

April 1, 2002

Mr. Lewis K. Smith
Counsel, Montana Board of Dentistry
P.O. Box 1691
Helena, MT 59624

Dear Mr. Smith:

You have requested an Opinion of the Attorney General on a question relating to the desire by the Board to prohibit licensed denturists from using the letters "D.D.M." in advertising their practice based on the receipt by the denturist of a purported degree from an educational institution not authorized by the Board of Regents to confer the degree. Your letter informs me that denturists in Montana are advertising their services using the letters "D.D.M." in apparent reliance on purported degrees conferred by "Mills Grae University." The degree of "D.D.M." from Mills Grae has not been approved by the Board of Regents, nor have the Regents recognized an accrediting agency that has accredited Mills Grae to award the degree. Since your question can be answered by reference to clear statutory language, this letter of advice has been determined to be appropriate.

The legislature has provided that the awarding of degrees by institutions without the prior approval of the Board of Regents is unlawful, unless the degree is awarded by an institution accredited by an organization recognized by the Regents. Mont. Code. Ann. § 20-25-107. The Regents also have the responsibility for reviewing and approving accrediting agencies that approve of the curriculum for training of denturists. Mont. Code. Ann. § 37-29-303(1). In this case, your letter informs us that the Regents have approved neither an accrediting agency for the Mills Grae degree nor the Mills Grae degree itself.

The Board of Dentistry has been authorized by statute to adopt and enforce rules providing "disciplinary standards for licensees." Mont. Code. Ann. § 37-29-201(5). Pursuant to that authority, the Board has adopted Mont. Admin. R. 8.17.801(2), which provides that it is "unprofessional conduct" for a denturist to "[use] advertising matter

that contains misstatements, falsehoods, misrepresentation or wording that may in any way reflect against a fellow licensee or other licensed health care provider.” For the reasons that follow, I believe it would not necessarily be unlawful or an abuse of the Board’s discretion for the Board to find a violation of Mont. Admin. R. 8.17.801(2) from the use of the letters “D.D.M.” by a denturist based on his or her receipt of a degree that has not been approved by the Board of Regents under Mont. Code. Ann. § 20-25-107. However, I express no opinion as to whether such a conclusion would be justified in any particular case, since that would require factual analysis that is beyond the scope of this letter.

Your letter states that it has been argued that Mont. Code. Ann. § 37-29-301 authorizes a licensed denturist to “use in connection with the person’s name the word “denturist”, “L.D.”, or any other words, letters, abbreviations, or insignia implying that the person is engaged in the practice of denturity.” This statutory authorization has been claimed to allow the denturist to use the letters “D.D.M.” in advertising a denturity practice.

In my opinion, the Board would be justified in rejecting this argument. The use of such letters constitutes an assertion by the denturist that he or she has achieved a legitimate degree carrying the right to use the letters. Assuming that the Mills Grae degree is not such a legitimate degree for the reasons discussed above, in my view the Board could reasonably conclude that the use of the letters “D.D.M.” was a “misrepresentation” under Mont. Admin. R. 8.17.801(2). Under these circumstances, the Board could reasonably conclude that the broad language of Mont. Code. Ann. § 37-29-301 does not apply. A strong argument could be made that in this context the letters “D.D.M.” are not used to “[imply] that the person is engaged in the practice of denturity.” Rather, they are used to imply that the person holds a degree when in fact the degree is not recognized under Montana law.

I note further that the Board also administers the laws regulating dentistry. Mont. Code. Ann. § 37-4-101(2)(j) defines the practice of dentistry to include:

[use of] 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[.]

While none of the dental regulations “apply to a person engaged in the lawful practice of denturity,” Mont. Code. Ann. § 37-4-103(4), the Board may also wish to consider whether the letters “D.D.M.” are similar enough to the letters used to describe dental

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degrees as to be likely to be perceived by the public in a particular case as a representation that the person using the letters is qualified to practice dentistry.

It is beyond the proper scope of this letter or of an opinion of the Attorney General to determine whether disciplinary action should be taken with respect to any particular case. That is a matter that is left to the Board's discretion, exercised under law in reliance on the Board's experience and expertise in the area. This letter should not be considered an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/alh