

1 Committee Substitute

2 for

3 **H. B. 4538**

4
5 (By Delegates Staggers, Morgan and Stephens)

6 (Originating in the Committee on the Judiciary)

7
8 [February 21, 2014]

9
10 A BILL to amend and reenact §30-4-6 and §30-4-19 of the Code of
11 West Virginia, 1931, as amended; and to amend and reenact
12 §30-4A-1 of said code, all relating to the Board of Dentistry;
13 providing authority to promulgate legislative rules concerning
14 agreements with organizations to create alcohol or chemical
15 dependency treatments programs and to form dentist recovery
16 networks; authorizing the board to defer disciplinary action
17 with regard to an impaired licensee who voluntarily enters an
18 approved treatment program; and providing for annual renewal
19 of anesthesia permits.

20 *Be it enacted by the Legislature of West Virginia:*

21 That §30-4-6 and §30-4-19 of the Code of West Virginia, 1931,
22 as amended, be amended and reenacted; and that §30-4A-1 of said
23 code be amended and reenacted, all to read as follows:

24 **ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.**

1 **§30-4-6. Rule-making authority.**

2 (a) The board shall propose rules for legislative approval, in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code to implement the provisions of this
5 article and articles four-a and four-b of this chapter including:

6 (1) Standards and requirements for licenses, certifications
7 and permits;

8 (2) Requirements for third parties to prepare and/or
9 administer examinations and reexaminations;

10 (3) Educational and experience requirements;

11 (4) Continuing education requirements and approval of
12 continuing education courses;

13 (5) Procedures for the issuance and renewal of licenses,
14 certifications and permits;

15 (6) Establish a fee schedule;

16 (7) Regulate dental specialities;

17 (8) Delegate procedures to be performed by a dental hygienist;

18 (9) Delegate procedures to be performed by a dental assistant;

19 (10) Designate the services and procedures performed under
20 direct supervision, general supervision in public health practice;

21 (11) Designate additional public health settings;

22 (12) Regulate the use of firm or trade names;

23 (13) Regulate dental corporations;

24 (14) Regulate mobile dental facilities;

1 (15) Regulate portable dental units;

2 (16) Regulate professional limited liability companies;

3 (17) Establish professional conduct requirements;

4 (18) Establish the procedures for denying, suspending,
5 revoking, reinstating or limiting the practice of licensees,
6 certifications and permitters;

7 (19) Standards and requirements for agreements with
8 organizations to form professional recovery networks;

9 (20) Establish an alcohol and chemical dependency treatment
10 program, including standards and requirements;

11 ~~(19)~~ (21) Establish requirements for inactive or revoked
12 licenses, certifications and permits;

13 ~~(20)~~ (22) Regulate dental anesthesia, including:

14 (A) Fees;

15 (B) Evaluations;

16 (C) Equipment;

17 (D) Emergency drugs;

18 (E) Definitions;

19 (F) Qualified monitor requirements; and

20 (G) Education;

21 ~~(21)~~ (23) Any other rules necessary to implement this article.

22 (b) All of the board's rules in effect and not in conflict
23 with these provisions shall remain in effect until they are amended
24 or rescinded.

1 **§30-4-19. Complaints; investigations; due process procedure;**
2 **grounds for disciplinary action.**

3 (a) The board may initiate a complaint upon receipt of
4 credible information and shall, upon the receipt of a written
5 complaint of any person, cause an investigation to be made to
6 determine whether grounds exist for disciplinary action under this
7 article or the legislative rules promulgated pursuant to this
8 article.

9 (b) After reviewing any information obtained through an
10 investigation, the board shall determine if probable cause exists
11 that the licensee, certificate holder or permittee has violated
12 subsection (g) of this section or rules promulgated pursuant to
13 this article.

14 (c) Upon a finding of probable cause to go forward with a
15 complaint, the board shall provide a copy of the complaint to the
16 licensee, certificate holder or permittee.

17 (d) Upon a finding that probable cause exists that the
18 licensee, certificate holder or permittee has violated subsection
19 (g) of this section or rules promulgated pursuant to this article,
20 the board may enter into a consent decree or hold a hearing for
21 disciplinary action against the licensee, certificate holder or
22 permittee. Any hearing shall be held in accordance with the
23 provisions of this article and shall require a violation to be
24 proven by a preponderance of the evidence.

1 (e) A member of the complaint committee or the executive
2 director of the board may issue subpoenas and subpoenas duces tecum
3 to obtain testimony and documents to aid in the investigation of
4 allegations against any person regulated by the article.

