

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2962

BY DELEGATES STEELE AND J. PACK

[Introduced March 08, 2021; Referred to the
Committee on Health and Human Resources then
Government Organization]

1 A BILL to amend and reenact §30-4-1, §30-4-3, §30-4-8, §30-4-8a, §30-4-9, §30-4-10, §30-4-11,
 2 §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-19, §30-4-20, §30-4-
 3 22, §30-4-23, and §30-4-24 of the Code of West Virginia, 1931, as amended; and to
 4 amend said code by adding thereto a new section, designated §30-4-25, all relating to
 5 defining the practice of dentistry; adding necessary definitions; revising certain definitions,
 6 and removing unnecessary definitions; revising and making consistent the requirements
 7 for a dental license, dental hygiene license, dental intern permit, dental resident permit,
 8 and teaching permit; revising the scope of practice of dentistry and dental hygiene;
 9 accounting for the existence of dental professional limited liability companies; revising the
 10 grounds for disciplinary action and the availability of certain disciplinary sanctions; revising
 11 the criminal offenses related to dentistry; clarifying who is exempt from this article; adding
 12 the statutorily required provisions regarding telehealth services; and correcting
 13 typographical and grammatical errors where necessary and use plain language where
 14 appropriate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to practice dentistry or dental hygiene
 2 in this state without a license, issued under the provisions of this article, or advertise or use any
 3 title or description tending to convey or give the impression that they are a dentist or dental
 4 hygienist, unless the person is licensed under the provisions of this article.

5 (b) A business entity may not render any service or engage in any activity which, if
 6 rendered or engaged in by an individual, would constitute the practice of dentistry, except through
 7 a licensee.

8 (c) Any person shall be deemed to be practicing dentistry who uses the words "dentist,"
 9 "dental surgeon," "dental hygienist," the letters "D.D.S.," "D.M.D.," "R.D.H.," or other letters or title

10 in connection with his or her name, which in any way represents him or her as being engaged in
11 the practice of dentistry, or who holds himself or herself out, advertises, or permits to be advertised
12 that he or she can or will perform dental operations of any kind, or who, for a fee, salary, or other
13 reward paid either to himself/herself or to another person, (i) performs dental operations of any
14 kind, including the whitening of natural or manufactured teeth, (ii) diagnoses or treats diseases,
15 disorders, or conditions of the human teeth or jaws, or attempts to correct malpositions thereof,
16 (iii) diagnoses or treats diseases, disorders, or conditions of the oral cavity or adjacent associated
17 structures, (iv) takes or causes to be taken digital scans or impressions of the human teeth or
18 jaws to be used directly in the fabrication of any intraoral appliance, (v) constructs, supplies,
19 reproduces or repairs any prosthetic denture, bridge, artificial restoration, or other structure to be
20 used or worn as a substitute for natural teeth, except upon the written laboratory procedure work
21 order of a licensed dentist and constructed upon or by the use of casts or models made from an
22 impression taken by a licensed dentist, (vi) advertises, offers, sells, or delivers any such substitute
23 or the services rendered in the construction, reproduction, supply, or repair thereof to any person
24 other than a licensed dentist, or (vii) places or adjusts such substitute in the oral cavity of another.
25 Provided, that nothing in this article shall be construed to prevent a medical professional otherwise
26 qualified to perform any procedure or engage in a course of treatment which falls within the
27 medical professional's scope of practice from engaging in such practice.

§30-4-3. Definitions.

1 As used in §30-4-1 *et seq.*, §30-4A-1 *et seq.*, and §30-4B-1 *et seq.* of this code, the
2 following words and terms have the following meanings:

3 “AAOMS” means the American Association of Oral and Maxillofacial Surgeons;

4 “AAPD” means the American Academy of Pediatric Dentistry;

5 “ACLS” means advanced cardiac life support;

6 “ADA” means the American Dental Association;

7 “AMA” means the American Medical Association;

8 “Appliance” means a removable device used in a plan of dental care;

9 “ASA” means American Society of Anesthesiologists;

10 “Anxiolysis/minimal sedation” means removing, eliminating, or decreasing anxiety by the
11 use of a single anxiety or analgesia medication that is administered in an amount consistent with
12 the manufacturer’s current recommended dosage for the unsupervised treatment of anxiety,
13 insomnia, or pain, in conjunction with nitrous oxide and oxygen. This does not include multiple
14 dosing or exceeding current normal dosage limits set by the manufacturer for unsupervised use
15 by the patient at home for the treatment of anxiety;

16 ~~“Approved dental hygiene program” means a program that is approved by the board and~~
17 ~~is accredited or its educational standards are deemed by the board to be substantially equivalent~~
18 ~~to those required by the Commission on Dental Accreditation of the American Dental Association;~~

19 ~~“Approved dental school, college, or dental department of a university” means a dental~~
20 ~~school, college, or dental department of a university that is approved by the board and is~~
21 ~~accredited or its educational standards are deemed by the board to be substantially equivalent to~~
22 ~~those required by the Commission on Dental Accreditation of the American Dental Association;~~

23 “Authorize” means that the dentist is giving permission or approval to dental auxiliary
24 personnel to perform delegated procedures in accordance with the dentist’s diagnosis and
25 treatment plan;

26 “BLS” means basic life support;

27 “Board” means the West Virginia Board of Dentistry;

28 “Business entity” means any firm, partnership, association, company, corporation, limited
29 partnership, limited liability company, or other entity;

30 “Central nervous system anesthesia” means an induced, controlled state of
31 unconsciousness or depressed consciousness produced by a pharmacologic method;

32 “Certificate of qualification” means a certificate authorizing a dentist to practice a specialty;

33 “CPR” means cardiopulmonary resuscitation;

34 “Conscious sedation/moderate sedation” means an induced, controlled state of depressed
35 consciousness, produced through the administration of nitrous oxide and oxygen and/or the
36 administration of other agents whether enteral or parenteral, in which the patient retains the ability
37 to independently and continuously maintain an airway and to respond purposefully to physical
38 stimulation and to verbal command;

39 “CRNA” means certified registered nurse anesthetist;

40 “Defibrillator” means ~~a device used to sustain asthmatic heartbeat in an emergency~~ an
41 electronic device that applies an electric shock to the heart to restore the normal functional rhythm
42 of a fibrillating, nonfunctional heart and includes an Automatic Electronic Defibrillator (AED);

43 “Delegated procedures” means those procedures specified by law or by rule of the board
44 and performed by dental auxiliary personnel under the supervision of a licensed dentist;

45 “Dentist anesthesiologist” means a dentist who is trained in the practice of anesthesiology
46 and has completed an additional approved anesthesia education course;

47 “Dental anesthesiology” is the specialty of dentistry and discipline of anesthesiology
48 encompassing the art and science of managing pain, anxiety, and overall patient health during
49 dental, oral, maxillofacial and adjunctive surgical or diagnostic procedures throughout the entire
50 perioperative period. The specialty is dedicated to promoting patient safety as well as access to
51 care for all dental patients, including the very young and patients with special health care needs;

52 “Dental assistant” means a person qualified by education, training or experience who aids
53 or assists a dentist in the delivery of patient care in accordance with delegated procedures as
54 specified by the board by rule or who may perform nonclinical duties in the dental office;

55 “Dental auxiliary personnel” or “auxiliary” means dental hygienists and dental assistants
56 who assist the dentist in the practice of dentistry;

57 “Dental hygiene” means the performance of educational, preventive or therapeutic dental
58 services and as further provided in §30-4-11 of this code and legislative rule;

59 “Dental hygienist” means a person licensed by the board to practice and who provides

60 dental hygiene and other services as specified by the board by rule to patients in the dental office
61 and in a public health setting;

62 “Dental laboratory” means a business performing dental laboratory services;

63 “Dental laboratory services” means the fabricating, repairing, or altering of a dental
64 prosthesis;

