross-References

Statutes of limitations, Title 27, ch. 2.

Injunctions, Title 27, ch. 19.