

VOLUME NO. 44

OPINION NO. 36

COMMERCE, DEPARTMENT OF - Authorization of denturists to fit partial dentures;

DENTISTRY - Authority of denturists to fit partial dentures;

DENTURITY - Authority of denturists to fit partial dentures;

MONTANA CODE ANNOTATED - Sections 37-29-102, 37-29-403.

HELD: Under section 37-29-403, MCA, a denturist must refer a patient to a dentist prior to making, fitting, or reconstructing a partial denture.

June 18, 1992

Charles Brooke, Director
Department of Commerce
1424 Ninth Avenue
Helena MT 59620-0501

Dear Mr. Brooke:

You have requested my opinion on a number of questions, but because I must decline to answer questions that require factual determinations or determinations of the constitutionality of a legislative act, I have rephrased your request as follows:

Is a denturist required to refer a partial-denture patient to a dentist before the denturist may construct, fit, or reconstruct a partial denture?

The Board of Dentistry is vested with the authority to regulate the licensure

and practice of dentistry. § 37-29-201, MCA. The practice of dentistry is defined in section 37-29-102(6), MCA, as:

- (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.

A "denture" is defined as "any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth." § 37-29-102(2), MCA.

Section 37-29-403, MCA, describes in particular the procedure for making and fitting partial dentures:

- (1) Prior to making and fitting a partial denture, a dentist 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 dentist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.
- (3) A dentist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in 37-29-311.

Your question concerns whether section 37-29-403(1)(b), MCA, imposes a mandatory duty upon a dentist to refer a patient to a dentist every time a partial denture is made, fitted, or reconstructed. You state that the Board of Dentistry interprets the section as mandatory, leaving no discretion with a dentist, while the denturists contend that the "as needed" language at the end of subsection (1)(b) grants them discretion to determine if a referral to a dentist is necessary.

In construing a statute, the primary goal is to discern legislative intent whenever possible. § 1-2-102, MCA. Often, legislative intent may be gleaned from the plain language of the statute. Here, however, the language of section 37-29-403(1)(b), MCA, standing alone, is ambiguous. It is unclear whether the phrase "as needed" modifies the general duty of a denturist to refer a patient to a dentist; or vests discretion in the denturist to refer a patient for tooth cleaning, mouth preparation, and x-rays; or requires a referral to a dentist in every case prior to making or fitting a partial denture for necessary tooth cleaning, mouth preparation, and x-rays as determined by the dentist to whom the patient is referred.

Where there is doubt as to the meaning of a phrase in a statute, the statute must be construed in its entirety and the phrase given a reasonable construction which is harmonious with the entire statute. McClanathan v. Smith, 186 Mont. 56, 61, 606 P.2d 507, 510 (1980). Thus, statutes must be read and considered in their entirety and legislative intent may not be found in the wording of any one particular section or sentence, but in the consideration of the whole statute. State v. Meader, 184 Mont. 32, 36-37, 601 P.2d 386, 389 (1979); Vita-Rich Dairy v. Department of Business Regulation, 170 Mont. 341, 348, 553 P.2d 980, 984 (1976). See also Burritt v. City of Butte, 161 Mont. 530, 535, 508 P.2d 563, 566 (1973) (context in which words are used is more important than precise grammatical rules).

When section 37-29-403, MCA, is construed in its entirety, it becomes clear that a denturist has no discretion with respect to referral of a patient to a dentist before the making and fitting of partial dentures. Section 37-29-402(1)(c), MCA, expressly provides that a denturist shall "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.*" (Emphasis added.) This subsection allows the fitting of a partial denture only after a dentist has been given the opportunity to check the patient and review the model sent to him or her under subsection (1)(b). Further, a partial denture must be fitted in accordance "with the dentist's recommendations." § 37-29-403(1)(c), MCA.

This conclusion is consistent with the administrative rules promulgated by the Board of Dentistry which regulate the practice of dentistry. Section 8.17.808, ARM, provides:

- (1) The board of dentistry interprets 37-29-403(1)(b), MCA, to mean that all partial denture patients shall be referred to a dentist to determine what is needed prior to the denturist starting his services.

Although the history portion of this rule indicates that the rule is advisory only, the Board of Dentistry has proposed to strike that qualification. Notice of Proposed Amendment of 8.17.808, Montana Administrative Register, Issue

No. 7, April 16, 1992, at 723. The construction of a statute by the agency responsible for its execution is given great deference. Norfolk Holdings v. Department of Revenue, 48 St. Rptr. 569, 813 P.2d 460, 462 (1991); D'Ewart v. Neibauer, 228 Mont. 335, 340, 742 P.2d 1015, 1018 (1987); Montana Power Company v. Cremer, 182 Mont. 277, 280, 596 P.2d 483, 485 (1979); Department of Revenue v. Puget Sound Power and Light Company, 179 Mont. 255, 262, 587 P.2d 1282, 1286 (1978). Giving deference to the agency's interpretation reinforces my opinion that a denturist must refer all partial-denture patients to a dentist prior to making or fitting a partial denture.

You have also asked whether there must be referral each time a patient goes to a denturist to have the partial denture reconstructed. According to the rules of statutory construction, I am obliged to ascertain and declare what is in terms or in substance contained in the statute, not insert what has been omitted or omit what has been inserted. § 1-2-101, MCA. Here, there is no limitation in the statutory language exempting reconstruction of a partial denture from the general duty to refer all partial-denture patients to a dentist prior to fitting a partial denture. While an exception could be created legislatively, I may not insert such an exception into the statutes.

THEREFORE, IT IS MY OPINION:

Under section 37-29-403, MCA, a denturist must refer a patient to a dentist prior to making, fitting, or reconstructing a partial denture.

Sincerely,

MARC RACICOT
Attorney General