65 “Dental laboratory technician” means a person qualified by education, training, or
66 experience who has completed a dental laboratory technology education program and who
67 fabricates, repairs, or alters a dental prosthesis in accordance with a dentist’s work authorization;

68 “Dental office” means the place where the licensed dentist and dental auxiliary personnel
69 are practicing dentistry;

70 “Dental prosthesis” means ~~an artificial appliance~~ a fixed or removable device fabricated to
71 replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or
72 aesthetics;

73 “Dental public health” is the science and art of preventing and controlling dental diseases
74 and promoting dental health through organized community efforts. It is that form of dental practice
75 which considers the community to be the patient rather than any individual. It is concerned with
76 the dental health education of the public, with applied dental research, and with the administration
77 of group dental care programs as well as the prevention and control of dental diseases on a
78 community basis;

79 “Dentist” means an individual licensed by the board to practice dentistry;

80 “Dentistry” means the evaluation, diagnosis, prevention, and treatment, through surgical,
81 nonsurgical, or related procedures, of diseases, disorders, and conditions of the oral cavity and
82 the maxillofacial, adjacent, and associated structures and their impact on the human body;
83 ~~maxillofacial area, and the adjacent and associated structures provided by a dentist;~~

84 “Direct supervision” means supervision ~~of dental auxiliary personnel~~ provided by a
85 licensed dentist who is physically present in the dental office or treatment facility, ~~when~~

86 ~~procedures are being performed~~ personally diagnoses the condition to be treated, authorizes the
87 procedures to be performed, remains in the dental office or treatment facility while the procedures
88 are being performed, and evaluates the performance of the individual supervised;

89 “Endodontics” is the branch of dentistry which is concerned with the morphology,
90 physiology, and pathology of the human dental pulp and periradicular tissues. Its study and
91 practice encompass the basic and clinical sciences including biology of the normal pulp, the
92 etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp and associated
93 periradicular conditions;

94 “Facility permit” means a permit for a facility where sedation procedures are used that
95 correspond with the level of anesthesia provided;

96 “General anesthesia” means an induced, controlled state of unconsciousness in which the
97 patient experiences complete loss of protective reflexes, as evidenced by the inability to
98 independently maintain an airway, the inability to respond purposefully to physical stimulation or
99 the inability to respond purposefully to verbal command;

100 “Deep conscious sedation/general anesthesia” includes partial loss of protective reflexes
101 while the patient retains the ability to independently and continuously maintain an airway;

102 “General supervision” means a dentist is not required to be in the office or treatment facility
103 when procedures are being performed, ~~by the auxiliary dental personnel~~ but has personally
104 diagnosed the condition to be treated, has personally authorized the procedures, and will evaluate
105 the treatment provided; ~~by the dental auxiliary personnel~~

106 ~~“Good moral character” means a lack of history of dishonesty;~~

107 “Health care provider BLS/CPR” means health care provider basic life
108 support/cardiopulmonary resuscitation;

109 “License” means a license to practice dentistry or dental hygiene;

110 “Licensee” means a person holding a license;

111 “Mobile dental facility” means any self-contained facility in which dentistry or dental

112 hygiene will be practiced which may be moved, towed, or transported from one location to another;

113 “Portable dental unit” means any nonfacility in which dental equipment, utilized in the
114 practice of dentistry, is transported to and utilized on a temporary basis in an out-of-office location,
115 including, but not limited to, patients’ homes, schools, nursing homes, or other institutions;

116 “Oral medicine” is the specialty of dentistry responsible for the oral health care of medically
117 complex patients and for the diagnosis and management of medically related disorders or
118 conditions affecting the oral and maxillofacial region;

119 “Oral pathology” is the specialty of dentistry and discipline of pathology that deals with the
120 nature, identification, and management of diseases affecting the oral and maxillofacial regions. It
121 is a science that investigates the causes, processes, and effects of these diseases. The practice
122 of oral pathology includes research and diagnosis of diseases using clinical, radiographic,
123 microscopic, biochemical, or other examinations;

124 “Oral and maxillofacial radiology” is the specialty of dentistry and discipline of radiology
125 concerned with the production and interpretation of images and data produced by all modalities
126 of radiant energy that are used for the diagnosis and management of diseases, disorders, and
127 conditions of the oral and maxillofacial region;

128 “Oral and maxillofacial surgery” is the specialty of dentistry which includes the diagnosis,
129 surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional
130 and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region;

131 “Orofacial pain” is the specialty of dentistry that encompasses the diagnosis, management
132 and treatment of pain disorders of the jaw, mouth, face and associated regions, which specialty
133 is dedicated to the evidenced-based understanding of the underlying pathophysiology, etiology,
134 prevention, and treatment of these disorders and improving access to interdisciplinary patient
135 care. These disorders as they relate to orofacial pain include, but are not limited to,
136 temporomandibular muscle and joint (TMJ) disorders, jaw movement disorders, neuropathic and
137 neurovascular pain disorders, headache, and sleep disorders;

138 “Orthodontics and dentofacial orthopedics” is the dental specialty that includes the
139 diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and
140 skeletal abnormalities of the developing or mature orofacial structures;

141 ~~“Other dental practitioner” means those persons excluded from the definition of the~~
142 ~~practice of dentistry under the provisions of §30-4-24(3), §30-4-24(4), and §30-4-24(5) of this~~
143 ~~code and also those persons who hold teaching permits which have been issued to them under~~
144 ~~the provisions of §30-4-14 of this code;~~

145 “PALS” means pediatric advanced life support;

146 “Pediatric dentistry” is an age-defined specialty that provides both primary and
147 comprehensive preventive and therapeutic oral health care for infants and children through
148 adolescence, including those with special health care needs;

149 “Pediatric patient” means infants and children;

150 “Periodontics” is that specialty of dentistry which encompasses the prevention, diagnosis,
151 and treatment of diseases of the supporting and surrounding tissues of the teeth or their
152 substitutes and the maintenance of the health, function, and aesthetics of these structures and
153 tissues;

154 “Physician anesthesiologist” means a physician, medical doctor, or doctor of osteopathy
155 who is specialized in the practice of anesthesiology;

156 “Prosthodontics” is the dental specialty pertaining to the diagnosis, treatment planning,
157 rehabilitation and maintenance of the oral function, comfort, appearance and health of patients
158 with clinical conditions associated with missing or deficient teeth and/or oral and maxillofacial
159 tissues using biocompatible substitutes;

160 “Public health practice” means treatment or procedures in a public health setting which
161 shall be designated by a rule promulgated by the board to require direct, general, or no
162 supervision of a dental hygienist by a dentist;

163 “Public health setting” means hospitals, schools, correctional facilities, jails, community

164 clinics, long-term care facilities, nursing homes, home health agencies, group homes, state
165 institutions under the West Virginia Department of Health and Human Resources, public health
166 facilities, homebound settings, accredited dental hygiene education programs, and any other
167 place designated by the board by rule;

168 “Qualified monitor” means an individual who by virtue of credentialing and/or training is
169 qualified to check closely and document the status of a patient undergoing anesthesia and
170 observe utilized equipment;

171 “Relative analgesia/minimal sedation” means an induced, controlled state of minimally
172 depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide
173 and oxygen or single oral premedication without the addition of nitrous oxide and oxygen in which
174 the patient retains the ability to independently and continuously maintain an airway and to respond
175 purposefully to physical stimulation and to verbal command;

176 “Specialty” means the practice of a certain branch of dentistry;

177 “Subcommittee” means West Virginia Board of Dentistry Subcommittee on Anesthesia;

178 “Teledentistry” means the use of electronic and digital communications to provide and
179 deliver dentistry and dental hygiene-related information and services. The term does not include
180 audio-only telephone calls, e-mail messages, or facsimile transmissions; and

181 “Work authorization” means a written order for dental laboratory services which has been
182 issued by a licensed dentist ~~or other dental practitioner.~~

§30-4-8. License to practice dentistry.

