

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 580**

5 (SENATOR STOLLINGS, *original sponsor*)

6 _____
7 [Passed April 13, 2013; in effect ninety days from passage.]
8 _____
9

10 AN ACT to repeal §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27,
11 §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as
12 amended; to repeal §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d
13 and §30-4A-18 of said code; to repeal §30-4B-5, §30-4B-6,
14 §30-4B-7 and §30-4B-8 of said code; to amend and reenact
15 §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7,
16 §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13,
17 §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19,
18 §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said
19 code; to amend and reenact §30-4A-1, §30-4A-2, §30-4A-3,
20 §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9,
21 §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14,
22 §30-4A-15, §30-4A-16 and §30-4A-17 of said code; and to amend
23 and reenact §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said
24 code, all relating to the practice of dentistry; prohibiting

1 the practice of dentistry without a license; providing other
2 applicable sections; providing definitions; providing for
3 board composition; setting forth the powers and duties of the
4 board; clarifying rule-making authority; continuing a special
5 revenue account; establishing license, certification and
6 permit requirements; continuing a scope of practice; creating
7 temporary permits; establishing renewal requirements;
8 providing for exemptions from licensure; providing
9 requirements for the display of a board authorization;
10 permitting the board to file an injunction; setting forth
11 grounds for disciplinary actions; allowing for specific
12 disciplinary actions; providing procedures for investigation
13 of complaints; providing for judicial review and appeals of
14 decisions; setting forth hearing and notice requirements;
15 providing for civil causes of action; providing criminal
16 penalties; updating the requirements concerning the use of
17 anesthesia; updating the requirements of dental laboratory
18 services and updating references.

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

20 That §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27,
21 §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as
22 amended, be repealed; that §30-4A-6a, §30-4A-6b, §30-4A-6c,
23 §30-4A-6d and §30-4A-18 of said code be repealed; that §30-4B-5,
24 §30-4B-6, §30-4B-7 and §30-4B-8 of said code be repealed; that

1 §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7,
2 §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14,
3 §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20,
4 §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code be amended
5 and reenacted; that §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4,
6 §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10,
7 §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16
8 and §30-4A-17 of said code be amended and reenacted; and that
9 §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code be amended
10 and reenacted; all to read as follows:

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

12 **§30-4-1. Unlawful acts.**

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

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

23 **§30-4-2. Applicable law.**

24 The practices authorized under the provisions of this article

1 and the Board of Dentistry are subject to article one of this
2 chapter, the provisions of this article and any rules promulgated
3 hereunder.

4 **§30-4-3. Definitions.**

5 As used in articles four, four-a and four-b, the following
6 words and terms have the following meanings:

7 (1) "AAOMS" means the American Association of Oral and
8 Maxillofacial Surgeons;

9 (2) "AAPD" means the American Academy of Pediatric Dentistry;

10 (3) "ACLS" means Advanced Cardiac Life Support;

11 (4) "ADA" means the American Dental Association;

12 (5) "AMA" means the American Medical Association;

13 (6) "ASA" means American Society of Anesthesiologists;

14 (7) "Anxiolysis/minimal sedation" means removing, eliminating
15 or decreasing anxiety by the use of a single anxiety or analgesia
16 medication that is administered in an amount consistent with the
17 manufacturer's current recommended dosage for the unsupervised
18 treatment of anxiety, insomnia or pain, in conjunction with nitrous
19 oxide and oxygen. This does not include multiple dosing or
20 exceeding current normal dosage limits set by the manufacturer for
21 unsupervised use by the patient at home for the treatment of
22 anxiety;

23 (8) "Approved dental hygiene program" means a program that is
24 approved by the board and is accredited or its educational

1 standards are deemed by the board to be substantially equivalent to
2 those required by the Commission on Dental Accreditation of the
3 American Dental Association;

4 (9) "Approved dental school, college or dental department of
5 a university" means a dental school, college or dental department
6 of a university that is approved by the board and is accredited or
7 its educational standards are deemed by the board to be
8 substantially equivalent to those required by the Commission on
9 Dental Accreditation of the American Dental Association;

10 (10) "Authorize" means that the dentist is giving permission
11 or approval to dental auxiliary personnel to perform delegated
12 procedures in accordance with the dentist's diagnosis and treatment
13 plan;

14 (11) "BLS" means Basic Life Support;

15 (12) "Board" means the West Virginia Board of Dentistry;

16 (13) "Business entity" means any firm, partnership,
17 association, company, corporation, limited partnership, limited
18 liability company or other entity;

19 (14) "Central Nervous System Anesthesia" means an induced,
20 controlled state of unconsciousness or depressed consciousness
21 produced by a pharmacologic method;

22 (15) "Certificate of qualification" means a certificate
23 authorizing a dentist to practice a specialty;

24 (16) "CPR" means Cardiopulmonary Resuscitation;

1 (17) "Conscious sedation/Moderate sedation" means an induced,
2 controlled state of depressed consciousness, produced through the
3 administration of nitrous oxide and oxygen and/or the
4 administration of other agents whether enteral or parenteral, in
5 which the patient retains the ability to independently and
6 continuously maintain an airway and to respond purposefully to
7 physical stimulation and to verbal command;

8 (18) "CRNA" means Certified Registered Nurse Anesthetist;

9 (19) "Defibrillator" means a device used to sustain asthmatic
10 heartbeat in an emergency and includes an automatic electronic
11 defibrillator (AED);

12 (20) "Delegated procedures" means those procedures specified
13 by law or by rule of the board and performed by dental auxiliary
14 personnel under the supervision of a licensed dentist;

15 (21) "Dentist Anesthesiologist" means a dentist who is trained
16 in the practice of anesthesiology and has completed an additional
17 approved anesthesia education course;

18 (22) "Dental assistant" means a person qualified by education,
19 training or experience who aids or assists a dentist in the
20 delivery of patient care in accordance with delegated procedures as
21 specified by the board by rule or who may perform nonclinical
22 duties in the dental office;

23 (23) "Dental auxiliary personnel" or "auxiliary" means dental
24 hygienists and dental assistants who assist the dentist in the

1 practice of dentistry;

2 (24) "Dental Hygiene" means the performance of educational,
3 preventive or therapeutic dental services and as further provided
4 in section eleven and legislative rule;

5 (25) "Dental hygienist" means a person licensed by the board
6 to practice and who provides dental hygiene and other services as
7 specified by the board by rule to patients in the dental office and
8 in a public health setting;

9 (26) "Dental laboratory" means a business performing dental
10 laboratory services;

11 (27) "Dental laboratory services" means the fabricating,
12 repairing or altering of a dental prosthesis;

13 (28) "Dental laboratory technician" means a person qualified
14 by education, training or experience who has completed a dental
15 laboratory technology education program and who fabricates, repairs
16 or alters a dental prosthesis in accordance with a dentist's work
17 authorization;

18 (29) "Dental office" means the place where the licensed
19 dentist and dental auxiliary personnel are practicing dentistry;

20 (30) "Dental prosthesis" means an artificial appliance
21 fabricated to replace one or more teeth or other oral or peri-oral
22 structure in order to restore or alter function or aesthetics;

23 (31) "Dentist" means an individual licensed by the board to
24 practice dentistry;

1 (32) "Dentistry" means the evaluation, diagnosis, prevention
2 and treatment of diseases, disorders and conditions of the oral
3 cavity, maxillofacial area and the adjacent and associated
4 structures provided by a dentist;

5 (33) "Direct supervision" means supervision of dental
6 auxiliary personnel provided by a licensed dentist who is
7 physically present in the dental office or treatment facility when
8 procedures are being performed;

9 (34) "Facility Permit" means a permit for a facility where
10 sedation procedures are used that correspond with the level of
11 anesthesia provided;

12 (35) "General anesthesia" means an induced, controlled state
13 of unconsciousness in which the patient experiences complete loss
14 of protective reflexes, as evidenced by the inability to
15 independently maintain an airway, the inability to respond
16 purposefully to physical stimulation or the inability to respond
17 purposefully to verbal command.

