

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2498**

4
5 (By Delegates Morgan, Stephens, Hartman, Hatfield,
6 Martin, D. Poling, Staggers and Rowan)

7 (Originating in the Committee on the Judiciary)

8 [February 28, 2011]

9
10 A BILL to amend and reenact §30-4-19, §30-4-20, §30-4-23, §30-4-28
11 and §30-4-29, of the Code of West Virginia, 1931, as amended,
12 all relating to the practice of dentistry; requiring
13 notification of a dentist's death to the dental board by the
14 deceased's personal representative; requiring dentists to
15 notify the board of a life threatening occurrence, serious
16 injury or death to patient as a result of dental treatment or
17 related complications; providing for disciplinary action for
18 failing to report; certain actions of dentists subject to
19 disciplinary action by board; providing the board with the
20 authority to require a licensee have a psychological
21 evaluation prior to reinstatement of license; increasing
22 personal representative's length of time to dispose of shares
23 of a deceased shareholder in a dental corporation after
24 dentist's death; and permitting a dental student to work in a
25 public health setting under certain conditions.

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

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

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

5 **§30-4-19. Dental Office.**

6 (a) ~~Every~~ A licensed dentist within thirty days of changing
7 his or her place of practice or establishing a practice at an
8 additional dental office shall furnish the board with the address
9 of the new or additional dental office.

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

13 (c) Every A licensed dental hygienist within thirty days of
14 changing his or her place of employment or establishing employment
15 at additional dental office shall furnish the board with the name
16 and address of the new or additional employers.

17 **§30-4-20. Refusal to issue or renew, suspension or revocation of**
18 **license; disciplinary action.**

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

24 (1) The presentation to the board of any diploma, license or
25 certificate illegally or fraudulently obtained, or one obtained

1 from an institution which is not reputable, or one obtained from an
2 unrecognized or irregular institution or state board;

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

6 (3) Incompetent, negligent or willful misconduct in the
7 practice of dentistry or dental hygiene, which shall include the
8 departure from, or the failure to conform to, the minimal standards
9 of acceptable and prevailing dental or dental hygiene practice in
10 their area of expertise as shall be determined by the board. The
11 board need not establish actual injury to the patient in order to
12 adjudge a licensee guilty of this conduct;

13 (4) Engaging in conduct that indicates a lack of knowledge of,
14 an inability to apply or the negligent application of principles or
15 skills of dentistry or dental hygiene;

16 (5) Being guilty of gross ignorance or gross inefficiency in
17 his or her profession;

18 (6) Being convicted of a felony; and a certified copy of the
19 record of the court of conviction shall be sufficient proof of
20 conviction;

21 (7) Announcing or otherwise holding himself or herself out to
22 the public as a specialist or as being specially qualified in any
23 particular branch of dentistry or as giving special attention to
24 any branch of dentistry or as limiting his or her practice to any
25 branch of dentistry without first complying with the requirements
26 established by the board for the specialty and having been issued

1 a certificate of qualification in the specialty by the board; ~~or~~

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

6 (10) Being guilty of unprofessional conduct as contained in
7 the American Dental Association principles of ethics and code of
8 professional conduct. The following acts or any of them are
9 conclusively presumed to be unprofessional conduct:

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

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

13 (C) Abusing alcohol or drugs;

14 (D) Violating any professional confidence or disclosing any
15 professional secret;

16 (E) Being grossly immoral;

17 (F) Harassing, abusing, intimidating, insulting, degrading or
18 humiliating a patient physically, verbally or through another form
19 of communication;

20 ~~(F)~~(G) Employing what are known as "cappers" or "steerers" to
21 obtain business;

22 ~~(G)~~(H) Obtaining any fee by fraud or misrepresentation;

23 ~~(H)~~(I) Employing directly or indirectly, or directing or
24 permitting any suspended or unlicensed person so employed, to
25 perform operations of any kind or to treat lesions of the human
26 teeth or jaws or correct malimposed formations thereof;

1 ~~(I)~~(J) Practicing, or offering, or undertaking to practice
2 dentistry under any firm name or trade name not approved by the
3 board;

4 ~~(J)~~(K) Having a professional connection or association with,
5 or lending his or her name to another, for the illegal practice of
6 dentistry, or professional connection or association with any
7 person, firm or corporation holding himself or herself, themselves
8 or itself out in any manner contrary to this article;