1 (a) The board shall issue a license to practice dentistry to an applicant who meets the
2 following requirements:

3 (1) Is at least 18 years of age;

4 (2) ~~Is of good moral character~~ Does not have any criminal convictions which would bar the
5 applicant’s licensure pursuant to §30-1-24 of this code;

6 (3) Is a graduate of and has a ~~diploma~~ D.D.S. or D.M.D. degree from a dental school,

7 college, or university accredited by the Commission on Dental Accreditation or ~~equivalently~~
8 ~~approved dental college, school, or dental department of a university as determined by the board~~
9 of the American Dental Association;

10 (4) Has passed a national board examination as given by the Joint Commission on
11 National Dental Examinations and a clinical examination administered by the Commission on
12 Dental Competency Assessments, the Central Regional Dental Testing Service, the Council of
13 Interstate Testing Agencies, the Southern Regional Testing Agency, or the Western Regional
14 Examining Board, or the successor to any of those entities, which demonstrates competency, and
15 passed each individual component with no compensatory scoring in:

16 (A) Endodontics, including access opening of a posterior tooth and access, canal
17 instrumentation, and obturation of an anterior tooth;

18 (B) Fixed prosthodontics, including an anterior crown preparation and two posterior crown
19 preparations involving a fixed partial denture factor;

20 (C) Periodontics, including scaling and root planing ~~in a patient-based clinical setting;~~ and

21 (D) Restorative, including a class II amalgam or composite preparation and restoration
22 and a class III composite preparation and restoration, ~~in a patient-based clinical setting;~~ and

23 (E) The board may consider clinical examinations taken prior to July 1, 2019, or individual
24 state clinical examinations as equivalent which demonstrates competency.

25 (5) Has not been found guilty of cheating, deception, or fraud in the examination or any
26 part of the application;

27 (6) Has paid the application fee specified by rule; ~~and~~

28 (7) ~~Not be~~ is not an alcohol or drug abuser, as ~~these~~ those terms are defined in §27-1A-
29 11 of this code: *Provided*, that an applicant in an active recovery process, which may, in the
30 discretion of the board, be evidenced by participation in a 12-step program or other similar group
31 or process, may be considered; and

32 (8) Meets the other requirements specified by rule.

33 (b) A dentist may not represent to the public that he or she is a specialist in any branch of
34 dentistry or limit his or her practice to any branch of dentistry unless first issued a certificate of
35 qualification in that branch of dentistry by the board.

36 (c) A license to practice dentistry issued by the board shall ~~for all purposes be considered~~
37 ~~a license issued under this section. Provided, That a person holding a license shall renew the~~
38 ~~license~~ expire on an annual basis and is subject to renewal by the board upon application and
39 payment of the renewal fee.

40 (d) A license to practice dentistry issued by the board and in good standing on the effective
41 date of the amendments to this section shall for all purposes be considered a license issued under
42 this section.

§30-4-8a Dental specialties.

1 (a) The Board of Dentistry may issue a dental specialty license authorizing a dentist to
2 represent himself or herself to the public as a specialist, and to practice as a specialist, upon
3 proper application and fee for each specialty and as provided pursuant to the provisions of this
4 article.

5 (b) ~~A dentist may not represent himself or herself to the public as a specialist, nor practice~~
6 ~~as a specialist, unless the individual:~~ To be granted a dental specialty license, an applicant shall
7 submit proof, in a form prescribed by the board and verified by oath, that he or she:

8 (1) Is at least 18 years of age;

9 (2) ~~Is of good moral character~~ Does not have any criminal convictions which would bar the
10 applicant's licensure pursuant to §30-1-24 of this code;

11 (3) Is a graduate of and has a D.D.S. or D.M.D. degree, or its equivalent, from a dental
12 school, college, or university;

13 (4) Has successfully completed a board-recognized dental specialty/advanced education
14 program accredited by the Commission on Dental Accreditation;

15 (5) Has passed a national board examination as given by the Joint Commission on

16 National Dental Examinations and a clinical examination administered by the Commission on
17 Dental Competency Assessments, the Central Regional Dental Testing Service, the Council of
18 Interstate Testing Agencies, the Southern Regional Testing Agency, or the Western Regional
19 Examining Board, or the successor to any of those entities, which demonstrates competency, and
20 passed each individual component with no compensatory scoring in:

21 (A) Endodontics, including access opening of a posterior tooth and access, canal
22 instrumentation, and obturation of an anterior tooth;

23 (B) Fixed prosthodontics, including an anterior crown preparation and two posterior crown
24 preparations involving a fixed partial denture factor;

25 (C) Periodontics, including scaling and root planing; and

26 (D) Restorative, including a class II amalgam or composite preparation and restoration
27 and a class III composite preparation and restoration.

28 (E) The board may consider clinical examinations taken prior to July 1, 2019, or individual
29 state clinical examinations as equivalent which demonstrates competency.

30 (6) Has not been found guilty of cheating, deception, or fraud in the examination or any
31 part of the application;

32 (7) Has paid the application fee specified by rule;

33 (8) Is not an alcohol or drug abuser, as those terms are defined in §27-1A-11 of this code:

34 Provided, That an applicant in an active recovery process, which may, in the discretion of the
35 board, be evidenced by participation in a 12-step program or other similar group or process, may
36 be considered; and

37 (9) Meets the other requirements specified by rule.

38 ~~(1) Has successfully completed a board-recognized dental specialty/advanced education~~
39 ~~program accredited by the Commission on Dental Accreditation;~~

40 ~~(2) Holds a general dental license in this state; and~~

41 ~~(3) Has completed any additional requirements set forth in state law or rules and has been~~

42 ~~issued a dental specialty license by the board.~~

43 (c) Specialties recognized by the board and the educational requirements for obtaining a
44 specialty license shall include:

45 (1) Dental public health. — In order to qualify for this specialty, the licensee shall have
46 successfully completed a minimum of one full-time academic year of at least eight calendar
47 months each of graduate or post-graduate education, internship, or residency.

48 (2) Endodontics. — In order to qualify for this specialty, the licensee shall have
49 successfully completed a minimum of two full-time academic years of at least eight calendar
50 months each of graduate or post-graduate education, internship, or residency.

51 (3) Oral and maxillofacial surgery. — In order to qualify for this specialty, the licensee shall
52 have successfully completed a minimum of three full-time academic years of at least eight
53 calendar months each of graduate or post-graduate education, internship, or residency.

54 (4) Oral and maxillofacial radiology. — In order to qualify for this specialty, the licensee
55 shall have successfully completed a minimum of two full-time years of at least eight calendar
56 months each of graduate or post-graduate education, internship, or residency.

57 (5) Orthodontics and dentofacial orthopedics. — In order to qualify for this specialty, the
58 licensee shall have successfully completed a minimum of two full-time academic years of at least
59 eight calendar months each of graduate or post-graduate education, internship, or residency. In
60 addition, any applicant for an orthodontic and dentofacial orthopedic specialty certificate
61 commencing on July 1, 2019, shall submit verification of successful completion of the American
62 Board of Orthodontics written examination.

63 (6) Pediatric dentistry. — In order to qualify for this specialty, the licensee shall have
64 successfully completed a minimum of two full-time academic years of at least eight calendar
65 months each of graduate or post-graduate education, internship, or residency.

66 (7) Periodontics. — In order to qualify for this specialty, the licensee shall have
67 successfully completed a minimum of two full-time academic years of at least eight calendar

68 months each of graduate or post-graduate education, internship, or residency.

69 (8) Prosthodontics. — In order to qualify for this specialty, the licensee shall have
70 successfully completed a minimum of two full-time academic years of at least eight calendar
71 months each of graduate or post-graduate education, internship, or residency.

72 (9) Oral pathology. — In order to qualify for this specialty, the licensee shall have
73 successfully completed a minimum of two full-time academic years of at least eight calendar
74 months each of graduate or post-graduate education, internship, or residency.