5 (f) Any member of the board or its executive director may sign
6 a consent decree or other legal document on behalf of the board.

7 (g) The board may, after notice and opportunity for hearing,
8 deny or refuse to renew, suspend, restrict or revoke the license,
9 certificate or permit of, or impose probationary conditions upon or
10 take disciplinary action against, any licensee, certificate holder
11 or permittee for any of the following reasons:

12 (1) Obtaining a board authorization by fraud,
13 misrepresentation or concealment of material facts;

14 (2) Being convicted of a felony or a misdemeanor crime of
15 moral turpitude;

16 (3) Being guilty of unprofessional conduct which placed the
17 public at risk, as defined by legislative rule of the board;

18 (4) Intentional violation of a lawful order or legislative
19 rule of the board;

20 (5) Having had a board authorization revoked or suspended,
21 other disciplinary action taken, or an application for a board
22 authorization denied by the proper authorities of another
23 jurisdiction;

24 (6) Aiding or abetting unlicensed practice;

1 (7) Engaging in an act while acting in a professional capacity
2 which has endangered or is likely to endanger the health, welfare
3 or safety of the public;

4 (8) Having an incapacity that prevents a licensee from
5 engaging in the practice of dentistry or dental hygiene, with
6 reasonable skill, competence and safety to the public;

7 (9) Committing fraud in connection with the practice of
8 dentistry or dental hygiene;

9 (10) Failing to report to the board one's surrender of a
10 license or authorization to practice dentistry or dental hygiene in
11 another jurisdiction while under disciplinary investigation by any
12 of those authorities or bodies for conduct that would constitute
13 grounds for action as defined in this section;

14 (11) Failing to report to the board any adverse judgment,
15 settlement or award arising from a malpractice claim arising
16 related to conduct that would constitute grounds for action as
17 defined in this section;

18 (12) Being guilty of unprofessional conduct as contained in
19 the American Dental Association principles of ethics and code of
20 professional conduct. The following acts are conclusively presumed
21 to be unprofessional conduct:

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

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

1 (C) Abusing alcohol or drugs;

2 (D) Violating any professional confidence or disclosing any
3 professional secret;

4 (E) Being grossly immoral;

5 (F) Harassing, abusing, intimidating, insulting, degrading or
6 humiliating a patient physically, verbally or through another form
7 of communication;

8 (G) Obtaining any fee by fraud or misrepresentation;

9 (H) Employing directly or indirectly, or directing or
10 permitting any suspended or unlicensed person so employed, to
11 perform operations of any kind or to treat lesions of the human
12 teeth or jaws or correct malimposed formations thereof;

13 (I) Practicing, or offering or undertaking to practice
14 dentistry under any firm name or trade name not approved by the
15 board;

16 (J) Having a professional connection or association with, or
17 lending his or her name to another, for the illegal practice of
18 dentistry, or professional connection or association with any
19 person, firm or corporation holding himself or herself, themselves
20 or itself out in any manner contrary to this article;

21 (K) Making use of any advertising relating to the use of any
22 drug or medicine of unknown formula;

23 (L) Advertising to practice dentistry or perform any operation
24 thereunder without causing pain;

1 (M) Advertising professional superiority or the performance of
2 professional services in a superior manner;

3 (N) Advertising to guarantee any dental service;

4 (O) Advertising in any manner that is false or misleading in
5 any material respect;

6 (P) Soliciting subscriptions from individuals within or
7 without the state for, or advertising or offering to individuals
8 within or without the state, a course or instruction or course
9 materials in any phase, part or branch of dentistry or dental
10 hygiene in any journal, newspaper, magazine or dental publication,
11 or by means of radio, television or United States mail, or in or by
12 any other means of contacting individuals: *Provided*, That the
13 provisions of this paragraph may not be construed so as to
14 prohibit:

15 (i) An individual dentist or dental hygienist from presenting
16 articles pertaining to procedures or technique to state or national
17 journals or accepted dental publications; or

18 (ii) Educational institutions approved by the board from
19 offering courses or instruction or course materials to individual
20 dentists and dental hygienists from within or without the state; or

21 (Q) Engaging in any action or conduct which would have
22 warranted the denial of the license.

