

HOUSE BILL 240

Introduced by Hayne, et al.

1/19	Introduced
1/19	Referred to Business & Economic Development
1/19	First Reading
2/03	Hearing
2/10	Tabled in Committee

1 House BILL NO: 240  
 2 INTRODUCED BY Hayne Knapf  
 3 BY REQUEST OF THE DEPARTMENT OF COMMERCE  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 6 POWERS AND MEMBERSHIP OF THE BOARD OF DENTISTRY; PROVIDING  
 7 FOR THE PURPOSE OF THE REGULATION OF THE PROFESSIONS OF  
 8 DENTISTRY, DENTAL HYGIENE, AND DENTURITRY; AUTHORIZING THE  
 9 BOARD TO PARTICIPATE IN A PROGRAM FOR THE INVESTIGATION,  
 10 REHABILITATION, AND DISCIPLINE OF CHEMICALLY DEPENDENT  
 11 DENTISTS, DENTAL HYGIENISTS, AND DENTURISTS; PROVIDING  
 12 INVESTIGATIVE AND DISCIPLINARY PROCEDURES; PROVIDING FOR  
 13 REPORTS OF INCOMPETENCE OR UNPROFESSIONAL CONDUCT;  
 14 PROHIBITING DENTURISTS FROM OPERATING OFFICES WHERE  
 15 DENTISTRY IS PERFORMED; PROHIBITING DENTURISTS FROM  
 16 CONSTRUCTING DENTURES PRIOR TO DIAGNOSIS AND FROM  
 17 CONSTRUCTING OR PLACING DENTAL IMPLANTS OR PROSTHESES ON  
 18 IMPLANTS; AMENDING SECTIONS 2-15-1842, 37-4-321, 37-4-323,  
 19 37-29-102, 37-29-103, 37-29-201, 37-29-311, 37-29-402, AND  
 20 37-29-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 21  
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 23 **Section 1.** Section 2-15-1842, MCA, is amended to read:  
 24 "2-15-1842. Board of dentistry. (1) There is a board of  
 25 dentistry.

1 (2) ~~{a}~~ The board consists of five dentists, one of  
 2 whom ~~shall--serve~~ serves as a nonvoting member; one  
 3 denturist; one dental hygienist; and two public members,  
 4 one of whom must be a senior citizen. All members are  
 5 appointed by the governor with the consent of the senate.  
 6 Each licensed member ~~shall~~ must be licensed to practice as a  
 7 dentist, denturist, or dental hygienist in this state; ~~shall~~ must  
 8 have actively practiced in this state for at  
 9 least 5 continuous years immediately before his appointment;  
 10 ~~except--as-provided-in-subsection-(2)(b);~~ and ~~shall~~ must be  
 11 actively engaged in practice while serving on the board.  
 12 Each member ~~shall~~ must be a resident of this state.  
 13 ~~{b}--The--provision--in--subsection--(2)(a)--requiring-a~~  
 14 ~~licensed-member-to-have-actively-practiced-in-this-state-for~~  
 15 ~~at--least--5--continuous--years--immediately--before--his~~  
 16 ~~appointment--does-not-apply-to-the-first-denturist-appointed~~  
 17 ~~to-the-board.~~  
 18 (3) Each member shall serve for a term of 5 years. Each  
 19 dentist appointed to the board for a statutory 5-year term  
 20 shall serve the first year of the term as a nonvoting member  
 21 of the board. The governor may remove a member only for  
 22 neglect or cause.  
 23 (4) The governor shall fill any vacancy within 30 days.  
 24 (5) The board is a quasi-judicial board, as provided in  
 25 2-15-124, except that one member need not be an attorney,

1 and the president must be elected by the board.

2 ~~(5)~~(6) The board is allocated to the department for  
3 administrative purposes only as prescribed in 2-15-121."

4 NEW SECTION. Section 2. Purpose. The legislature finds  
5 that the professions of dentistry and dental hygiene are  
6 privileges granted by the legislative authority to license  
7 and are not natural rights of individuals. The legislature  
8 considers it necessary, in the interests of protecting the  
9 health, safety, and welfare of the people of Montana and in  
10 order to provide for the dental needs of the public, to  
11 provide laws and delegate rulemaking authority regarding the  
12 granting of these privileges and their subsequent use so  
13 that the public is protected from the unprofessional,  
14 improper, unauthorized, and unqualified practice of  
15 dentistry and dental hygiene.

16 **Section 3.** Section 37-4-321, MCA, is amended to read:

17 "37-4-321. Grounds for disciplinary proceedings --  
18 range of sanctions -- recovery of costs. (1) The board may  
19 censure, prescribe probation, suspend, or revoke any license  
20 issued under this chapter or fine the licensee not to exceed  
21 \$5,000 per incident for any of the following causes:

- 22 (a) physical or mental incompetence;  
23 (b) malpractice;  
24 (c) unprofessional conduct, as defined by rule of the  
25 board; or

1 (d) violation of any of the provisions of this chapter  
2 or rules or orders of the board.

3 (2) The board may, following a final determination  
4 resulting in any disciplinary action taken by the board  
5 under subsection (1), recover from the disciplined party all  
6 reasonable costs of any proceeding incurred for the purposes  
7 of that disciplinary action. Fines and costs recovered must  
8 be deposited in the board's special revenue account.

9 (3) The board may participate in a program to assist  
10 and rehabilitate persons licensed under this chapter and  
11 denturists licensed under Title 37, chapter 29, who are  
12 found to be chemically dependent on addictive drugs,  
13 alcohol, or any other drug or substance or who have some  
14 other condition that impairs the licensee's intellect or  
15 judgment to an extent that the licensee is unable to safely  
16 perform professional duties."

17 **Section 4.** Section 37-4-323, MCA, is amended to read:

18 "37-4-323. Procedure for investigation -- sanctions --  
19 chemically dependent or impaired condition. (1) Upon receipt  
20 of a complaint or upon its own motion, the board shall  
21 determine whether the matters alleged warrant investigation  
22 and may cause investigation to be made. The board, in its  
23 discretion, may refer the complaint to a peer review  
24 network. The peer review network's findings and conclusions  
25 must be referred back to the board so that the board may

determine if the peer review network's findings and conclusions constitute preliminary cause to believe that a violation of 37-4-321 has occurred. If the board finds preliminary cause for imposing the sanctions listed in 37-4-321, it may do so in accordance with the provisions of the Montana Administrative Procedure Act. If the board finds that the evidence obtained does not justify the imposition of sanctions, it must so notify the licensee concerned and the complaining party and may not take no further action.

(2) If the board finds that the evidence obtained does not warrant suspension or revocation of a license but does warrant other sanctions, it may either:

- (a) issue a public or private decree of censure; or
- (b) impose a probation with terms and conditions appropriately adapted under the circumstances of the particular case.

(3) The licensee is entitled to an opportunity for a contested case hearing before a sanction of censure or probation becomes effective to the same extent an opportunity for hearing is afforded prior to suspension or revocation.

(4) The board may conduct an investigation if it believes that an individual licensed pursuant to Title 37, chapter 4, may be chemically dependent on addictive drugs, alcohol, or any other drug or substance or may have some

other condition that impairs the licensee's intellect or judgment to an extent that the licensee is unable to safely perform professional duties.

(5) An investigation pursuant to subsection (4) must be for the purpose of determining whether a condition of dependency or impairment exists. As part of the investigation, the board may request the individual to submit a bodily fluid sample to an authorized representative of the board and may request the individual to submit to a physical, mental, or chemical dependency evaluation, or a combination of evaluations, by a physician or physicians selected by the board. Upon refusal of a request for a bodily fluid sample or upon its own motion and without a request to the individual, the board may apply to the district court for a warrant authorizing the sample. Upon refusal to participate in a physical, mental, or chemical dependency evaluation, the board may apply to the district court or may, following a hearing pursuant to the contested case provisions of the Montana Administrative Procedure Act, issue an administrative order requiring the evaluation. As part of its investigation, the board may also examine hospital records of and reports concerning the licensee. Copies of the records and reports must be released to the board upon written request.

(6) If the board has reasonable cause to believe that a

chemical dependency or other impairment exists, the department shall mail to the individual at the individual's address of record a specification of the charges against the individual together with written notice of the time and place of the hearing on the charges, advising that the individual may be present and may be represented by counsel to offer evidence and to be heard in the individual's defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(7) At the hearing, the board shall adopt findings of fact and conclusions of law and draft an order finding that the individual does or does not display a chemical dependency or other impairment. If the board finds that the dependency or impairment does not exist, the board shall dismiss the complaint. If the board finds that the dependency or impairment does exist, the board shall:

(a) revoke the individual's license;

(b) suspend the right to practice for a period not to exceed 1 year;

(c) suspend any revocation of the license on terms and conditions to be determined by the board, provided that successful completion of a program of rehabilitation under 37-4-321 is one condition;

(d) place the individual on probation, provided that successful completion of a program of rehabilitation under

37-4-321 is one condition of the probation; or

(e) take other action that the board believes appropriate to safeguard the public.