75 (10) Dental anesthesiology. — In order to qualify for this specialty, the licensee shall have
76 successfully completed a minimum of two full-time academic years of at least eight calendar
77 months each of graduate or post-graduate education, internship, or residency.

78 (11) Oral medicine. — In order to qualify for this specialty, the licensee shall have
79 successfully completed a minimum of two full-time academic years of at least eight calendar
80 months each of graduate or post-graduate education, internship, or residency.

81 (12) Orofacial pain. — In order to qualify for this specialty, the licensee shall have
82 successfully completed a minimum of two full-time academic years of at least eight calendar
83 months each of graduate or post-graduate education, internship, or residency.

84 (d) The licensee shall limit his or her practice of dentistry only to the specialty or specialties
85 in which he or she is licensed and in which he or she holds himself or herself out to the public as
86 a specialist.

87 (e) The licensee shall limit his or her listing in the telephone directory or on the internet to
88 the specialties in which he or she has an office or offices.

89 (f) The limitation of practice is removed for purposes of volunteering services in organized
90 health clinics and at charitable events.

91 (g) A specialty license issued by the board shall expire on an annual basis and is subject
92 to renewal by the board upon application and payment of the renewal fee.

93 (h) A specialty license issued by the board and in good standing on the effective date of

94 the amendments to this section shall for all purposes be considered a license issued under this
95 section.

§30-4-9. Scope of practice of a dentist.

1 The practice of dentistry includes the following:

2 (1) Coordinate dental services to meet the oral health needs of the patient;

3 (2) Examine, evaluate and diagnose diseases, disorders and conditions of the oral cavity,
4 maxillofacial area and adjacent and associated structures;

5 (3) Treat diseases, disorders and conditions of the oral cavity, maxillofacial area and the
6 adjacent and associated structures;

7 (4) Provide services to prevent diseases, disorders and conditions of the oral cavity,
8 maxillofacial area and the adjacent and associated structures;

9 (5) Fabricate, repair or alter a dental prosthesis, other than as set forth in article four-b of
10 this chapter;

11 (6) Administer anesthesia in accordance with the provisions of article four-a of this chapter;

12 (7) Prescribe drugs necessary for the practice of dentistry;

13 (8) Execute and sign a death certificate when it is required in the practice of dentistry;

14 (9) Employ and supervise dental auxiliary personnel;

15 (10) Authorize delegated procedures to be performed by dental auxiliary personnel; and

16 (11) ~~Perform any other work included in the curriculum of an approved dental school,~~

17 ~~college or dental department of a university~~ During a declared public health emergency,

18 administer vaccines, perform FDA-authorized diagnostic tests to screen patients for infectious

19 diseases, triage medical patients, administer intravenous fluids, and perform other ancillary

20 medical procedures and activities as requested by medical personnel and where the individual

21 providing such services is otherwise qualified, certified, or licensed to provide the requested

22 services.

§30-4-10. License to practice dental hygiene.

1 (a) The board shall issue a dental hygienist license to an applicant who meets the following
2 requirements:

3 (1) Is at least 18 years of age;

4 (2) ~~Is of good moral character~~ Does not have any criminal convictions which would bar the
5 applicant's licensure pursuant to §30-1-24 of this code;

6 (3) Is a graduate with a degree in dental hygiene from ~~an approved dental hygiene~~
7 ~~program of a college, school, or dental department of a university~~ a school, college, or university
8 accredited by the Commission on Dental Accreditation of the American Dental Association;

9 (4) Has passed a national board examination as given by the Joint Commission on
10 National Dental Examinations and passed a board-approved ~~patient-based~~ examination designed
11 to determine the applicant's level of clinical skills;

12 (5) Has not been found guilty of cheating, deception, or fraud in the examination or any
13 part of the application;

14 (6) Has paid the application fee specified by rule; ~~and~~

15 (7) Is not an alcohol or drug abuser, as those terms are defined in §27-1A-11 of this code:
16 *Provided*, That an applicant in an active recovery process, which may, in the discretion of the
17 board, be evidenced by participation in a 12-step program or other similar group or process, may
18 be considered; and

19 (8) Meets the other requirements specified by rule.

20 (b) A license to practice dental hygiene issued by the board shall expire on an annual
21 basis and is subject to renewal by the board upon application and payment of the renewal fee.

22 ~~(b) (c)~~ (c) A dental hygienist license license to practice dental hygiene issued by the board
23 and in good standing on the effective date of the amendments to this section shall for all purposes
24 be considered a dental hygienist license issued under this section. ~~Provided, That a person~~
25 ~~holding a dental hygienist license shall renew the license~~

§30-4-11. Scope of practice for a dental hygienist.

1 The practice of dental hygiene includes the following:

2 (1) Perform a complete prophylaxis, including the removal of any deposit, accretion or
3 stain from supra and subgingival, the surface of a tooth or a restoration;

4 (2) Apply a medicinal agent to a tooth for a prophylactic purpose;

5 (3) Take a radiograph for interpretation by a dentist;

6 (4) Instruct a patient on proper oral hygiene practice;

7 (5) Place sealants on a patient's teeth without a prior examination by a licensed dentist:

8 *Provided*, That for this subdivision, the dental hygienist has a public health practice permit issued
9 by the board, and subject to a collaborative agreement with a supervising dentist and the patient
10 is referred for a dental examination within six months of sealant application;

11 (6) Perform all delegated procedures of a dental hygienist specified by rule by the
12 board;~~and~~

13 (7) Performing all delegated procedures of a dental assistant specified by rule by the
14 board; and

15 (8) During a declared public health emergency, dental hygienists with a local anesthesia
16 certificate may administer vaccines, perform FDA-authorized diagnostic tests to screen patients
17 for infectious diseases, triage medical patients, and perform other ancillary medical procedures
18 and activities as requested by medical personnel.

§30-4-12. License renewal.

1 (a) All persons regulated by this article shall annually ~~or biannually~~ renew his or her board
2 authorization by completing a form prescribed by the board and submitting any other information
3 required by the board.

4 (b) The board shall charge a fee for each renewal of a board authorization and shall charge
5 a late fee for any renewal not paid by the due date.

6 (c) The board shall require as a condition of renewal that each licensee, certificate holder,
7 or permittee complete continuing education.

8 (d) The board may deny an application for renewal for any reason which would justify the
9 denial of an original application.

§30-4-13. Board authorizations shall be displayed.

1 (a) The board shall prescribe the form for a board authorization, and may issue a duplicate
2 upon payment of a fee.

3 (b) Any person regulated by ~~the~~ this article shall conspicuously display his or her board
4 authorization at his or her principal ~~business location~~ place of practice.

§30-4-14. Dental intern, resident, or teaching permit.

1 (a) The board may issue a temporary annual permit to an applicant who will serve as a
2 dental intern, resident, or post-doctoral certificate or degree candidate in a hospital or school of
3 dentistry in this state that maintains an intern, residency, or post-doctoral program accredited by
4 the Commission on Dental Accreditation of the American Dental Association. To be granted such
5 permit, an applicant shall submit proof, in a form prescribed by the board and verified by oath,
6 that he or she: ~~dental intern or dental resident permit to an applicant who has been accepted as~~
7 ~~a dental intern or dental resident by a licensed hospital or dental school in this state which~~
8 ~~maintains an established dental department under the supervision of a licensed dentist and meets~~
9 ~~the following qualifications:~~

10 (1) Is at least 18 years of age;

11 (2) Does not have any criminal convictions which would bar the applicant's licensure
12 pursuant to §30-1-24 of this code;

13 (3) Is a graduate of and has a D.D.S. or D.M.D. degree, or its equivalent, from a dental
14 school, college, or university;

15 (4) Has passed a national board examination as given by the Joint Commission on
16 National Dental Examinations;

17 (5) Has not been found guilty of cheating, deception, or fraud in the examination or any
18 part of the application;

19 (6) Has paid the application fee specified by rule;

20 (7) Is not an alcohol or drug abuser, as those terms are defined in §27-1A-11 of this code:

21 Provided, That an applicant in an active recovery process, which may, in the discretion of the
22 board, be evidenced by participation in a 12-step program or other similar group or process, may
23 be considered; and

24 (8) Meets the other requirements specified by rule.