23 (13) Knowing or suspecting that a licensee is incapable of
24 engaging in the practice of dentistry or dental hygiene, with

1 reasonable skill, competence and safety to the public, and failing
2 to report any relevant information to the board;

3 (14) Using or disclosing protected health information in an
4 unauthorized or unlawful manner;

5 (15) Engaging in any conduct that subverts or attempts to
6 subvert any licensing examination or the administration of any
7 licensing examination;

8 (16) Failing to furnish to the board or its representatives
9 any information legally requested by the board or failing to
10 cooperate with or engaging in any conduct which obstructs an
11 investigation being conducted by the board;

12 (17) Announcing or otherwise holding himself or herself out to
13 the public as a specialist or as being specially qualified in any
14 particular branch of dentistry or as giving special attention to
15 any branch of dentistry or as limiting his or her practice to any
16 branch of dentistry without first complying with the requirements
17 established by the board for the specialty and having been issued
18 a certificate of qualification in the specialty by the board;

19 (18) Failing to report to the board within seventy-two hours
20 of becoming aware thereof any life threatening occurrence, serious
21 injury or death of a patient resulting from dental treatment or
22 complications following a dental procedure;

23 (19) Failing to report to the board any driving under the
24 influence and/or driving while intoxicated offense; or

1 (20) Violation of any of the terms or conditions of any order
2 entered in any disciplinary action.

3 (h) For the purposes of subsection (g) of this section,
4 effective July 1, 2013, disciplinary action may include:

5 (1) Reprimand;

6 (2) Probation;

7 (3) Restrictions;

8 (4) Suspension;

9 (5) Revocation;

10 (6) Administrative fine, not to exceed \$1,000 per day per
11 violation;

12 (7) Mandatory attendance at continuing education seminars or
13 other training;

14 (8) Practicing under supervision or other restriction; or

15 (9) Requiring the licensee or permittee to report to the board
16 for periodic interviews for a specified period of time.

17 (i) In addition to any other sanction imposed, the board may
18 require a licensee or permittee to pay the costs of the proceeding.

19 (j) The board may defer disciplinary action with regard to an
20 impaired licensee who voluntarily signs an agreement, in a form
21 satisfactory to the board, agreeing not to practice dental care and
22 to enter an approved treatment and monitoring program in accordance
23 with the board's legislative rule: *Provided, That this subsection*
24 does not apply to a licensee who has been convicted of, pleads

1 guilty to, or enters a plea of nolo contendere to an offense
2 relating to a controlled substance in any jurisdiction.

3 ~~(j)~~ (k) A person authorized to practice under this article who
4 reports or otherwise provides evidence of the negligence,
5 impairment or incompetence of another member of this profession to
6 the board or to any peer review organization is not liable to any
7 person for making the report if the report is made without actual
8 malice and in the reasonable belief that the report is warranted by
9 the facts known to him or her at the time.

10 **ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY DENTISTS.**

11 **§30-4A-1. Requirement for anesthesia permit; qualifications and**
12 **requirements for qualified monitors.**

13 (a) No dentist may induce central nervous system anesthesia
14 without first having obtained an anesthesia permit for the level of
15 anesthesia being induced.

16 (b) The applicant for an anesthesia permit shall pay the
17 appropriate permit fees and renewal fees, submit a completed
18 board-approved application and consent to an office evaluation.

19 (c) Permits shall be ~~issued to coincide with the annual~~
20 ~~renewal dates for licensure~~ renewed annually by June 30.

21 (d) Permit holders shall report the names and qualifications
22 of each qualified monitor providing services to that permit holder.
23 A qualified monitor may not perform the functions and
24 responsibilities specified in this article for any level of

1 anesthesia, other than relative analgesia/minimal sedation, without
2 certification by the board. Qualified monitors shall apply for
3 certification and pay the appropriate application fees and renewal
4 fees. Qualified monitors are required to renew annually by the
5 June 30. To be certified as a qualified monitor, the applicant
6 must meet the following minimum qualifications:

7 (1) Possess a current health care provider BLS/CPR
8 certification;

9 (2) For monitoring, conscious sedation/moderate sedation or
10 general anesthesia/deep conscious sedation procedures, successful
11 completion of an AAOMS or AAPD anesthesia assistants certification
12 program; and

13 (3) For monitoring a nitrous oxide unit, successful completion
14 of a board-approved course in nitrous oxide monitoring.

15 (e) A dentist shall hold a class permit equivalent to or
16 exceeding the anesthesia level being provided unless the provider
17 of anesthesia is a physician anesthesiologist or another licensed
18 dentist who holds a current anesthesia permit issued by the board.