18 (36) "Deep conscious sedation/general anesthesia" includes
19 partial loss of protective reflexes and the patient retains the
20 ability to independently and continuously maintain an airway;

21 (37) "General supervision" means a dentist is not required to
22 be in the office or treatment facility when procedures are being
23 performed by the auxiliary dental personnel, but has personally
24 diagnosed the condition to be treated, has personally authorized

1 the procedures and will evaluate the treatment provided by the
2 dental auxiliary personnel;

3 (38) "Good moral character" means a lack of history of
4 dishonesty;

5 (39) "Health Care Provider BLS/CPR" means Health Care Provider
6 Basic Life Support/Cardiopulmonary Resuscitation;

7 (40) "License" means a license to practice dentistry or dental
8 hygiene;

9 (41) "Licensee" means a person holding a license;

10 (42) "Mobile Dental Facility" any self-contained facility in
11 which dentistry or dental hygiene will be practiced which may be
12 moved, towed or transported from one location to another;

13 (43) "Portable dental unit" means any nonfacility in which
14 dental equipment, utilized in the practice of dentistry, is
15 transported to and utilized on a temporary basis an out-of-office
16 location, including but not limited to, patients' homes, schools,
17 nursing homes or other institutions;

18 (44) "Other dental practitioner" means those persons excluded
19 from the definition of the practice of dentistry under the
20 provisions of subdivisions (3), (4) and (5), section twenty-four,
21 article four of this chapter and also those persons who hold
22 teaching permits which have been issued to them under the
23 provisions of section fourteen, article four of this chapter;

24 (45) "PALS" means Pediatric Advanced Life Support;

1 (46) "Pediatric patient" means infants and children;

2 (47) "Physician anesthesiologist" means a physician, medical
3 doctor or doctor of osteopathy, who is specialized in the practice
4 of anesthesiology;

5 (48) "Public health practice" means treatment or procedures in
6 a public health setting which shall be designated by a rule
7 promulgated by the board to require direct, general or no
8 supervision of a dental hygienist by a dentist;

9 (49) "Public health setting" means hospitals, schools,
10 correctional facilities, jails, community clinics, long-term care
11 facilities, nursing homes, home health agencies, group homes, state
12 institutions under the West Virginia Department of Health and Human
13 Resources, public health facilities, homebound settings, accredited
14 dental hygiene education programs and any other place designated by
15 the board by rule;

16 (50) "Qualified monitor" means an individual who by virtue of
17 credentialing and/or training is qualified to check closely and
18 document the status of a patient undergoing anesthesia and observe
19 utilized equipment;

20 (51) "Relative analgesia /minimal sedation" means an induced,
21 controlled state of minimally depressed consciousness, produced
22 solely by the inhalation of a combination of nitrous oxide and
23 oxygen or single oral premedication without the addition of nitrous
24 oxide and oxygen in which the patient retains the ability to

1 independently and continuously maintain an airway and to respond
2 purposefully to physical stimulation and to verbal command.

3 (52) "Specialty" means the practice of a certain branch of
4 dentistry;

5 (53) "Subcommittee" means West Virginia Board of Dentistry
6 Subcommittee on Anesthesia; and

7 (54) "Work authorization" means a written order for dental
8 laboratory services which has been issued by a licensed dentist or
9 other dental practitioner.

10 **§30-4-4. Board of Dental Examiners.**

11 (a) The West Virginia Board of Dental Examiners is continued
12 and on July 1, 2013, the board shall be renamed the West Virginia
13 Board of Dentistry. The members of the board in office on the date
14 this section takes effect shall, unless sooner removed, continue to
15 serve until their respective terms expire and until their
16 successors have been appointed and qualified.

17 (b) The Governor, by and with the advice and consent of the
18 Senate, shall appoint:

19 (1) Six licensed dentists;

20 (2) One licensed dental hygienist;

21 (3) One nationally certified dental assistant or currently
22 practicing dental assistant with a minimum of ten years experience;
23 and

24 (4) One citizen member who is not licensed under the

1 provisions of this article and does not perform any services
2 related to the practice of dentistry.

3 (c) The West Virginia Dental Association may submit
4 recommendations to the Governor for the appointment of the licensed
5 dentists board members, the West Virginia Association of Dental
6 Hygienists may submit recommendations to the Governor for the
7 appointment of a Dental Hygienist board member and the West
8 Virginia Dental Assistant Association may submit recommendations to
9 the Governor for the appointment of a dental assistant board
10 member.

11 (d) A person connected with a commercial entity that may
12 derive financial gain from the profession of dentistry and a person
13 employed as full-time faculty with a dental college, school or
14 dental department of a university are not eligible for appointment
15 to the board.

16 (e) After the initial appointment term, the appointment term
17 is five years. A member may not serve more than two consecutive
18 terms. A member who has served two consecutive full terms may not
19 be reappointed for at least one year after completion of his or her
20 second full term. A member may continue to serve until his or her
21 successor has been appointed and qualified.

22 (f) Each licensed member of the board, at the time of his or
23 her appointment, shall have held a license in this state for a
24 period of not less than five years immediately preceding the

1 appointment.

2 (g) Each member of the board shall be a resident of this state
3 during the appointment term.

4 (h) A vacancy on the board shall be filled by appointment by
5 the Governor for the unexpired term of the member whose office is
6 vacant.

7 (i) The Governor may remove any member from the board for
8 neglect of duty, incompetency or official misconduct.

9 (j) A licensed member of the board immediately and
10 automatically forfeits membership to the board if his or her
11 license to practice is suspended or revoked in any jurisdiction.

12 (k) A member of the board immediately and automatically
13 forfeits membership to the board if he or she is convicted of a
14 felony under the laws of any jurisdiction or becomes a nonresident
15 of this state.

16 (l) The board shall elect annually one of its members as
17 president and one member as secretary who shall serve at the will
18 and pleasure of the board.

19 (m) Each member of the board is entitled to receive
20 compensation and expense reimbursement in accordance with article
21 one of this chapter.

22 (n) A simple majority of the membership serving on the board
23 at a given time is a quorum for the transaction of business.

24 (o) The board shall hold at least two meetings annually.

1 Other meetings shall be held at the call of the president or upon
2 the written request of four members, at the time and place as
3 designated in the call or request.

4 (p) Prior to commencing his or her duties as a member of the
5 board, each member shall take and subscribe to the oath required by
6 section five, article four of the Constitution of this state.