25 ~~(1) Has graduated from a Commission on Dental Accreditation or equivalent approved~~
26 ~~dental college, school or dental department of a university with a degree in dentistry;~~

27 ~~(2) Has paid the application fee specified by rule; and~~

28 ~~(3) Meets the other qualifications specified by rule.~~

29 (b) A dental intern permit or dental resident permit shall limit the holder to practicing
30 dentistry under the supervision of program faculty, within the facilities owned, operated by, or
31 affiliated with the hospital or school, on patients of the hospital or school.

32 ~~(b) (c) The A dental intern permit or dental resident permit shall expire on an annual basis~~
33 ~~and is subject to renewal by the board upon application and payment of the renewal fee. Unless~~
34 ~~earlier expired, such permit may be renewed and expires on the earlier of:~~

35 ~~(1) The date the permit holder ceases to be a dental intern or dental resident; or~~

36 ~~(2) One year after the date of issue shall expire, and may not be renewed, upon the~~
37 ~~holder's graduation, withdrawal, or termination from the relevant program.~~

38 ~~(c) (d) The board may issue a teaching permit to an applicant who is not otherwise licensed~~
39 ~~to practice dentistry in this state and who holds a faculty appointment with a school, college, or~~
40 ~~university in this state, or with an academic medical center affiliated with such school, college, or~~
41 ~~university, that is accredited by the Commission on Dental Accreditation or Joint Commission on~~
42 ~~Accreditation of Health Care Organizations. To be granted such permit, an applicant shall submit~~
43 ~~proof, in a form prescribed by the board and verified by oath, that he or she: meets the following~~
44 ~~conditions:~~

- 45 (1) Is at least 18 years of age;
- 46 (2) Does not have any criminal convictions which would bar the applicant's licensure
47 pursuant to §30-1-24 of this code;
- 48 (3) Is a graduate of and has a D.D.S. or D.M.D. degree, or its equivalent, from a dental
49 school, college, or university;
- 50 (4) Has passed a national board examination as given by the Joint Commission on
51 National Dental Examinations;
- 52 (5) Has not been found guilty of cheating, deception, or fraud in any part of the application;
- 53 (6) Has paid the application fee specified by rule;
- 54 (7) Is not an alcohol or drug abuser, as those terms are defined in §27-1A-11 of this code:
55 Provided, That an applicant in an active recovery process, which may, in the discretion of the
56 board, be evidenced by participation in a 12-step program or other similar group or process, may
57 be considered; and
- 58 (8) Meets the other requirements specified by rule.
- 59 ~~(1) Is authorized or is eligible, as determined by the board, for a authorization to practice~~
60 ~~dentistry in another jurisdiction;~~
- 61 ~~(2) Has met or been approved under the credentialing standards of a dental school or an~~
62 ~~academic medical center with which the person is to be affiliated: Provided, That the dental school~~
63 ~~or academic medical center is accredited by the Commission on Dental Accreditation or Joint~~
64 ~~Commission on Accreditation of Health Care Organizations;~~
- 65 ~~(3) The permittee may teach and practice dentistry in or on behalf of a dental school or~~
66 ~~college offering a doctoral degree in dentistry operated and conducted in this state, in connection~~
67 ~~with an academic medical center or at any teaching hospital adjacent to a dental school or an~~
68 ~~academic medical center;~~
- 69 ~~(4) Shall successfully complete the West Virginia Dental Law Examination;~~
- 70 ~~(5) Shall pay annual renewal fees to the board;~~

71 ~~(6) Shall comply with continuing education requirements; and~~

72 ~~(7) Has had no disciplinary actions taken or pending against him or her by any other~~
73 ~~jurisdiction.~~

74 ~~(d) (e) A teaching permit may be renewed annually with a written recommendation from~~
75 ~~the dental school dean. A teaching permit shall limit the holder to practicing dentistry only in~~
76 ~~connection with programs operated by the school, college, or university or by the academic~~
77 ~~medical center affiliated therewith, on patients of such programs.~~

78 ~~(e) (f) While in effect, a permittee is subject to the restrictions and requirements imposed~~
79 ~~by this article to the same extent as a licensee. In addition, a permittee may not receive any fee~~
80 ~~for service other than a salary paid by the hospital or dental school. A teaching permit issued by~~
81 ~~the board shall expire on an annual basis and is subject to renewal by the board upon application~~
82 ~~and payment of the renewal fee. Unless earlier expired, such permit shall expire, and may not be~~
83 ~~renewed, upon the termination of the holder's faculty appointment.~~

84 ~~(g) The holder of a dental intern permit, dental resident permit, or teaching permit is subject~~
85 ~~to the restrictions and requirements imposed by this article to the same extent as a licensee. In~~
86 ~~addition, a permittee may not receive any fee for service other than a salary or stipend paid by~~
87 ~~the hospital or dental school.~~

88 ~~(h) A dental intern permit, dental resident permit, or teaching permit issued by the board~~
89 ~~and in good standing on the effective date of the amendments to this section shall for all purposes~~
90 ~~be considered a permit issued under this section.~~

§30-4-15. Special volunteer dentist or dental hygienist license; civil immunity for voluntary services rendered to indigents.

1 (a) There is continued a special volunteer dentist and dental hygienist license for dentists
2 and dental hygienists retired or retiring from the active practice of dentistry and dental hygiene
3 who wish to donate their expertise for the care and treatment of indigent and needy patients in
4 the clinical setting of clinics organized, in whole or in part, for the delivery of health care services

5 without charge. The special volunteer dentist or dental hygienist license shall be issued by the
6 board to a dentist or dental hygienists licensed or otherwise eligible for licensure under this article
7 and the legislative rules promulgated hereunder without the payment of an application fee, license
8 fee or renewal fee, shall be issued for the remainder of the licensing period and renewed
9 consistent with the ~~boards~~ board's other licensing requirements. The board shall develop
10 application forms for the special license provided in this subsection which shall contain the
11 dentist's or dental hygienist's acknowledgment that:

12 (1) The ~~dentist~~ dentist's or dental hygienist's practice under the special volunteer dentist
13 or dental hygienist license will be exclusively devoted to providing dentistry or dental hygiene care
14 to needy and indigent persons in West Virginia;

15 (2) The dentist or dental hygienist will not receive any payment or compensation, either
16 direct or indirect, or have the expectation of any payment or compensation but may donate to the
17 clinic the proceeds of any reimbursement, for any dentistry or dental hygiene services rendered
18 under the special volunteer dentist or dental hygienist license;

19 (3) The dentist or dental hygienist will supply any supporting documentation that the board
20 may reasonably require; and

21 (4) The dentist or dental hygienist agrees to continue to participate in continuing
22 professional education as required by the board for the special volunteer dentist or dental
23 hygienist.

24 (b) Any person engaged in the active practice of dentistry and dental hygiene in this state
25 whose license is in good standing may donate their expertise for the care and treatment of indigent
26 and needy patients pursuant to an arrangement with a clinic organized, in whole or in part, for the
27 delivery of health care services without charge to the patient. Services rendered pursuant to an
28 arrangement may be performed in either the office of the dentist or dental hygienist or the clinical
29 setting.