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

11 ~~(L)~~(M) Advertising to practice dentistry or perform any
12 operation thereunder without causing pain;

13 ~~(M)~~(N) Advertising professional superiority or the performance
14 of professional services in a superior manner;

15 ~~(N)~~(O) Advertising to guarantee any dental service;

16 ~~(O)~~(P) Advertising in any manner that is false or misleading
17 in any material respect;

18 ~~(P)~~(Q) Soliciting subscriptions from individuals within or
19 without the state for, or advertising or offering to individuals
20 within or without the state, a course or instruction or course
21 materials in any phase, part or branch of dentistry or dental
22 hygiene in any journal, newspaper, magazine or dental publication,
23 or by means of radio, television or United States mail, or in or by
24 any other means of contacting individuals: *Provided*, That the
25 provisions of this paragraph may not be construed so as to
26 prohibit: (i) An individual dentist or dental hygienist from

1 presenting articles pertaining to procedures or technique to state
2 or national journals or accepted dental publications; or (ii)
3 educational institutions approved by the board from offering
4 courses or instruction or course materials to individual dentists
5 and dental hygienists from within or without the state; or

6 ~~(Q)~~(R) Engaging in any action or conduct which would have
7 warranted the denial of the license.

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

10 (c) Disciplinary action includes, but is not limited to, a
11 reprimand, censure, probation, administrative fine not to exceed
12 \$1,000 per day per violation and mandatory attendance at
13 continuing professional education seminars.

14 ~~(d) This entire section is passed in the interest of the
15 public health, safety and welfare and its provisions must be
16 liberally construed to carry out its object and purpose.~~

17 **§30-4-23. Reinstatement.**

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

23 (b) The board may require a licensee to undergo a
24 psychological evaluation to determine a licensee is competent to
25 make decisions or if the licensee is impaired by drugs or alcohol.

26 **§30-4-28. Dental corporations.**

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

3 (b) ~~On or after July 1, 2001,~~ One or more dentists may
4 organize and become a shareholder or shareholders of a dental
5 corporation domiciled within this state under the terms and
6 conditions and subject to the limitations and restrictions
7 specified by rule.

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

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

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

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

26 (g) A dental corporation holding a certificate of

1 authorization shall cease to engage in the practice of dentistry
2 upon being notified by the board that any of its shareholders is no
3 longer a duly licensed dentist or when any shares of the
4 corporation have been sold or disposed of to a person who is not a
5 duly licensed dentist: *Provided*, That the personal representative
6 of a deceased shareholder has a period, not to exceed ~~twelve~~
7 twenty-four months from the date of the shareholder's death, to
8 dispose of the shares; but nothing contained herein may be
9 construed as affecting the existence of the corporation or its
10 right to continue to operate for all lawful purposes other than the
11 practice of dentistry.

12 **§30-4-29. Inapplicability of article.**

13 The provisions of this article do not apply to:

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

19 (2) A dental laboratory in the performance of dental
20 laboratory services as that term is defined in section one, article
21 four-b of this chapter while the dental laboratory, in the
22 performance of the work, conforms in all respects to the
23 requirements of article four-b and further does not apply to
24 persons performing dental laboratory services under the direct
25 supervision of a licensed dentist or under the direct supervision
26 of a person authorized under this article to perform any of the

1 acts in this article defined to constitute the practice of
2 dentistry while the work is performed in connection with, and as a
3 part of, the dental practice of the licensed dentist or other
4 authorized person and for his or her dental patients;

5 (3) Students enrolled in and regularly attending any dental
6 college recognized by the state board of dental examiners, provided
7 their acts are done in the dental college and under the direct and
8 personal supervision of their instructor;

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

14 ~~(4)~~ (5) Licensed or registered dentists of another state
15 temporarily operating a clinic under the auspices of a duly
16 organized and reputable dental college or reputable dental society,
17 or to one lecturing before a reputable society composed exclusively
18 of dentists; or

19 ~~(5)~~ (6) The practice of dentistry by dentists whose practice
20 is confined exclusively to the service of the United States Army,
21 the United States Navy, the United States Public Health Service,
22 the United States Veteran's Bureau or any other authorized United
23 States government agency or bureau.