

COMMITTEE SUBSTITUTE

FOR

H. B. 2498

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

(Originating in the Committee on the Judiciary)
[February 28, 2011]

A BILL to amend and reenact §3-4-19, §30-4-20, §30-4-23, §30-4-28 and §30-4-29, of the Code of West Virginia, 1931, as amended, all relating to the practice of dentistry; requiring notification of a dentist's death to the dental board by the deceased's personal representative; requiring dentists to notify the board of a life threatening occurrence, serious injury or death to patient as a result of dental treatment or related complications; providing for disciplinary action for failing to report; certain actions of dentists subject to disciplinary action

by board; providing the board with the authority to require a licensee have a psychological evaluation prior to reinstatement of license; increasing personal representative's length of time to dispose of shares of a deceased shareholder in a dental corporation after dentist's death; and permitting a dental student to work in a public health setting under certain conditions.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.
§30-4-19. Dental Office.**

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

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

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

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

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

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

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

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

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

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

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

31 (7) Announcing or otherwise holding himself or herself
32 out to the public as a specialist or as being specially qualified

33 in any particular branch of dentistry or as giving special
34 attention to any branch of dentistry or as limiting his or her
35 practice to any branch of dentistry without first complying
36 with the requirements established by the board for the
37 specialty and having been issued a certificate of qualification
38 in the specialty by the board; or

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

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

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

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

51 (C) Abusing alcohol or drugs;

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

54 (E) Being grossly immoral;

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

58 ~~(F)~~(G) Employing what are known as “cappers” or
59 “steerers” to obtain business;

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

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

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

69 ~~(J)~~(K) Having a professional connection or association
70 with, or lending his or her name to another, for the illegal

71 practice of dentistry, or professional connection or
72 association with any person, firm or corporation holding
73 himself or herself, themselves or itself out in any manner
74 contrary to this article;

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

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

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

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

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

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

90 mail, or in or by any other means of contacting individuals:

91 *Provided*, That the provisions of this paragraph may not be

92 construed so as to prohibit: (i) An individual dentist or dental

93 hygienist from presenting articles pertaining to procedures or

94 technique to state or national journals or accepted dental

95 publications; or (ii) educational institutions approved by the

96 board from offering courses or instruction or course materials

97 to individual dentists and dental hygienists from within or

98 without the state; or

99 ~~(C)~~(R) Engaging in any action or conduct which would

100 have warranted the denial of the license.

101 (b) The term advertising, as used in this section, shall be

102 construed to include any type of public media.

103 (c) Disciplinary action includes, but is not limited to, a

104 reprimand, censure, probation, administrative fine not to

105 exceed \$1,000 per day per violation and mandatory

106 attendance at continuing professional education seminars.

107 ~~(d) This entire section is passed in the interest of the~~

108 ~~public health, safety and welfare and its provisions must be~~

109 ~~liberally construed to carry out its object and purpose.~~

§30-4-23. Reinstatement.

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

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

§30-4-28. Dental corporations.

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

3 ~~(b) On or after July 1, 2001,~~ One or more dentists may
4 organize and become a shareholder or shareholders of a
5 dental corporation domiciled within this state under the terms
6 and 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
10 without 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
13 or she shall attach the authorization to the corporation
14 application and, upon compliance with the applicable
15 provisions of chapter thirty-one of this code, the Secretary of
16 State shall issue to the incorporators a certificate of
17 incorporation for the dental corporation.

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

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

26 (g) A dental corporation holding a certificate of
27 authorization shall cease to engage in the practice of dentistry

28 upon being notified by the board that any of its shareholders
29 is no longer a duly licensed dentist or when any shares of the
30 corporation have been sold or disposed of to a person who is
31 not a duly licensed dentist: *Provided*, That the personal
32 representative of a deceased shareholder has a period, not to
33 exceed ~~twelve~~ twenty-four months from the date of the
34 shareholder's death, to dispose of the shares; but nothing
35 contained herein may be construed as affecting the existence
36 of the corporation or its right to continue to operate for all
37 lawful purposes other than the practice of dentistry.

§30-4-29. Inapplicability of article.

1 The provisions of this article do not apply to:

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

7 (2) A dental laboratory in the performance of dental
8 laboratory services as that term is defined in section one,

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

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

25 (4) Students enrolled in and regularly attending any
26 dental college recognized by the state board of dental
27 examiners may practice dentistry in a public health setting,

28 provided their acts are done under the direct supervision of
29 their instructor, adjunct instructor or a dentist;

30 ~~(4)~~ (5) Licensed or registered dentists of another state
31 temporarily operating a clinic under the auspices of a duly
32 organized and reputable dental college or reputable dental
33 society, or to one lecturing before a reputable society
34 composed exclusively of dentists; or

35 ~~(5)~~ (6) The practice of dentistry by dentists whose
36 practice is confined exclusively to the service of the United
37 States Army, the United States Navy, the United States
38 Public Health Service, the United States Veteran's Bureau or
39 any other authorized United States government agency or
40 bureau.