30 (c) Any dentist or dental hygienist who renders any dentistry or dental hygiene service to

31 indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care
32 services without charge under a special volunteer dentist or dental hygienist license authorized
33 under subsection (a) of this section or pursuant to an arrangement with a clinic as authorized
34 pursuant to subsection (b) of this section without payment or compensation or the expectation or
35 promise of payment or compensation is immune from liability ~~for~~ in any civil action arising out of
36 any act or omission ~~resulting from the incident to rendering of the dental hygiene~~ service at the
37 clinic unless the act or omission was the result of the dentist's or dental hygienist's gross
38 negligence or willful misconduct. In order for the immunity under this subsection to apply, there
39 shall be a written agreement between the dentist or dental hygienist and the clinic, pursuant to
40 which the dentist or dental hygienist will provide voluntary uncompensated ~~dental hygiene~~
41 services under the control of the clinic to patients of the clinic, ~~before~~ executed prior to the
42 rendering of any services by the dentist or dental hygienist at the clinic: *Provided*, That any clinic
43 entering into such written agreement is required to maintain liability coverage of not less than \$1
44 million per occurrence.

45 (d) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in
46 whole or in part, for the delivery of health care services without charge is not relieved from imputed
47 liability for the negligent acts of a dentist or dental hygienist rendering voluntary ~~dental hygiene~~
48 uncompensated services at or for the clinic under a special volunteer dentist or dental hygienist
49 license ~~authorized~~ issued under subsection (a) of this section or who renders such care and
50 treatment pursuant to an arrangement with a clinic as authorized pursuant to subsection (b) of
51 this section.

52 (e) For purposes of this section, "otherwise eligible for licensure" means the satisfaction
53 of all the requirements for licensure as listed in section eight of this article and in the legislative
54 rules promulgated thereunder, except the fee requirements of subdivision (6) of said section and
55 of the legislative rules promulgated by the board relating to fees.

56 (f) Nothing in this section may be construed as requiring the board to issue a special

57 volunteer dentist or dental hygienist license to any dentist or dental hygienist whose license is or
58 has been subject to any disciplinary action or to any dentist or dental hygienist who has
59 surrendered a license or caused such license to lapse, expire ~~and~~ or become ~~invalid~~ inactive in
60 lieu of having a complaint initiated or other action taken against his or her ~~dentist or dental~~
61 ~~hygienist license, or who has elected to place a dentist or dental hygienist license in inactive~~
62 ~~status in lieu of having a complaint initiated or other action taken against his or her license, or~~
63 who has been denied a dentist or dental hygienist license.

64 (g) Any policy or contract of liability insurance providing coverage for liability that is sold,
65 issued or delivered in this state to any dentist or dental hygienist covered under the provisions of
66 this article shall be read so as to contain a provision or endorsement whereby the company issuing
67 such policy waives or agrees not to assert as a defense on behalf of the policyholder or any
68 beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the
69 immunity from liability of the insured by reason of the care and treatment of needy and indigent
70 patients by a dentist or dental hygienist who holds a special volunteer dentist or dental hygienist
71 license or who renders such care and treatment pursuant to an arrangement with a clinic as
72 authorized pursuant to subsection (b) of this section.

§30-4-16. Dental corporations and professional limited liability companies.

1 (a) Dental corporations and professional limited liability companies are continued.

2 (b) One or more dentists licensed by the board may organize and become a shareholder
3 or shareholders of a dental corporation, or member or members of a professional limited liability
4 company, domiciled within this state under the terms and conditions and subject to the limitations
5 and restrictions specified by rule.

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

9 (d) When the Secretary of State receives a certificate of authorization to act as a dental

10 corporation or professional limited liability company from the board, he or she shall attach the
11 authorization to the corporation application and, upon compliance with the applicable provisions
12 of ~~chapter thirty-one~~ Chapter 31 or Chapter 31B of this code, the Secretary of State shall issue to
13 the incorporators a certificate of incorporation for the dental corporation or to the organizers a
14 certificate of organization for the professional limited liability company.

15 (e) A corporation or professional limited liability company holding a certificate of
16 authorization shall renew annually, on or before June 30, on a form prescribed by the board and
17 pay an annual fee in an amount specified by rule.

18 (f) A dental corporation or professional limited liability company may practice dentistry only
19 through ~~an individual dentist or~~ one or more dentists licensed to practice dentistry in this state,
20 but the dentist or dentists may be employees rather than shareholders or members of the
21 corporation or company.

22 (g) A dental corporation holding a certificate of authorization shall cease to engage in the
23 practice of dentistry upon being notified by the board that any of its shareholders is no longer a
24 licensed dentist or when any shares of the corporation have been sold or disposed of to a person
25 who is not a licensed dentist: *Provided*, That the personal representative of a deceased
26 shareholder has a period, not to exceed twenty-four months from the date of the shareholder's
27 death, to dispose of the shares; but nothing contained herein may be construed as affecting the
28 existence of the corporation or its right to continue to operate for all lawful purposes other than
29 the practice of dentistry.

§30-4-17. Reinstatement.

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

5 (b) A licensee who does not complete annual renewal, as specified herein and by the

6 board by rule, and whose license has lapsed for one year or longer, shall make application for
7 reinstatement as specified by the board by rule.

8 (c) The board, at its discretion and for cause, may require an applicant for reinstatement
9 to undergo a physical and/or mental evaluation, at his or her expense, to determine whether a
10 licensee ~~the applicant~~ is competent to practice or if the licensee is impaired by drugs or alcohol
11 dentistry or dental hygiene.

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

1 (a) The board may initiate a complaint upon receipt of the quarterly report from the Board
2 of Pharmacy as required by §60A-9-1 *et seq.* of this code or upon receipt of credible information
3 and shall, upon the receipt of a written complaint of any person, cause an investigation to be
4 made to determine whether grounds exist for disciplinary action under this article or the legislative
5 rules promulgated pursuant to this article.

6 (b) After reviewing any information obtained through an investigation, the board shall
7 determine if probable cause exists that the licensee, certificate holder, or permittee has violated
8 §30-4-19~~(a)~~ (g) of this code or rules promulgated pursuant to this article.

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

11 (d) Upon a finding that probable cause exists that the licensee, certificate holder, or
12 permittee has violated §30-4-19(g) of this code or rules promulgated pursuant to this article, the
13 board may enter into a consent decree or hold a hearing for disciplinary action against the
14 licensee, certificate holder, or permittee. Any hearing shall be held in accordance with the
15 provisions of this article and shall require a violation to be proven by a preponderance of the
16 evidence.

17 (e) A member of the complaint committee or the executive director of the board may issue
18 subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the
19 investigation of allegations against any person regulated by ~~the~~ this article.

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

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

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

28 (2) Being convicted of a felony crime, or being convicted of a misdemeanor crime ~~of moral~~
29 ~~turpitude~~ related to the practice of dentistry or dental hygiene;

30 (3) Being guilty of ~~unprofessional conduct which placed the public at risk, as defined by~~
31 ~~legislative rule of the board~~ malpractice or neglect in the practice of dentistry or dental hygiene;

32 (4) ~~Intentional violation~~ Violation of a lawful order or legislative rule of the board;

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

36 (6) ~~Aiding, or abetting, or supervising the unlicensed practice of dentistry or dental hygiene~~
37 by an unlicensed person;

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

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

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

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

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

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

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

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

55 ~~(C)~~(B) Abusing alcohol or drugs;

56 ~~(D)~~(C) Violating or improperly disclosing any professional confidence ~~or disclosing any~~
57 ~~professional secret;~~

58 ~~(E) Being grossly immoral;~~

59 (F)(D) Harassing, abusing, intimidating, insulting, degrading, or humiliating a patient
60 physically, verbally, or through another form of communication;

61 ~~(G)~~(E) Obtaining any fee by fraud or misrepresentation;

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

65 ~~(I)~~(G) Practicing or offering or undertaking to practice dentistry under any firm name or
66 trade name not approved by the board;

67 ~~(J)~~(H) Having a professional connection or association with, or lending his or her name to,
68 another, for the illegal practice of dentistry, or having a professional connection or association

69 with any person, firm, or corporation holding himself or herself, themselves, or itself out in any
70 manner contrary to this article;

71 ~~(K)~~(L) Making use of any advertising relating to the use of any drug or medicine of unknown
72 formula;

73 ~~(L)~~(J) Advertising to practice dentistry or perform any operation thereunder without
74 causing pain;

75 ~~(M)~~(K) Advertising professional superiority or the performance of professional services in
76 a superior manner;

77 ~~(N)~~(L) Advertising to guarantee any dental service;

78 ~~(O)~~(M) Advertising in any manner that is false or misleading in any material respect; or

79 ~~(P)~~ Soliciting subscriptions from individuals within or without the state for, or advertising
80 or offering to individuals within or without the state, a course or instruction or course materials in
81 any phase, part, or branch of dentistry or dental hygiene in any journal, newspaper, magazine, or
82 dental publication, or by means of radio, television, or United States mail, or in or by any other
83 means of contacting individuals: Provided, That the provisions of this paragraph may not be
84 construed so as to prohibit:

85 (i) ~~An individual dentist or dental hygienist from presenting articles pertaining to~~
86 ~~procedures or technique to state or national journals or accepted dental publications; or~~

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

89 ~~(Q)~~(N) Engaging in any action or conduct which would have warranted the denial of the
90 license.

