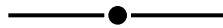


WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011

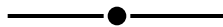


ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 2498

(By Delegates Morgan, Stephens, Hartman, Hatfield,
Martin, D. Poling, Staggers and Rowan)



Passed March 10, 2011

In Effect Ninety Days From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2498

(BY DELEGATES MORGAN, STEPHENS, HARTMAN, HATFIELD,
MARTIN, D. POLING, STAGGERS AND ROWAN)

[Passed March 10, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §30-4-19, §30-4-20, §30-4-23, §30-4-28 and §30-4-29, of the Code of West Virginia, 1931, as amended, all relating to the practice of dentistry; requiring notification of a dentist's death to the dental board by the deceased's personal representative; requiring dentists to notify the board of a life threatening occurrence, serious injury or death to patient as a result of dental treatment or related complications; providing for disciplinary action for failing to report; certain actions of dentists subject to disciplinary action by board; providing the board with the authority to require a licensee have a psychological evaluation prior to reinstatement of license; increasing personal representative's length of time to dispose of shares of a deceased shareholder in a dental corporation after dentist's death; and permitting a dental

student to work in a public health setting under certain conditions.

Be it enacted by the Legislature of West Virginia:

That §30-4-19, §30-4-20, §30-4-23, §30-4-28 and §30-4-29, of the Code of West Virginia, 1931, as amended, be amended reenacted, all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-19. Dental Office.

1 (a) A licensed dentist within thirty days of changing his
2 or her place of practice or establishing a practice at an
3 additional dental office shall furnish the board with the
4 address of the new or additional dental office.

5 (b) A personal representative of a deceased dentist shall
6 notify the board of a dentist's death no later than 60 days
7 from the death of the dentist.

8 (c) A licensed dental hygienist within thirty days of
9 changing his or her place of employment or establishing
10 employment at additional dental office shall furnish the board
11 with the name and address of the new or additional
12 employers.

§30-4-20. Refusal to issue or renew, suspension or revocation of license; disciplinary action.

1 (a) The board may refuse to issue, refuse to renew,
2 suspend, revoke or limit any license or practice privilege of
3 a licensee and may take disciplinary action against a licensee
4 who, after hearing, has been adjudged by the board as
5 unqualified for any of the following reasons:

6 (1) The presentation to the board of any diploma, license
7 or certificate illegally or fraudulently obtained, or one
8 obtained from an institution which is not reputable, or one
9 obtained from an unrecognized or irregular institution or state
10 board;

11 (2) Suspension or revocation of a license issued by
12 another state or territory on grounds which would be the basis
13 of discipline in this state;

14 (3) Incompetent, negligent or willful misconduct in the
15 practice of dentistry or dental hygiene, which shall include
16 the departure from, or the failure to conform to, the minimal
17 standards of acceptable and prevailing dental or dental
18 hygiene practice in their area of expertise as shall be
19 determined by the board. The board need not establish actual
20 injury to the patient in order to adjudge a licensee guilty of
21 this conduct;

22 (4) Engaging in conduct that indicates a lack of
23 knowledge of, an inability to apply or the negligent
24 application of principles or skills of dentistry or dental
25 hygiene;

26 (5) Being guilty of gross ignorance or gross inefficiency
27 in his or her profession;

28 (6) Being convicted of a felony; and a certified copy of
29 the record of the court of conviction shall be sufficient proof
30 of conviction;

31 (7) Announcing or otherwise holding himself or herself
32 out to the public as a specialist or as being specially qualified
33 in any particular branch of dentistry or as giving special
34 attention to any branch of dentistry or as limiting his or her
35 practice to any branch of dentistry without first complying

36 with the requirements established by the board for the
37 specialty and having been issued a certificate of qualification
38 in the specialty by the board;

39 (8) Failing to report to the board within 72 hours of
40 becoming aware thereof any life threatening occurrence,
41 serious injury or death of a patient resulting from dental
42 treatment or complications following a dental procedure; or

43 (9) Being guilty of unprofessional conduct as contained
44 in the American Dental Association principles of ethics and
45 code of professional conduct. The following acts or any of
46 them are conclusively presumed to be unprofessional
47 conduct:

48 (A) Being guilty of any fraud or deception;

49 (B) Committing a criminal operation or being convicted
50 of a crime involving moral turpitude;

51 (C) Abusing alcohol or drugs;

52 (D) Violating any professional confidence or disclosing
53 any professional secret;

54 (E) Being grossly immoral;

55 (F) Harassing, abusing, intimidating, insulting, degrading
56 or humiliating a patient physically, verbally or through
57 another form of communication;

58 (G) Employing what are known as "cappers" or "steerers"
59 to obtain business;

60 (H) Obtaining any fee by fraud or misrepresentation;

61 (I) Employing directly or indirectly, or directing or
62 permitting any suspended or unlicensed person so employed,
63 to perform operations of any kind or to treat lesions of the
64 human teeth or jaws or correct malimposed formations
65 thereof;

66 (J) Practicing, or offering, or undertaking to practice
67 dentistry under any firm name or trade name not approved by
68 the board;

69 (K) Having a professional connection or association with,
70 or lending his or her name to another, for the illegal practice
71 of dentistry, or professional connection or association with
72 any person, firm or corporation holding himself or herself,
73 themselves or itself out in any manner contrary to this article;

74 (L) Making use of any advertising relating to the use of
75 any drug or medicine of unknown formula;

76 (M) Advertising to practice dentistry or perform any
77 operation thereunder without causing pain;