(8) Except as otherwise provided in this section, hearings pursuant to this section must comply with the contested case provisions of the Montana Administrative Procedure Act.

(9) In addition to its authority to impose sanctions, the board may deny an application for a license for any of the following reasons:

(a) failure to meet the relevant requirements of Title 37, chapter 4;

(b) making any untrue or fraudulent statement in support of the application; or

(c) any of the grounds set forth in 37-4-321 for suspension or revocation of a license."

NEW SECTION. Section 5. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law concerning confidentiality, each licensed physician, dentist, or dental hygienist; any professional standards review organization; the Montana dental association, dental hygiene association, or any component society of those organizations shall, and any other person may, report to the board any information that the entity has indicating that a dentist or dental hygienist is:

- 1 (a) medically incompetent;
- 2 (b) mentally or physically unable to safely engage in
- 3 the practice of dentistry or dental hygiene; or
- 4 (c) guilty of unprofessional conduct.
- 5 (2) Information relating to physical or mental
- 6 impairment connected with chemical dependency on addictive
- 7 drugs, alcohol, or any other drug or substance, or relating
- 8 to other chronic physical or mental illness, may be reported
- 9 to the rehabilitation program provided for under 37-4-321 in
- 10 lieu of reporting directly to the board.
- 11 (3) The rehabilitation program provided for under
- 12 37-4-321 shall report to the board the identity of the
- 13 licensee and all facts and documentation in the program's
- 14 possession in the event that:
- 15 (a) the licensee fails to comply with a request that
- 16 the licensee undergo a physical, mental, or chemical
- 17 dependency evaluation, or a combination of evaluations;
- 18 (b) the licensee fails to undergo a course of treatment
- 19 prescribed by the program, including aftercare;
- 20 (c) the licensee fails to satisfactorily complete a
- 21 required evaluation, course of treatment, or aftercare
- 22 program;
- 23 (d) the licensee's condition creates a risk of harm to
- 24 the licensee, a patient, or others;
- 25 (e) the program is in possession of information

1 indicating that the licensee has engaged in or is engaged in  
2 unprofessional conduct.

3 **NEW SECTION. Section 6. Findings -- purpose.** The  
4 legislature finds that the practice of dentistry is a  
5 privilege granted pursuant to the legislative authority to  
6 license and is not a natural right of individuals. The  
7 legislature considers it necessary, in the interest of  
8 protecting the health, safety, and welfare of the people of  
9 Montana, to provide laws and delegate rulemaking authority  
10 regarding the granting of dentistry licenses so that the  
11 public is protected from the unprofessional, improper,  
12 unauthorized, and unqualified practice of dentistry.

13 **Section 7. Section 37-29-102, MCA, is amended to read:**  
14 "37-29-102. Definitions. As used in this chapter,  
15 unless the context requires otherwise, the following  
16 definitions apply:

17 (1) "Board" means the state board of dentistry provided  
18 for in 2-15-1842.

19 (2) "Denture" means any removable full or partial upper  
20 or lower prosthetic dental appliance, excluding dental  
21 implants or prostheses on implants, to be worn in the mouth.

22 (3) "Denturist" means a person licensed under this  
23 chapter to engage in the practice of dentistry.

24 (4) "Department" means department of commerce provided  
25 for in Title 2, chapter 15, part 18.

(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."

**Section 8.** Section 37-29-103, MCA, is amended to read:

"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. This section may not be construed to allow a licensed denturist to engage in the practice of dentistry, as defined in 37-4-101, by acting as a manager, proprietor, operator, or conductor of a dental clinic or office or other place where dental operations, oral surgery, or dental services are performed."

**Section 9.** Section 37-29-201, MCA, is amended to read:

"37-29-201. Board powers and duties. (1) The board has the following powers and duties:

(1)(a) determination of the qualifications of applicants for licensure under this chapter;

(2)(b) administration of examinations for licensure under this chapter;

(3)(c) collection of fees and charges prescribed in this chapter;

(4)(d) issuance, suspension, and revocation of licenses for the practice of denturistry under the conditions prescribed in this chapter; and

(5)(e) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to license applications, form and display of licenses, license examination format, criteria and grading of examinations, disciplinary standards for licensees, inspection of denturistry premises and facilities, and investigation of complaints.

(2) The board may also exercise the same powers regarding denturists that the board exercises under 37-4-321, 37-4-323, and [section 5] regarding dentists and dental hygienists, including the powers of:

(a) referring complaints to a peer review network;

(b) conducting investigations to determine chemical dependency;

(c) examining hospital records and reports;

(d) preferring charges, conducting hearings, and

entering orders; and

(e) taking disciplinary action."