91 (13) Knowing or suspecting that a licensee is incapable of engaging in the practice of
92 dentistry or dental hygiene, with reasonable skill, competence, and safety to the public, and failing
93 to report any relevant that information to the board;

94 (14) Using or disclosing protected health information in an unauthorized or unlawful

95 manner;

96 (15) Engaging in any conduct that subverts or attempts to subvert any licensing
97 examination or the administration of any licensing examination;

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

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

106 (18) Failing to report to the board within 72 hours of becoming aware of any life threatening
107 occurrence, serious injury, or death of a patient resulting from the licensee's or permittee's dental
108 treatment ~~or complications following a dental procedure~~;

109 (19) Administering sedation anesthesia without a valid permit, or other violation of W. Va.
110 Code § 30-4A-1 et seq. of this code;

111 (20) Failing to observe or adhere to regulations, standards, or guidelines regarding
112 infection control, disinfection, or sterilization, or otherwise applicable to dental care settings;

113 ~~(19)~~(21) Failing to report to the board any driving under the influence and/or driving while
114 intoxicated offense; or

115 ~~(20)~~(22) Violation of any of the terms or conditions of any order entered in any disciplinary
116 action.

117 ~~(j)~~ (h) For the purposes of §30-4-19(g) of this code, disciplinary action may include:

118 (1) Reprimand;

119 (2) Probation;

120 (3) Restrictions;

- 121 (4) Suspension;
- 122 (5) Revocation;
- 123 (6) Administrative fine, not to exceed \$1,000 per day per violation;
- 124 (7) Mandatory attendance at continuing education seminars or other training;
- 125 (8) Practicing under supervision or other restriction; or
- 126 (9) Requiring the licensee or permittee to report to the board for periodic interviews for a
127 specified period of time.

128 ~~(j)~~ (i) In addition to any other sanction imposed, the board may require a licensee or
129 permittee to pay the board's costs of the proceeding incurred in investigating and adjudicating a
130 disciplinary matter, including the board's legal fees.

131 ~~(k)~~ (j) The board may defer disciplinary action with regard to an impaired licensee or
132 permittee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to
133 practice dental care and to enter an approved treatment and monitoring program in accordance
134 with the board's legislative rules; Provided, That this subsection does not apply to a licensee or
135 permittee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to an
136 offense relating to a controlled substance in any jurisdiction.

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

§30-4-20. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by the provisions of ~~section eight, article one of this chapter~~
2 §30-1-8 of this code and the legislative rules promulgated pursuant to this article.

3 (b) The board may conduct the hearing or elect to have an administrative law judge
4 conduct the hearing.

5 (c) If the hearing is conducted by an administrative law judge, at the conclusion of a the
 6 hearing he or she shall prepare a proposed written order containing findings of fact and
 7 conclusions of law. The proposed order may contain proposed disciplinary actions if the board so
 8 directs. The board may accept, reject or modify the decision of the administrative law judge.

9 (d) Any member of the board or the executive director of the board has the authority to
 10 administer oaths and to examine any person under oath.

11 (e) If, after a hearing, the board determines the licensee or permittee has violated one or
 12 more provisions of this article or the board's rules, a formal written decision shall be prepared
 13 which contains findings of fact, conclusions of law, and a specific description of the disciplinary
 14 actions imposed.

§30-4-22. Criminal offenses.

1 (a) When, as a result of an investigation under this article or otherwise, the board has
 2 reason to believe that a person ~~authorized under this article~~ has committed a criminal offense
 3 ~~under~~ in violation of this article, the board may bring ~~its~~ such information to the attention of an
 4 appropriate law-enforcement official.

5 (b) ~~Any person who intentionally practices, or holds himself or herself out as qualified to~~
 6 ~~practice dentistry or dental hygiene, or uses any title, word or abbreviation to indicate to or induce~~
 7 ~~others to believe he or she is licensed to practice as a dentist or dental hygienist without obtaining~~
 8 ~~an active, valid West Virginia license to practice that profession or with a license that is:~~

9 (1) ~~Expired, suspended or lapsed; or~~

10 (2) ~~Inactive, revoked, suspended as a result of disciplinary action, or surrendered, is guilty~~
 11 ~~of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000.~~

12 Any person who practices dentistry or dental hygiene in this state and (1) has never been
 13 licensed by the board under this article, (2) holds a license that has been classified by the board
 14 as expired or lapsed, or (3) holds a license that has been inactive, revoked, or suspended as a
 15 result of disciplinary action, or surrendered to the board, is guilty of a felony and, upon conviction,

16 shall be fined not more than \$10,000 or imprisoned in a correctional facility for not less than one
 17 year nor more than five years, or both fined and imprisoned.

18 (c) Any person who holds himself or herself out as licensed to practice dentistry or dental
 19 hygiene in this State, or who uses any title, word, or abbreviation to indicate to or induce others
 20 to believe he or she is licensed to practice dentistry or dental hygiene in this State, and (1) has
 21 never been licensed by the board under this article, (2) holds a license that has been classified
 22 by the board as expired or lapsed, or (3) holds a license that has been inactive, revoked, or
 23 suspended as a result of disciplinary action, or surrendered to the board, is guilty of a
 24 misdemeanor and, upon conviction, shall be fined not more than \$5,000 or confined in jail not
 25 more than twelve months, or both fined and confined.

§30-4-23. Single act evidence of practice.

1 In any action brought under this article, ~~or under article four-a or article four-b~~ §30-4A-1 et
 2 seq. or §30-4B-1 et seq. of this code ~~any proceeding initiated under this article,~~ evidence of the
 3 commission of a single act prohibited by ~~this~~ said article is sufficient to justify a penalty, injunction,
 4 restraining order or conviction without evidence of a general course of conduct.

§30-4-24. Inapplicability of article.

1 The provisions of this article do not apply to:

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

5 (2) A dental laboratory in the performance of dental laboratory services, while the dental
 6 laboratory, in the performance of the work, conforms in all respects to the requirements of article
 7 four-b of this chapter, and further does not apply to persons performing dental laboratory services
 8 under the direct supervision of a licensed dentist ~~or under the direct supervision of a person~~
 9 ~~authorized under this article to perform any of the acts in this article defined to constitute the~~

10 ~~practice of dentistry while the work is performed in connection with, and as a part of, the dental~~
11 ~~practice of the licensed dentist or other authorized person and for his or her dental patients;~~

12 (3) A student enrolled in an accredited D.D.S. or D.M.D. degree program or an accredited
13 dental hygiene program practicing under the direct supervision of an instructor licensed by the
14 board and (i) within a school, college, or university in this State; (ii) in a dental clinic operated by
15 a nonprofit organization providing indigent care; (iii) in governmental or indigent care clinics in
16 which the student is assigned to practice during his or her final academic year rotations; or (iv) in
17 a private dental office for a limited time during the student's final academic year, provided the
18 supervising dentist holds appointment on the faculty of the school in which the student is enrolled;
19 ~~and regularly attending any dental college recognized by the board, provided their acts are done~~
20 ~~in the dental college and under the direct and personal supervision of their instructor;~~

21 ~~(4) A student enrolled in and regularly attending any dental college, recognized by the~~
22 ~~board, practicing dentistry in a public health setting, provided their acts are done under the direct~~
23 ~~supervision of their instructor, adjunct instructor or a dentist;~~

24 ~~(5)~~ (4) An authorized dentist of another state temporarily operating a clinic under the
25 auspices of an organized and reputable dental college or reputable dental society, or to one
26 lecturing before a reputable society composed exclusively of dentists; or

27 ~~(6)~~ (5) A dentists whose practice is confined exclusively to the service of the United States
28 Army, the United States Navy, the United States Air Force, The United States Coast Guard, the
29 United States Public Health Service, the United States Veteran's Bureau or any other authorized
30 United States government agency or bureau.