78 (N) Advertising professional superiority or the
79 performance of professional services in a superior manner;

80 (O) Advertising to guarantee any dental service;

81 (P) Advertising in any manner that is false or misleading
82 in any material respect;

83 (Q) Soliciting subscriptions from individuals within or
84 without the state for, or advertising or offering to individuals
85 within or without the state, a course or instruction or course
86 materials in any phase, part or branch of dentistry or dental
87 hygiene in any journal, newspaper, magazine or dental
88 publication, or by means of radio, television or United States

89 mail, or in or by any other means of contacting individuals:
90 *Provided*, That the provisions of this paragraph may not be
91 construed so as to prohibit: (i) An individual dentist or dental
92 hygienist from presenting articles pertaining to procedures or
93 technique to state or national journals or accepted dental
94 publications; or (ii) educational institutions approved by the
95 board from offering courses or instruction or course materials
96 to individual dentists and dental hygienists from within or
97 without the state; or

98 (R) Engaging in any action or conduct which would have
99 warranted the denial of the license.

100 (b) The term advertising, as used in this section, shall be
101 construed to include any type of public media.

102 (c) Disciplinary action includes, but is not limited to, a
103 reprimand, censure, probation, administrative fine not to
104 exceed \$1,000 per day per violation and mandatory
105 attendance at continuing professional education seminars.

§30-4-23. Reinstatement.

1 (a) Any dentist or dental hygienist against whom
2 disciplinary action has been taken under the provisions of this
3 article shall be afforded an opportunity to demonstrate the
4 qualifications to resume practice. The application for
5 reinstatement shall be in writing and subject to the
6 procedures specified by the board by rule.

7 (b) The board may require a licensee to undergo a
8 psychological evaluation to determine a licensee is competent
9 to make decisions or if the licensee is impaired by drugs or
10 alcohol.

§30-4-28. Dental corporations.

1 (a) All dental corporations created prior to July 1, 2001,
2 are hereby continued.

3 (b) One or more dentists may organize and become a
4 shareholder or shareholders of a dental corporation domiciled
5 within this state under the terms and conditions and subject
6 to the limitations and restrictions specified by rule.

7 (c) No corporation may practice dentistry, or any of its
8 branches, or hold itself out as being capable of doing so
9 without a certificate of authorization from the board.

10 (d) When the Secretary of State receives a certificate of
11 authorization to act as a dental corporation from the board, he
12 or she shall attach the authorization to the corporation
13 application and, upon compliance with the applicable
14 provisions of chapter thirty-one of this code, the Secretary of
15 State shall issue to the incorporators a certificate of
16 incorporation for the dental corporation.

17 (e) A corporation holding a certificate of authorization
18 must register annually, on or before June 30, on a form
19 prescribed by the board and pay an annual registration fee in
20 an amount specified by rule.

21 (f) A dental corporation may practice dentistry only
22 through an individual dentist or dentists duly licensed to
23 practice dentistry in this state, but the dentist or dentists may
24 be employees rather than shareholders of the corporation.

25 (g) A dental corporation holding a certificate of
26 authorization shall cease to engage in the practice of dentistry
27 upon being notified by the board that any of its shareholders
28 are no longer a duly licensed dentist or when any shares of
29 the corporation have been sold or disposed of to a person
30 who is not a duly licensed dentist: *Provided*, That the

31 personal representative of a deceased shareholder has a
32 period, not to exceed twenty-four months from the date of the
33 shareholder's death, to dispose of the shares; but nothing
34 contained herein may be construed as affecting the existence
35 of the corporation or its right to continue to operate for all
36 lawful purposes other than the practice of dentistry.

§30-4-29. Inapplicability of article.

1 The provisions of this article do not apply to:

2 (1) A duly licensed physician or surgeon in the practice
3 of his or her profession when rendering dental relief in
4 emergency cases, unless he or she undertakes to reproduce or
5 reproduces lost parts of the human teeth or to restore or
6 replace lost or missing teeth in the human mouth;

7 (2) A dental laboratory in the performance of dental
8 laboratory services as that term is defined in section one,
9 article four-b of this chapter while the dental laboratory, in
10 the performance of the work, conforms in all respects to the
11 requirements of article four-b and further does not apply to
12 persons performing dental laboratory services under the
13 direct supervision of a licensed dentist or under the direct
14 supervision of a person authorized under this article to
15 perform any of the acts in this article defined to constitute the
16 practice of dentistry while the work is performed in
17 connection with, and as a part of, the dental practice of the
18 licensed dentist or other authorized person and for his or her
19 dental patients;

20 (3) Students enrolled in and regularly attending any
21 dental college recognized by the state board of dental
22 examiners, provided their acts are done in the dental college
23 and under the direct and personal supervision of their
24 instructor;

25 (4) Students enrolled in and regularly attending any
26 dental college recognized by the state board of dental
27 examiners may practice dentistry in a public health setting,
28 provided their acts are done under the direct supervision of
29 their instructor, adjunct instructor or a dentist;

30 (5) Licensed or registered dentists of another state
31 temporarily operating a clinic under the auspices of a duly
32 organized and reputable dental college or reputable dental
33 society, or to one lecturing before a reputable society
34 composed exclusively of dentists; or

35 (6) The practice of dentistry by dentists whose practice is
36 confined exclusively to the service of the United States
37 Army, the United States Navy, the United States Public
38 Health Service, the United States Veteran's Bureau or any
39 other authorized United States government agency or bureau.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor