

1 **H. B. 2498**

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

5 [Introduced January 14, 2011; referred to the
6 Committee on Government Organization then the Judiciary.]
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10 A BILL to amend and reenact §30-4-20, §30-4-23, §30-4-28 and §30-4-
11 29, of the Code of West Virginia, 1931, as amended, all
12 relating to the practice of dentistry; prohibiting certain
13 actions of dentists; providing the board with the authority to
14 require a licensee have a psychological evaluation; increasing
15 the length of time to dispose of shares of a deceased
16 shareholder in a dental corporation; and permitting a dental
17 student to work in a public health setting under certain
18 conditions.

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

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

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

24 **§30-4-20. Refusal to issue or renew, suspension or revocation of**
25 **license; disciplinary action.**

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

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

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

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

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

23 (5) Being guilty of gross ignorance or gross inefficiency in
24 his or her profession;

25 (6) Being convicted of a felony; and a certified copy of the

1 record of the court of conviction shall be sufficient proof of
2 conviction;

3 (7) Announcing or otherwise holding himself or herself out to
4 the public as a specialist or as being specially qualified in any
5 particular branch of dentistry or as giving special attention to
6 any branch of dentistry or as limiting his or her practice to any
7 branch of dentistry without first complying with the requirements
8 established by the board for the specialty and having been issued
9 a certificate of qualification in the specialty by the board; ~~or~~

10 (8) Fail to notify the board of a life threatening occurrence,
11 serious injury or death of a patient;

12 (9) Harass, abuse, intimidate, insult, degrade or humiliate a
13 patient physically, verbally or through another form of
14 communication; or

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

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

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

22 (C) Abusing alcohol or drugs;

23 (D) Violating any professional confidence or disclosing any
24 professional secret;

25 (E) Being grossly immoral;

1 (F) Employing what are known as "cappers" or "steerers" to
2 obtain business;

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

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

8 (I) Practicing, or offering, or undertaking to practice
9 dentistry under any firm name or trade name not approved by the
10 board;

11 (J) Having a professional connection or association with, or
12 lending his or her name to another, for the illegal practice of
13 dentistry, or professional connection or association with any
14 person, firm or corporation holding himself or herself, themselves
15 or itself out in any manner contrary to this article;

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

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

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

22 (N) Advertising to guarantee any dental service;

23 (O) Advertising in any manner that is false or misleading in
24 any material respect;

25 (P) Soliciting subscriptions from individuals within or

1 without the state for, or advertising or offering to individuals
2 within or without the state, a course or instruction or course
3 materials in any phase, part or branch of dentistry or dental
4 hygiene in any journal, newspaper, magazine or dental publication,
5 or by means of radio, television or United States mail, or in or by
6 any other means of contacting individuals: *Provided*, That the
7 provisions of this paragraph may not be construed so as to
8 prohibit: (i) An individual dentist or dental hygienist from
9 presenting articles pertaining to procedures or technique to state
10 or national journals or accepted dental publications; or (ii)
11 educational institutions approved by the board from offering
12 courses or instruction or course materials to individual dentists
13 and dental hygienists from within or without the state; or

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

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

18 (c) Disciplinary action includes, but is not limited to, a
19 reprimand, censure, probation, administrative fine not to exceed
20 \$1,000 per day per violation and mandatory attendance at
21 continuing professional education seminars.

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

25 **§30-4-23. Reinstatement.**

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

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

9 **§30-4-28. Dental corporations.**

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

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

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

20 (d) When the Secretary of State receives a certificate of
21 authorization to act as a dental corporation from the board, he or
22 she shall attach the authorization to the corporation application
23 and, upon compliance with the applicable provisions of chapter
24 thirty-one of this code, the Secretary of State shall issue to the
25 incorporators a certificate of incorporation for the dental

1 corporation.

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

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

10 (g) A dental corporation holding a certificate of
11 authorization shall cease to engage in the practice of dentistry
12 upon being notified by the board that any of its shareholders is no
13 longer a duly licensed dentist or when any shares of the
14 corporation have been sold or disposed of to a person who is not a
15 duly licensed dentist: *Provided*, That the personal representative
16 of a deceased shareholder has a period, not to exceed ~~twelve~~
17 twenty-four months from the date of the shareholder's death, to
18 dispose of the shares; but nothing contained herein may be
19 construed as affecting the existence of the corporation or its
20 right to continue to operate for all lawful purposes other than the
21 practice of dentistry.

22 **§30-4-29. Inapplicability of article.**

23 The provisions of this article do not apply to:

24 (1) A duly licensed physician or surgeon in the practice of
25 his or her profession when rendering dental relief in emergency

1 cases, unless he or she undertakes to reproduce or reproduces lost
2 parts of the human teeth or to restore or replace lost or missing
3 teeth in the human mouth;

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

16 (3) Students enrolled in and regularly attending any dental
17 college recognized by the state board of dental examiners, provided
18 their acts are done in the dental college and under the direct and
19 personal supervision of their instructor;

20 (4) Students enrolled in and regularly attending any dental
21 college recognized by the state board of dental examiners may
22 practice dentistry in a public health setting, provided their acts
23 are done under the direct supervision of their instructor or a
24 dentist;

25 ~~(4)~~ (5) Licensed or registered dentists of another state

1 temporarily operating a clinic under the auspices of a duly
2 organized and reputable dental college or reputable dental society,
3 or to one lecturing before a reputable society composed exclusively
4 of dentists; or

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

NOTE: The purpose of this bill is to change the practice of dentistry by adding two ways a dentist may be disciplined; providing the board with the authority to require a licensee have a psychological evaluation in certain situations; increasing the length of time to dispose of shares of a deceased shareholder in a dental corporation; and permitting a dental student to work in a public health setting under certain conditions.

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