7 (q) The members of the board, when acting in good faith and
8 without malice, shall enjoy immunity from individual civil
9 liability while acting within the scope of their duties as board
10 members.

11 **§30-4-5. Powers of the board.**

12 The board has all the powers and duties set forth in this
13 article, by rule, in article one of this chapter and elsewhere in
14 law, including:

15 (1) Hold meetings;

16 (2) Establish procedures for submitting, approving and
17 rejecting applications for a license, certificate and permit;

18 (3) Determine the qualifications of any applicant for a
19 license, certificate and permit;

20 (4) Establish the fees charged under the provisions of this
21 article;

22 (5) Issue, renew, deny, suspend, revoke or reinstate a
23 license, certificate and permit;

24 (6) Prepare, conduct, administer and grade written, oral or

1 written and oral examinations for a license;

2 (7) Contract with third parties to administer the examinations
3 required under the provisions of this article;

4 (8) Maintain records of the examinations the board or a third
5 party administers, including the number of persons taking the
6 examination and the pass and fail rate;

7 (9) Maintain an office and hire, discharge, establish the job
8 requirements and fix the compensation of employees and contract
9 with persons necessary to enforce the provisions of this article.

10 (10) Employ investigators, attorneys, hearing examiners,
11 consultants and other employees as may be necessary who are exempt
12 from the classified service and who serve at the will and pleasure
13 of the board.

14 (11) Investigate alleged violations of the provisions of this
15 article and articles four-a and four-b of this chapter and
16 legislative rules, orders and final decisions of the board;

17 (12) Conduct disciplinary hearings of persons regulated by the
18 board;

19 (13) Determine disciplinary action and issue orders;

20 (14) Institute appropriate legal action for the enforcement of
21 the provisions of this article;

22 (15) Maintain an accurate registry of names and addresses of
23 all persons regulated by the board;

24 (16) Keep accurate and complete records of its proceedings,

1 and certify the same as may be necessary and appropriate;

2 (17) Propose rules in accordance with the provisions of
3 article three, chapter twenty-nine-a of this code to implement the
4 provisions of this article;

5 (18) Sue and be sued in its official name as an agency of this
6 state; and

7 (19) Confer with the Attorney General or his or her assistant
8 in connection with legal matters and questions.

9 **§30-4-6. Rule-making authority.**

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

14 (1) Standards and requirements for licenses, certifications
15 and permits;

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

18 (3) Educational and experience requirements;

19 (4) Continuing education requirements and approval of
20 continuing education courses;

21 (5) Procedures for the issuance and renewal of licenses,
22 certifications and permits;

23 (6) Establish a fee schedule;

24 (7) Regulate dental specialities;

- 1 (8) Delegate procedures to be performed by a dental hygienist;
- 2 (9) Delegate procedures to be performed by a dental assistant;
- 3 (10) Designate the services and procedures performed under
- 4 direct supervision, general supervision in public health practice;
- 5 (11) Designate additional public health settings;
- 6 (12) Regulate the use of firm or trade names;
- 7 (13) Regulate dental corporations;
- 8 (14) Regulate mobile dental facilities;
- 9 (15) Regulate portable dental units;
- 10 (16) Regulate professional limited liability companies;
- 11 (17) Establish professional conduct requirements;
- 12 (18) Establish the procedures for denying, suspending,
- 13 revoking, reinstating or limiting the practice of licensees,
- 14 certifications and permittees;
- 15 (19) Establish requirements for inactive or revoked licenses,
- 16 certifications and permits;
- 17 (20) Regulate dental anesthesia, including:
- 18 (A) Fees;
- 19 (B) Evaluations;
- 20 (C) Equipment;
- 21 (D) Emergency drugs;
- 22 (E) Definitions;
- 23 (F) Qualified monitor requirements; and
- 24 (G) Education;

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

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

5 **§30-4-7. Fees; special revenue account; administrative fines.**

6 (a) All fees and other moneys, except administrative fines,
7 received by the board shall be deposited in a separate special
8 revenue fund in the State Treasury designated the Board of Dentists
9 and Dental Hygienist Special Fund, which is continued and shall be
10 known as the Board of Dentistry Special Fund. The fund is used by
11 the board for the administration of this article. Except as may be
12 provided in article one of this chapter, the board retains the
13 amount in the special revenue account from year to year. No
14 compensation or expense incurred under this article is a charge
15 against the General Revenue Fund.

16 (b) Any amounts received as administrative fines imposed
17 pursuant to this article shall be deposited into the general
18 revenue fund of the State Treasury.

19 **§30-4-8. License to practice dentistry.**

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

22 (1) Is at least eighteen years of age;

23 (2) Is of good moral character;

24 (3) Is a graduate of and has a diploma from a school

1 accredited by the Commission on Dental Accreditation or
2 equivalently approved dental college, school or dental department
3 of a university as determined by the board;

4 (4) Has passed the National Board examination as given by the
5 Joint Commission on National Dental Examinations and a clinical
6 examination as specified by the board by rule;

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

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

10 (7) Not be an alcohol or drug abuser, as these terms are
11 defined in section eleven, article one-a, chapter twenty-seven of
12 this code: *Provided*, That an applicant in an active recovery
13 process, which may, in the discretion of the board, be evidenced by
14 participation in a twelve-step program or other similar group or
15 process, may be considered.

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

21 (c) A license to practice dentistry issued by the board shall
22 for all purposes be considered a license issued under this section:
23 *Provided*, That a person holding a license shall renew the license.

24 **§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
3 of the patient;

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

7 (3) Treat diseases, disorders and conditions of the oral
8 cavity, maxillofacial area and the adjacent and associated
9 structures;

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

13 (5) Fabricate, repair or alter a dental prosthesis;

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

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

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

19 (9) Employ and supervise dental auxiliary personnel;

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

22 (11) Perform any other work included in the curriculum of an
23 approved dental school, college or dental department of a
24 university.

1 **§30-4-10. License to practice dental hygiene.**

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

4 (1) Is at least eighteen years of age;

5 (2) Is of good moral character;

6 (3) Is a graduate with a degree in dental hygiene from an
7 approved dental hygiene program of a college, school or dental
8 department of a university;

9 (4) Has passed the national board dental hygiene examination,
10 a regional or state clinical examination and a state law
11 examination that tests the applicant's knowledge of subjects
12 specified by the board by rule;

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

15 (6) Has paid the application fee specified by rule; and,

16 (7) Not be an alcohol or drug abuser, as these terms are
17 defined in section eleven, article one-a, chapter twenty-seven of
18 this code: *Provided*, That an applicant in an active recovery
19 process, which may, in the discretion of the board, be evidenced by
20 participation in a twelve-step program or other similar group or
21 process, may be considered.

22 (b) A dental hygienist license issued by the board and in good
23 standing on the effective date of the amendments to this section
24 shall for all purposes be considered a dental hygienist license

1 issued under this section: *Provided*, That a person holding a dental
2 hygienist license shall renew the license.