**NEW SECTION. Section 10.** Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law concerning confidentiality, each licensed dentist, any professional standards review organization, and the Montana association of denturists shall, and any other person may, report to the board any information that the entity has indicating that a dentist is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of dentistry; or

(c) guilty of unprofessional conduct.

(2) Information relating to physical or mental impairment connected with chemical dependency on addictive drugs, alcohol, or any other drug or substance, or relating to other chronic physical or mental illness, may be reported to the rehabilitation program provided for under 37-4-321 and 37-29-201 in lieu of reporting directly to the board.

(3) The rehabilitation program provided for under 37-4-321 and 37-29-201 shall report to the board the identity of the licensee and all facts and documentation in the program's possession in the event that:

(a) the licensee fails to comply with a request that the licensee undergo a physical, mental, or chemical

dependency evaluation, or a combination of evaluations;

(b) the licensee fails to undergo a course of treatment prescribed by the program, including aftercare;

(c) the licensee fails to satisfactorily complete a required evaluation, course of treatment, or aftercare program;

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

(e) the program is in possession of information indicating that the licensee has engaged in or is engaged in unprofessional conduct.

**Section 11.** Section 37-29-311, MCA, is amended to read:

**"37-29-311. Suspension or revocation of license.** (1)

The board has the power to refuse to issue a license, to suspend or revoke a license, or to place a licensed person on probation for a period specified by the board, or to reprimand or censure a licensee for any of the following causes:

(a) conviction of a crime if that crime bears a demonstrable relationship to the practice of dentistry;

(b) incompetence or gross negligence in the practice of dentistry;

(c) fraud or misrepresentation in the practice of dentistry;

(d) the use of any narcotic, or dangerous drug, or



intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of dentistry;

(e) the willful violation of any provision of this chapter; or

(f) unprofessional conduct as defined by rule of the board.

(2) The board may also, pursuant to 37-4-321 and 37-29-201, exercise those disciplinary powers with respect to denturists that it exercises with respect to dentists and dental hygienists in cases of chemical dependency, addiction, or other conditions that impair the intellect or judgment of a denturist.

~~(2)~~(3) The board or its agents may examine and inspect the place of business of any denturist at any time during business hours or upon at least 72 hours' notice made by U.S. mail to the address of record of the denturist if the board or its agents are unable to establish the regular business hours. Inspections must be made to insure compliance with the standards of conduct and practice set forth in 37-29-401.

~~(3)~~(4) Conditions considered by investigators to be a menace to the public health must be brought to the attention of the board for consideration and immediate action."

**Section 12.** Section 37-29-402, MCA, is amended to read:

"37-29-402. Prohibitions. No A licensed denturist may

not:

(1) extract or attempt to extract teeth;

(2) ~~initially~~ insert immediate dentures in the mouth of the intended wearer or construct dentures prior to diagnosis and written prescription by a dentist or oral surgeon for the extraction of the intended wearer's teeth;

(3) diagnose or treat any abnormalities, except that a licensed denturist may apply tissue conditioning agents;

(4) diagnose, evaluate, or treat temporomandibular joint syndrome;

(5) construct, reproduce, make, fit, or place dental implants or prostheses on implants;

~~(4)~~(6) recommend any prescription drug for any oral or medical disease; or

~~(5)~~(7) construct or fit orthodontic appliances."

**Section 13.** Section 37-29-403, MCA, is amended to read:

"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,~~ for diagnosis, oral prophylaxis, 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

1 in subsection (1)(b) and in accordance with the dentist's  
2 recommendations and design prescription.

3 (2) A denturist may not cut, surgically remove, or  
4 surgically reduce any tissue or teeth in the process of  
5 fitting a partial denture.

6 (3) A denturist who makes or fits a partial denture in  
7 a manner not consistent with this section is subject to the  
8 sanctions provided in 37-29-311."

9 NEW SECTION. Section 14. Codification instruction. (1)  
10 [Sections 2 and 5] are intended to be codified as an  
11 integral part of Title 37, chapter 4, and the provisions of  
12 Title 37, chapter 4, apply to [sections 2 and 5].

13 (2) [Sections 6 and 10] are intended to be codified as  
14 an integral part of Title 37, chapter 29, and the provisions  
15 of Title 37, chapter 29, apply to [sections 6 and 10].

16 NEW SECTION. Section 15. Effective date. [This act] is  
17 effective on passage and approval.

-End-