§30-4-25. Teledentistry.

1 (a) To deliver teledentistry services in this state, one must hold a current, valid dental or
2 dental hygiene license issued by the Board. The practice of dentistry occurs where the patient is
3 located at the time teledentistry services are provided.

4 (b) No person shall practice teledentistry unless a bona fide dentist-patient relationship is

5 established. A bona fide dentist-patient relationship shall exist if the dentist has (i) obtained or
6 caused to be obtained a health and dental history of the patient; (ii) performed or caused to be
7 performed an appropriate examination of the patient, either physically, through use of
8 instrumentation and diagnostic equipment by which digital scans, photographs, images, and
9 dental records are able to be transmitted electronically, or through use of face-to-face interactive
10 two-way real-time communications services or store-and-forward technologies; (iii) provided
11 information to the patient about the services to be performed; and (iv) initiated additional
12 diagnostic tests or referrals as needed. In cases in which a dentist is providing teledentistry, the
13 examination required by clause (ii) shall not be required if the patient has been examined in
14 person by a dentist licensed by the board within the six months prior to the initiation of teledentistry
15 and the patient's dental records of such examination have been reviewed by the dentist providing
16 teledentistry.

17 (c) No person shall deliver dental services in this state through teledentistry unless he or
18 she has established written or electronic protocols for the practice of teledentistry that include (i)
19 methods to ensure that patients are fully informed about services provided through the use of
20 teledentistry, including obtaining informed consent; (ii) safeguards to ensure compliance with all
21 state and federal laws and regulations related to the privacy of health information; (iii)
22 documentation of all dental services provided to a patient through teledentistry, including the full
23 name, address, telephone number, and state license number of the dentist providing such dental
24 services; (iv) procedures for providing in-person services or for the referral of patients requiring
25 dental services that cannot be provided by teledentistry to another licensed dentist who actually
26 practices dentistry in an area the patient can readily access; (v) provisions for the use of
27 appropriate encryption when transmitting patient health information via teledentistry; and (vi) any
28 other requirements set forth by the board. A dentist who delivers dental services using
29 teledentistry shall, upon request of the patient, provide health records to the patient or a dentist
30 of record in a timely manner in accordance with applicable federal or state laws or regulations. All

31 patients receiving dental services through teledentistry shall have the right to speak or
32 communicate with the licensed dentist providing such services upon request.

33 (d) Nothing in this section shall be construed to alter the scope of practice of any licensed
34 dentist or dental hygienist or to authorize the delivery of health care services in a setting, or in a
35 manner, not authorized by law. Licensees delivering teledentistry services in this State shall
36 comply with all rules of professional conduct and state and federal statutes and regulations
37 relevant to dentistry and dental hygiene. Teledentistry encounters shall be held to the same
38 standard of care as a traditional in-person patient encounter.

39 (e) A patient in this state may be treated via teledentistry by (i) a dentist licensed by the
40 board; or (ii) a dental hygienist who is licensed by the board and is either supervised by, and has
41 delegated authority from, a dentist licensed by the board or holds a General Supervision or Public
42 Health Practice Permit.

43 (f) In providing dental services via teledentistry, a licensee shall, to the extent possible:

44 (1) Confirm the identity of the requesting patient;

45 (2) Collect the patient's health history;

46 (3) Disclose the licensee's identity, applicable credentials, and contact information
47 including a current phone number; and

48 (4) Obtain an appropriate informed consent from the requesting patient after disclosures
49 have been made regarding the delivery models and treatment methods and limitations, to include
50 any special informed consents regarding the use of teledentistry services. At a minimum, the
51 informed consent shall inform the patient or legal guardian and document acknowledgment of the
52 risk and limitations of:

53 (A) The use of electronic and communications in the provision of care;

54 (B) The potential for breach of confidentiality, or inadvertent access, of protected health
55 information using electronic and digital communication in the provision of care;

56 (C) The potential disruption of electronic and digital communication in the use of

57 teledentistry;

58 (D) The types of activities permitted using teledentistry services;

59 (E) The patient or legal guardian's understanding that it is the role of the licensee to
60 determine whether the condition being diagnosed or treated is appropriate for a teledentistry
61 encounter; and

62 (F) A requirement for explicit patient or legal guardian consent to forward patient-
63 identifiable information to a third party.

64 (g) The licensee shall ensure that any electronic or digital communication used in the
65 practice of teledentistry is secure to maintain confidentiality of the patient's medical information
66 as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all
67 other applicable laws, administrative regulations, and guidance. Confidentiality shall be
68 maintained through appropriate processes, practices and technology, including the disposal of
69 electronic and digital equipment and data.

70 (h) Any dental record made through teledentistry shall be held to the same record retention
71 standards as a record made through a traditional in-person dental encounter. An informed
72 consent obtained in connection with teledentistry services shall be filed in the patient's dental
73 record. The patient record established during the use of teledentistry services shall be accessible
74 to both the licensee and the patient or legal guardian, consistent with all established laws and
75 administrative regulations governing patient healthcare records. The licensee shall document or
76 record in the file:

77 (1) The patient's presenting problem;

78 (2) The licensee's chief concern;

79 (3) The patient's diagnosis;

80 (4) The patient's treatment plan; and

81 (5) A description of all services provided by teledentistry.

82 (i) The indication, appropriateness, and safety considerations for each prescription for

83 medication, laboratory services, or dental laboratory services provided through the use of
84 teledentistry services shall be evaluated by the licensee in accordance with applicable law and
85 current standards of care, including those for appropriate documentation. A licensee's use of
86 teledentistry carries the same professional accountability as when a prescription is issued in
87 connection with an in-person encounter. A licensee shall not prescribe schedule II drugs via
88 teledentistry, unless expressly authorized by another section of this code.

89 (i) A licensee using teledentistry to deliver dental services or who practices teledentistry
90 shall not:

91 (1) Directly or indirectly engage in false, misleading, or deceptive advertising of
92 teledentistry services;

93 (2) Allow fee-splitting for the use of teledentistry services; or

94 (3) Diagnose or initiate correction of malpositions of the human teeth or jaws, or initiate
95 the use of orthodontic appliances or aligners, prior to reviewing the patient's most recent
96 diagnostic digital or conventional radiographs or other equivalent bone imaging suitable for
97 orthodontia. New radiographs or other equivalent bone imaging shall be ordered if deemed
98 appropriate by the treating dentist.

NOTE: The purpose of this bill is to define the practice of dentistry, to add necessary definitions, to revise certain definitions, and to remove unnecessary definitions, to revise and make consistent the requirements for a dental license, dental hygiene license, dental intern permit, dental resident permit, and teaching permit, to revise the scope of practice of dentistry and dental hygiene, to account for the existence of dental professional limited liability companies, to revise the grounds for disciplinary action and the availability of certain disciplinary sanctions, to revise the criminal offenses related to dentistry, to clarify who is exempt from this article, to add the statutorily required provisions regarding telehealth services, and to correct typographical and grammatical errors where necessary and use plain language where appropriate.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.