3 **§30-4-11. Scope of practice for a dental hygienist.**

4 The practice of dental hygiene includes the following:

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

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

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

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

12 (5) Place sealants on a patient's teeth without a prior
13 examination by a licensed dentist: *Provided*, That for this
14 subdivision, the dental hygienist has a public health practice
15 permit issued by the board, and subject to a collaborative
16 agreement with a supervising dentist and the patient is referred
17 for a dental examination within six months of sealant application;

18 (6) Perform all delegated procedures of a dental hygienist
19 specified by rule by the board; and

20 (7) Performing all delegated procedures of a dental assistant
21 specified by rule by the board.

22 **§30-4-12. License renewal.**

23 (a) All persons regulated by this article shall annually or
24 biannually, renew his or her board authorization by completing a

1 form prescribed by the board and submitting any other information
2 required by the board.

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

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

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

11 **§30-4-13. Board authorizations shall be displayed.**

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

14 (b) Any person regulated by the article shall conspicuously
15 display his or her board authorization at his or her principal
16 business location.

17 **§30-4-14. Dental intern, resident, or teaching permit.**

18 (a) The board may issue a dental intern or dental resident
19 permit to an applicant who has been accepted as a dental intern or
20 dental resident by a licensed hospital or dental school in this
21 state which maintains an established dental department under the
22 supervision of a licensed dentist and meets the following
23 qualifications:

24 (1) Has graduated from a Commission on Dental Accreditation or

1 equivalent approved dental college, school or dental department of
2 a university with a degree in dentistry;

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

4 (3) Meets the other qualifications specified by rule.

5 (b) The dental intern or dental resident permit may be renewed
6 and expires on the earlier of:

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

9 (2) One year after the date of issue.

10 (c) The board may issue a teaching permit to an applicant who
11 is not otherwise licensed to practice dentistry in this state and
12 who meets the following conditions:

13 (1) Is authorized or is eligible, as determined by the board,
14 for a authorization to practice dentistry in another jurisdiction;

15 (2) Has met or been approved under the credentialing standards
16 of a dental school or an academic medical center with which the
17 person is to be affiliated: *Provided*, That the dental school or
18 academic medical center is accredited by the Commission on Dental
19 Accreditation or Joint Commission on Accreditation of Health Care
20 Organizations;

21 (3) The permittee may teach and practice dentistry in or on
22 behalf of a dental school or college offering a doctoral degree in
23 dentistry operated and conducted in this state, in connection with
24 an academic medical center or at any teaching hospital adjacent to

1 a dental school or an academic medical center;

2 (4) Shall successfully complete the West Virginia Dental Law
3 Examination;

4 (5) Shall pay annual renewal fees to the board;

5 (6) Shall comply with continuing education requirements; and

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

8 (d) A teaching permit may be renewed annually with a written
9 recommendation from the dental school dean.

10 (e) While in effect, a permittee is subject to the
11 restrictions and requirements imposed by this article to the same
12 extent as a licensee. In addition, a permittee may not receive any
13 fee for service other than a salary paid by the hospital or dental
14 school

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

17 (a) There is continued a special volunteer dentist and dental
18 hygienist license for dentist and dental hygienists retired or
19 retiring from the active practice of dentistry and dental hygiene
20 who wish to donate their expertise for the care and treatment of
21 indigent and needy patients in the clinic setting of clinics
22 organized, in whole or in part, for the delivery of health care
23 services without charge. The special volunteer dentist or dental
24 hygienist license shall be issued by the board to dentist or dental

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

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

13 (2) The dentist or dental hygienist will not receive any
14 payment or compensation, either direct or indirect, or have the
15 expectation of any payment or compensation, for any dentistry or
16 dental hygiene services rendered under the special volunteer
17 dentist or dental hygienist license;

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

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

23 (b) Any dentist or dental hygienist who renders any dentistry
24 or dental hygiene service to indigent and needy patients of a

1 clinic organized, in whole or in part, for the delivery of health
2 care services without charge under a special volunteer dentist or
3 dental hygienist license authorized under subsection (a) of this
4 section without payment or compensation or the expectation or
5 promise of payment or compensation is immune from liability for any
6 civil action arising out of any act or omission resulting from the
7 rendering of the dental hygiene service at the clinic unless the
8 act or omission was the result of the dentist's or dental
9 hygienist's gross negligence or willful misconduct. In order for
10 the immunity under this subsection to apply, there shall be a
11 written agreement between the dentist or dental hygienist and the
12 clinic pursuant to which the dentist or dental hygienist will
13 provide voluntary uncompensated dental hygiene services under the
14 control of the clinic to patients of the clinic before the
15 rendering of any services by the dentist or dental hygienist at the
16 clinic: *Provided*, That any clinic entering into such written
17 agreement is required to maintain liability coverage of not less
18 than one million dollars per occurrence.

19 (c) Notwithstanding the provisions of subsection (b) of this
20 section, a clinic organized, in whole or in part, for the delivery
21 of health care services without charge is not relieved from imputed
22 liability for the negligent acts of a dentist or dental hygienist
23 rendering voluntary dental hygiene services at or for the clinic
24 under a special volunteer dentist or dental hygienist license

1 authorized under subsection (a) of this section.

2 (d) For purposes of this section, "otherwise eligible for
3 licensure" means the satisfaction of all the requirements for
4 licensure as listed in section eight of this article and in the
5 legislative rules promulgated thereunder, except the fee
6 requirements of subdivision (6) of said section and of the
7 legislative rules promulgated by the board relating to fees.

8 (e) Nothing in this section may be construed as requiring the
9 board to issue a special volunteer dentist or dental hygienist
10 license to any dental hygienist whose license is or has been
11 subject to any disciplinary action or to any dentist or dental
12 hygienist who has surrendered a license or caused such license to
13 lapse, expire and become invalid in lieu of having a complaint
14 initiated or other action taken against his or her dentist or
15 dental hygienist license, or who has elected to place a dentist or
16 dental hygienist license in inactive status in lieu of having a
17 complaint initiated or other action taken against his or her
18 license, or who has been denied a dentist or dental hygienist
19 license.

20 (f) Any policy or contract of liability insurance providing
21 coverage for liability sold, issued or delivered in this state to
22 any dentist or dental hygienist covered under the provisions of
23 this article shall be read so as to contain a provision or
24 endorsement whereby the company issuing such policy waives or

1 agrees not to assert as a defense on behalf of the policyholder or
2 any beneficiary thereof, to any claim covered by the terms of such
3 policy within the policy limits, the immunity from liability of the
4 insured by reason of the care and treatment of needy and indigent
5 patients by a dentist or dental hygienist who holds a special
6 volunteer dentist or dental hygienist license.

7 **§30-4-16. Dental corporations.**

8 (a) Dental corporations are continued.

9 (b) One or more dentists may organize and become a shareholder
10 or shareholders of a dental corporation domiciled within this state
11 under the terms and conditions and subject to the limitations and
12 restrictions specified by rule.

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

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

23 (e) A corporation holding a certificate of authorization shall
24 renew annually, on or before June 30, on a form prescribed by the

1 board and pay an annual fee in an amount specified by rule.

2 (f) A dental corporation may practice dentistry only through
3 an individual dentist or dentists licensed to practice dentistry in
4 this state, but the dentist or dentists may be employees rather
5 than shareholders of the corporation.

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

17 **§30-4-17. Reinstatement.**

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

23 (b) A licensee who does not complete annual renewal, as
24 specified by the board by rule, and whose license has lapsed for

1 one year or longer, shall make application for reinstatement as
2 specified by the board by rule.

3 (c) The board, at its discretion and for cause, may require an
4 applicant for reinstatement to undergo a physical and/or mental
5 evaluation to determine a licensee is competent to practice or if
6 the licensee is impaired by drugs or alcohol.

7 **§30-4-18. Actions to enjoin violations.**

8 (a) If the board obtains information that any person has
9 engaged in, is engaging in or is about to engage in any act which
10 constitutes or will constitute a violation of the provisions of
11 this article, the rules promulgated pursuant to this article or a
12 final order or decision of the board, it may issue a notice to the
13 person to cease and desist in engaging in the act and/or apply to
14 the circuit court in the county of the alleged violation for an
15 order enjoining the act.

16 (b) The circuit court may issue a temporary injunction pending
17 a decision on the merits and may issue a permanent injunction based
18 on its findings in the case.

19 (c) The judgment of the circuit court on an application
20 permitted by the provisions of this section is final unless
21 reversed, vacated or modified on appeal to the West Virginia
22 Supreme Court of Appeals.

23 **§30-4-19. Complaints; investigations; due process procedure;**
24 **grounds for disciplinary action.**

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

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

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

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

23 (e) A member of the complaint committee or the executive
24 director of the board may issue subpoenas and subpoenas duces tecum

1 to obtain testimony and documents to aid in the investigation of
2 allegations against any person regulated by the article.

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

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

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

12 (2) Being convicted of a felony or a misdemeanor crime of
13 moral turpitude;

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

16 (4) Intentional violation of a lawful order or legislative
17 rule of the board;

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

22 (6) Aiding or abetting unlicensed practice;

23 (7) Engaging in an act while acting in a professional capacity
24 which has endangered or is likely to endanger the health, welfare

1 or safety of the public;

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

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

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

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

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

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

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

23 (C) Abusing alcohol or drugs;

24 (D) Violating any professional confidence or disclosing any

1 professional secret;

2 (E) Being grossly immoral;

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

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

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

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

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

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

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

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

1 (N) Advertising to guarantee any dental service;

2 (O) Advertising in any manner that is false or misleading in
3 any material respect;

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

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

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

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

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

1 (14) Using or disclosing protected health information in an
2 unauthorized or unlawful manner;

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

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

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

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

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

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

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

3 (1) Reprimand;

4 (2) Probation;

5 (3) Restrictions;

6 (4) Suspension;

7 (5) Revocation;

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

10 (7) Mandatory attendance at continuing education seminars or
11 other training;

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

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

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

17 (j) A person authorized to practice under this article who
18 reports or otherwise provides evidence of the negligence,
19 impairment or incompetence of another member of this profession to
20 the board or to any peer review organization is not liable to any
21 person for making the report if the report is made without actual
22 malice and in the reasonable belief that the report is warranted by
23 the facts known to him or her at the time.

24 **§30-4-20. Procedures for hearing; right of appeal.**

1 (a) Hearings are governed by the provisions of section eight,
2 article one of this chapter.

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

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

11 (d) Any member or the executive director of the board has the
12 authority to administer oaths, examine any person under oath.

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

18 **§30-4-21. Judicial review.**

19 A person adversely affected by a decision of the board denying
20 an application or entered after a hearing may obtain judicial
21 review of the decision in accordance with section four, article
22 five, chapter twenty-nine-a of this code and may appeal any ruling
23 resulting from judicial review in accordance with article six of
24 said chapter.

1 **§30-4-22. Criminal offenses.**

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

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

14 (1) Expired, suspended or lapsed; or

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

18 **§30-4-23. Single act evidence of practice.**

19 In any action brought under this article, article four-a or
20 article four-b any proceeding initiated under this article,
21 evidence of the commission of a single act prohibited by this
22 article is sufficient to justify a penalty, injunction, restraining
23 order or conviction without evidence of a general course of
24 conduct.

1 **§30-4-24. Inapplicability of article.**

2 The provisions of this article do not apply to:

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

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

19 (3) A student enrolled in and regularly attending any dental
20 college recognized by the board, provided their acts are done in
21 the dental college and under the direct and personal supervision of
22 their instructor;

23 (4) A student enrolled in and regularly attending any dental
24 college, recognized by the board, practicing dentistry in a public

1 health setting, provided their acts are done under the direct
2 supervision of their instructor, adjunct instructor or a dentist;

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

7 (6) A dentists whose practice is confined exclusively to the
8 service of the United States Army, the United States Navy, the
9 United States Air Force, The United States Coast Guard, the United
10 States Public Health Service, the United States Veteran's Bureau or
11 any other authorized United States government agency or bureau.

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

13 **§30-4A-1. Requirement for anesthesia permit; qualifications and**
14 **requirements for qualified monitors.**

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

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

21 (c) Permits shall be issued to coincide with the annual
22 renewal dates for licensure.

23 (d) Permit holders shall report the names and qualifications
24 of each qualified monitor providing services to that permit holder.

1 A qualified monitor may not perform the functions and
2 responsibilities specified in this article for any level of
3 anesthesia, other than relative analgesia/minimal sedation, without
4 certification by the board. Qualified monitors shall apply for
5 certification and pay the appropriate application fees and renewal
6 fees. Qualified monitors are required to renew annually by the
7 30th day of June. To be certified as a qualified monitor, the
8 applicant must meet the following minimum qualifications:

9 (1) Possess a current health care provider BLS/CPR
10 certification;

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

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

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

21 **§30-4A-2. Presumption of Degree of Central Nervous System**
22 **Depression.**

23 (a) In any hearing where a question exists as to the level of
24 central nervous system depression a licensee has induced, as

1 outlined in this article, the board may base its findings on, among
2 other things, the types, dosages and routes of administration of
3 drugs administered to the patient and what result can reasonably be
4 expected from those drugs in those dosages and routes administered
5 in a patient of that physical and psychological status.

6 (b) No permit holder may have more than one person under
7 conscious sedation/moderate sedation and/or general anesthesia/deep
8 conscious sedation at the same time, exclusive of recovery.

9 **§30-4A-3. Classes of anesthesia permits.**

10 (a) The board shall issue the following permits:

11 (1) Class 2 Permit: A Class 2 Permit authorizes a dentist to
12 induce anxiolysis/minimal sedation.

13 (2) Class 3 Permit: A Class 3 Permit authorizes a dentist to
14 induce conscious sedation/moderate sedation as limited enteral (3a)
15 and/or comprehensive parenteral (3b) and anxiolysis/minimal
16 sedation.

17 (3) Class 4 Permit: A Class 4 Permit authorizes a dentist to
18 induce general anesthesia/deep conscious sedation, conscious
19 sedation/moderate sedation and anxiolysis/minimal sedation.

20 (b) When anesthesia services are provided in dental facilities
21 by a medical doctor or doctor of osteopathy physician
22 anesthesiologist or dentist anesthesiologist, the dental facility
23 shall be inspected and approved for a Class 4 permit and the
24 dentist shall have a minimum of a Class 2 permit. If anesthesia

1 services are provided by a CRNA, the dental facility shall be
2 inspected and approved for a Class 4 permit and the supervising
3 dentist shall have the same level of permit for the level of
4 anesthesia provided by the CRNA.

5 **§30-4A-4. Qualifications, standards and continuing education**
6 **requirements for relative analgesia/minimal sedation use.**

7 (a) The board shall allow administration of relative
8 analgesia/minimal sedation if the practitioner:

9 (1) Is a licensed dentist in the state;

10 (2) Holds valid and current documentation showing successful
11 completion of a Health Care Provider BLS/CPR course; and

12 (3) Has completed a training course of instruction in dental
13 school, continuing education or as a postgraduate in the
14 administration of relative analgesia/minimal sedation.

15 (b) A practitioner who administers relative analgesia/minimal
16 sedation shall have the following facilities, equipment and drugs
17 available during the procedure and during recovery:

18 (1) An operating room large enough to adequately accommodate
19 the patient on an operating table or in an operating chair and to
20 allow delivery of age appropriate care in an emergency situation;

21 (2) An operating table or chair which permits the patient to
22 be positioned so that the patient's airway can be maintained,
23 quickly alter the patient's position in an emergency and provide a
24 firm platform for the administration of basic life support;

1 (3) A lighting system which permits evaluation of the
2 patient's skin and mucosa color and a backup lighting system of
3 sufficient intensity to permit completion of any operation underway
4 in the event of a general power failure;

5 (4) Suction equipment which permits aspiration of the oral and
6 pharyngeal cavities;

7 (5) An oxygen delivery system with adequate age appropriate
8 full face masks and appropriate connectors that is capable of
9 delivering high flow oxygen to the patient under positive pressure,
10 together with an adequate backup system;

11 (6) A nitrous oxide delivery system with a fail-safe mechanism
12 that will ensure appropriate continuous oxygen delivery and a
13 scavenger system; and

14 (7) A defibrillator device: *Provided*, That this requirement is
15 only for Class 2, 3 and 4 permittees.

16 (c) All equipment used shall be appropriate for the height and
17 weight and age of the patient.

18 (d) Before inducing relative analgesia/minimal sedation by
19 means of nitrous oxide or a single premedication agent, a
20 practitioner shall:

21 (1) Evaluate the patient;

22 (2) Give instruction to the patient or, when appropriate due
23 to age or psychological status of the patient, the patient's
24 guardian; and

1 (3) Certify that the patient is an appropriate candidate for
2 relative analgesia/minimal sedation.

3 (e) A practitioner who administers relative analgesia/minimal
4 sedation shall see that the patient's condition is visually
5 monitored. At all times, the patient shall be observed by a
6 qualified monitor until discharge criteria have been met.

7 (f) A qualified monitor's record shall include documentation
8 of all medications administered with dosages, time intervals and
9 route of administration including local anesthesia.

10 (g) A discharge entry shall be made in the patient's record
11 indicating the patient's condition upon discharge.

12 (h) A qualified monitor shall hold valid and current
13 documentation:

14 (1) Showing successful completion of a Health Care Provider
15 BLS/CPR course; and

16 (2) Have received training and be competent in the recognition
17 and treatment of medical emergencies, monitoring vital signs, the
18 operation of nitrous oxide delivery systems and the use of the
19 sphygmomanometer and stethoscope.

20 (i) The practitioner shall assess the patient's responsiveness
21 using preoperative values as normal guidelines and discharge the
22 patient only when the following criteria are met:

23 (1) The patient is alert and oriented to person, place and
24 time as appropriate to age and preoperative neurological status;

1 (2) The patient can talk and respond coherently to verbal
2 questioning or to preoperative neurological status;

3 (3) The patient can sit up unaided or without assistance or to
4 preoperative neurological status;

5 (4) The patient can ambulate with minimal assistance or to
6 preoperative neurological status; and

7 (5) The patient does not have uncontrollable nausea, vomiting
8 or dizziness.

9 **§30-4A-5. Qualifications, standards, and continuing education**
10 **requirements for a Class 2 Permit.**

11 (a) The board shall issue a Class 2 Permit to an applicant
12 who:

13 (1) Is a licensed dentist in West Virginia;

14 (2) Holds valid and current documentation showing successful
15 completion of a Health Care Provider BLS/CPR; and

16 (3) Has completed a board approved course of at least six
17 hours didactic and clinical of either predoctoral dental school or
18 postgraduate instruction.

19 (b) A dentist who induces relative analgesia/minimal sedation
20 and anxiolysis/minimal sedation shall have the following
21 facilities, properly maintained equipment and appropriate drugs
22 available during the procedures and during recovery:

23 (1) An operating room large enough to adequately accommodate
24 the patient on an operating table or in an operating chair and to

1 allow an operating team of at least two individuals to freely move
2 about the patient;

3 (2) An operating table or chair which permits the patient to
4 be positioned so the operating team can maintain the patient's
5 airway, quickly alter the patient's position in an emergency and
6 provide a firm platform for the administration of basic life
7 support;

8 (3) A lighting system which permits evaluation of the
9 patient's skin and mucosal color and a backup lighting system of
10 sufficient intensity to permit completion of any operation underway
11 in the event of a general power failure;

12 (4) Suction equipment which permits aspiration of the oral and
13 pharyngeal cavities;

14 (5) An oxygen delivery system with adequate age appropriate
15 full face mask and appropriate connectors that is capable of
16 delivering high flow oxygen to the patient under positive pressure,
17 together with an adequate backup system;

18 (6) A nitrous oxide delivery system with a fail-safe mechanism
19 that will ensure appropriate continuous oxygen delivery and a
20 scavenger system;

21 (7) A recovery area that has available oxygen, adequate
22 lighting, suction and electrical outlets. The recovery area can be
23 the operating room;

24 (8) Sphygmomanometer, stethoscope and pulse oximeter;

1 (9) Emergency drugs as specified by rule;

2 (10) A defibrillator device; and

3 (11) All equipment and medication dosages shall be in
4 accordance with the height and weight and age of the patient being
5 treated.

6 (c) Before inducing anxiolysis/minimal sedation, a dentist
7 shall:

8 (1) Evaluate the patient by using the ASA Patient Physical
9 Status Classification of the ASA that the patient is an appropriate
10 candidate for anxiolysis/minimal sedation; and

11 (2) Obtain written informed consent from the patient or
12 patient's guardian for the anesthesia. The obtaining of the
13 informed consent shall be documented in the patient's record.

14 (d) The dentist shall monitor and record the patient's
15 condition or shall use a qualified monitor to monitor and record
16 the patient's condition. The documented requirements of a
17 qualified monitor monitoring anxiolysis/minimal sedation cases are
18 as specified by rule. A Class 2 Permit holder may have no more
19 than one person under anxiolysis/minimal sedation at the same time.

20 (e) The patient shall be monitored as follows:

21 (1) Patients shall have continuous monitoring using pulse
22 oximetry. The patient's blood pressure, heart rate and respiration
23 shall be recorded at least once before, during and after the
24 procedure and these recordings shall be documented in the patient

1 record. At all times, the patient shall be observed by a qualified
2 monitor until discharge criteria have been met. If the dentist is
3 unable to obtain this information, the reasons shall be documented
4 in the patient's record. The record shall also include
5 documentation of all medications administered with dosages, time
6 intervals and route of administration including local anesthesia.

7 (2) A discharge entry shall be made by the dentist in the
8 patient's record indicating the patient's condition upon discharge.

9 (f) A permit holder who uses anxiolysis/minimal sedation shall
10 see that the patient's condition is visually monitored. The
11 patient shall be monitored as to response to verbal stimulation,
12 oral mucosal color and preoperative and postoperative vital signs.

13 (g) The dentist shall assess the patient's responsiveness
14 using preoperative values as normal guidelines and discharge the
15 patient only when the following criteria are met:

16 (1) Vital signs including blood pressure, pulse rate and
17 respiratory rate are stable;

18 (2) The patient is alert and oriented to person, place and
19 time as appropriate to age and preoperative neurological status;

20 (3) The patient can talk and respond coherently to verbal
21 questioning or to preoperative neurological status;

22 (4) The patient can sit up unaided or to preoperative
23 neurological status;

24 (5) The patient can ambulate with minimal assistance or to

1 preoperative neurological status; and

2 (6) The patient does not have uncontrollable nausea or
3 vomiting and has minimal dizziness.

4 (h) A dentist may not release a patient who has undergone
5 anxiolysis/minimal sedation except to the care of a responsible
6 adult third party.

7 **§30-4A-6. Qualifications, standards, and continuing education**
8 **requirements for Class 3 Anesthesia Permit.**

9 (a) The board shall issue or renew a Class 3 Permit to an
10 applicant who:

11 (1) Is a licensed dentist in West Virginia;

12 (2) Holds valid and current documentation showing successful
13 completion of a Health Care Provider BLS/CPR course, ACLS and/or a
14 PALS course if treating pediatric patients; and

15 (3) Satisfies one of the following criteria:

16 (A) Certificate of completion of a comprehensive training
17 program in conscious sedation that satisfies the requirements
18 described in the ADA Guidelines for Teaching Pain Control and
19 Sedation to Dentists and Dental Students and the ADA Guidelines for
20 the Use of Sedation and General Anesthesia by Dentists at the time
21 training was commenced.

22 (B) Certificate of completion of an ADA-accredited
23 postdoctoral training program which affords comprehensive and
24 appropriate training necessary to administer and manage conscious

1 sedation commensurate with these guidelines.

2 (C) In lieu of these requirements, the board may accept
3 documented evidence of equivalent training or experience in
4 conscious sedation anesthesia for Limited Enteral Permit as Class
5 3a or comprehensive Parenteral Permit as Class 3b as specified by
6 rule.

7 (b) A dentist who induces conscious sedation shall have the
8 following facilities, properly maintained age appropriate equipment
9 and age appropriate medications available during the procedures and
10 during recovery:

11 (1) An operating room large enough to adequately accommodate
12 the patient on an operating table or in an operating chair and to
13 allow an operating team of at least two individuals to freely move
14 about the patient;

15 (2) An operating table or chair which permits the patient to
16 be positioned so the operating team can maintain the patient's
17 airway, quickly alter the patient's position in an emergency, and
18 provide a firm platform for the administration of basic life
19 support;

20 (3) A lighting system which permits evaluation of the
21 patient's skin and mucosal color and a backup lighting system of
22 sufficient intensity to permit completion of any operation underway
23 in the event of a general power failure;

24 (4) Suction equipment which permits aspiration of the oral and

1 pharyngeal cavities and a backup suction device which will function
2 in the event of a general power failure;

3 (5) An oxygen delivery system with adequate age appropriate
4 full face mask and appropriate connectors that is capable of
5 delivering high flow oxygen to the patient under positive pressure,
6 together with an adequate backup system;

7 (6) A nitrous oxide delivery system with a fail-safe mechanism
8 that will ensure appropriate continuous oxygen delivery and a
9 scavenger system;

10 (7) A recovery area that has available oxygen, adequate
11 lighting, suction and electrical outlets. The recovery area can be
12 the operating room;

13 (8) Sphygmomanometer, pulse oximeter, oral and nasopharyngeal
14 airways, intravenous fluid administration equipment and/or
15 equipment required for the standard of care or as specified by
16 rule;

17 (9) Emergency drugs as specified by rule; and

18 (10) A defibrillator device.

19 (c) Before inducing conscious sedation, a dentist shall:

20 (1) Evaluate the patient and document, using the ASA Patient
21 Physical Status Classifications, that the patient is an appropriate
22 candidate for conscious sedation;

23 (2) Give written preoperative and postoperative instructions
24 to the patient or, when appropriate due to age or neurological

1 status of the patient, the patient's guardian; and

2 (3) Obtain written informed consent from the patient or
3 patient's guardian for the anesthesia.

4 (d) The dentist shall ensure that the patient's condition is
5 monitored and recorded on a contemporaneous record. The dentist
6 shall use a qualified monitor to monitor and record the patient's
7 condition in addition to the chair side dental assistant. A
8 qualified monitor shall be present to monitor the patient at all
9 times.

10 (e) The patient shall be monitored as follows:

11 (1) Patients shall have continuous monitoring using pulse
12 oximetry and/or equipment required for the standard of care or as
13 specified by rule by a qualified monitor until discharge criteria
14 have been met. The documented requirements of a qualified monitor
15 monitoring limited enteral or comprehensive parenteral sedations
16 cases are as specified by rule. The patient's blood pressure,
17 heart rate and respiration shall be recorded every five minutes and
18 these recordings shall be documented in the patient record. The
19 record shall also include documentation of preoperative and
20 postoperative vital signs, all medications administered with
21 dosages, time intervals and route of administration including local
22 anesthesia. If the dentist is unable to obtain this information,
23 the reasons shall be documented in the patient's record.

24 (2) During the recovery phase, the patient shall be monitored

1 by a qualified monitor.

2 (3) A discharge entry shall be made by the dentist in the
3 patient's record indicating the patient's condition upon discharge
4 and the name of the responsible party to whom the patient was
5 discharged.

6 (f) A dentist may not release a patient who has undergone
7 conscious sedation/moderate sedation except to the care of a
8 responsible adult third party.

9 (g) When discharging a pediatric patient the dentist shall
10 follow the current edition of AAPD Guidelines for Monitoring and
11 Management of Pediatric Patients During and After Sedation for
12 Diagnostic and Therapeutic Procedures.

13 (h) The dentist shall assess the patient's responsiveness
14 using preoperative values as normal guidelines and discharge the
15 patient only when the following criteria are met:

16 (1) Vital signs including blood pressure, pulse rate and
17 respiratory rate are stable;

18 (2) The patient is alert and oriented to person, place and
19 time as appropriate to age and preoperative neurological status;

20 (3) The patient can talk and respond coherently to verbal
21 questioning or to preoperative neurological status;

22 (4) The patient can sit up unaided or to preoperative
23 neurological status;

24 (5) The patient can ambulate with minimal assistance or to

1 preoperative neurological status; and

2 (6) The patient does not have uncontrollable nausea or
3 vomiting and has minimal dizziness.

4 (i) A dentist who induces conscious sedation shall employ the
5 services of a qualified monitor and a chair side dental assistant
6 at all times who each shall hold a valid BLS/CPR certification and
7 maintains certification as specified by rule.

8 **§30-4A-7. Qualifications, standards, and continuing education**
9 **requirements for Class 4 Anesthesia Permit.**

10 (a) A Class 4 Permit permits the use of general
11 anesthesia/deep conscious sedation, conscious sedation/moderate
12 sedation and anxiolysis/minimal sedation.

13 (b) The board shall issue or renew a Class 4 Permit to an
14 applicant who:

15 (1) Is a licensed dentist in West Virginia;

16 (2) Holds a valid and current documentation showing successful
17 completion of a Healthcare Provider BLS/CPR course, Advanced
18 Cardiac Life Support (ACLS) and/or Pediatric Advanced Life Support
19 (PALS) course if treating pediatric patients;

20 (3) Satisfies one of the following criteria:

21 (A) Completion of an advanced training program in anesthesia
22 and related subjects beyond the undergraduate dental curriculum
23 that satisfies the requirements described in the ADA Guidelines for
24 Teaching Pain Control and Sedation to Dentists and Dental Students

1 and the ADA Guidelines for the Use of Sedation and General
2 Anesthesia by Dentists at the time training was commenced;

3 (B) Completion of an ADA- or AMA-accredited postdoctoral
4 training program which affords comprehensive and appropriate
5 training necessary to administer and manage general anesthesia,
6 commensurate with these guidelines;

7 (C) In lieu of these requirements, the board may accept
8 documented evidence of equivalent training or experience in general
9 anesthesia/deep conscious sedation.

10 (c) A dentist who induces general anesthesia/deep conscious
11 sedation shall have the following facilities, properly maintained
12 age appropriate equipment and age appropriate drugs available
13 during the procedure and during recovery:

14 (1) An operating room large enough to adequately accommodate
15 the patient on an operating table or in an operating chair and to
16 allow an operating team of at least three individuals to freely
17 move about the patient;

18 (2) An operating table or chair which permits the patient to
19 be positioned so the operating team can maintain the patient's
20 airway, quickly alter the patient's position in an emergency and
21 provide a firm platform for the administration of basic life
22 support;

23 (3) A lighting system which permits evaluation of the
24 patient's skin and mucosal color and a backup lighting system of

1 sufficient intensity to permit completion of any operation underway
2 in the event of a general power failure;

3 (4) Suction equipment which permits aspiration of the oral and
4 pharyngeal cavities and a backup suction device which will function
5 in the event of a general power failure;

6 (5) An oxygen delivery system with adequate age appropriate
7 full face mask and appropriate connectors that is capable of
8 delivering high flow oxygen to the patient under positive pressure,
9 together with an adequate backup system;

10 (6) A nitrous oxide delivery system with a fail-safe mechanism
11 that will insure appropriate continuous oxygen delivery and a
12 scavenger system;

13 (7) A recovery area that has available oxygen, adequate
14 lighting, suction and electrical outlets. The recovery area can be
15 the operating room;

16 (8) Equipment as specified by rule;

17 (9) Emergency drugs as specified by rule

18 (10) A defibrillator device.

19 (d) Before inducing general anesthesia/deep conscious sedation
20 the dentist shall:

21 (1) Evaluate the patient and document, using the ASA Patient
22 Physical Status Classifications, that the patient is an appropriate
23 candidate for general anesthesia or deep conscious sedation;

24 (2) Shall give written preoperative and postoperative

1 instructions to the patient or, when appropriate due to age or
2 neurological status of the patient, the patient's guardian; and

3 (3) Shall obtain written informed consent from the patient or
4 patient's guardian for the anesthesia.

5 (e) A dentist who induces general anesthesia/deep conscious
6 sedation shall ensure that the patient's condition is monitored and
7 recorded on a contemporaneous record. The dentist shall use a
8 qualified monitor to monitor and record the patient's condition on
9 a contemporaneous record and a chair side dental assistant. The
10 documented requirements of a qualified monitor monitoring general
11 anesthesia/deep conscious sedation cases are as specified by rule.
12 No permit holder may have more than one patient under general
13 anesthesia at the same time.

14 (f) The patient shall be monitored as follows:

15 (1) Patients shall have continuous monitoring using pulse
16 oximetry and/or equipment required for the standard of care or as
17 specified by rule by a qualified monitor until discharge criteria
18 have been met. The patient's blood pressure, heart rate and oxygen
19 saturation shall be assessed every five minutes and shall be
20 contemporaneously documented in the patient record. The record
21 shall also include documentation of preoperative and postoperative
22 vital signs, all medications administered with dosages, time
23 intervals and route of administration including local anesthesia.
24 The person administering the anesthesia may not leave the patient

1 while the patient is under general anesthesia;

2 (2) During the recovery phase, the patient shall be monitored,
3 including the use of pulse oximetry, by a qualified monitor; and

4 (3) A dentist may not release a patient who has undergone
5 general anesthesia/deep conscious sedation except to the care of a
6 responsible adult third party.

7 (4) When discharging a pediatric patient the dentist shall
8 follow the current edition of AAPD Guidelines for the Monitoring
9 and Management of Pediatric Patients During and After Sedation for
10 Diagnostic and Therapeutic Procedures.

11 (g) The dentist shall assess the patient's responsiveness
12 using preoperative values as normal guidelines and discharge the
13 patient only when the following criteria are met:

14 (1) Vital signs including blood pressure, pulse rate and
15 respiratory rate are stable;

16 (2) The patient is alert and oriented to person, place and
17 time as appropriate to age and preoperative neurological status;

18 (3) The patient can talk and respond coherently to verbal
19 questioning or to preoperative neurological status;

20 (4) The patient can sit up unaided or to preoperative
21 neurological status;

22 (5) The patient can ambulate with minimal assistance or to
23 preoperative neurological status; and

24 (6) The patient does not have uncontrollable nausea or

1 vomiting and has minimal dizziness.

2 (7) A discharge entry shall be made in the patient's record by
3 the dentist indicating the patient's condition upon discharge and
4 the name of the responsible party to whom the patient was
5 discharged.

6 (h) A dentist who induces general anesthesia shall employ the
7 services of a qualified monitor and a chair side dental assistant
8 at all times, who each shall hold a valid BLS/CPR certification and
9 maintains certification as specified by rule.

10 **§30-4A-8. Board to review, inspect and reinspect dentists for**
11 **issuance of permits.**

12 (a) By making application to the board for an anesthesia
13 permit, a dentist consents and authorizes the board to review his
14 or her credentials, inspect or reinspect his or her facilities and
15 investigate any alleged anesthesia mortalities, misadventure or
16 other adverse occurrences. The board shall conduct an in-office
17 review or on-site inspection of any dentist applying for or holding
18 a permit to administer anesthesia.

19 Prior to issuing a permit, the board shall conduct an on-site
20 inspection of facility, equipment and auxiliary personnel of the
21 applicant to determine if, in fact, all the requirements for the
22 permit have been met. This inspection or evaluation, if required,
23 shall be carried out by at least two members of the subcommittee.
24 This evaluation is to be carried out in a manner following the

1 principles, but not necessarily the procedures, set forth by the
2 current edition of the AAOMS Office Anesthesia Evaluation Manual.
3 On-site inspections are required and shall be performed for all
4 Class 3a, 3b and 4 permittees. The board may reinspect annually, at
5 its discretion, but shall perform an on-site inspection for all
6 permit holders at least once every five years except Class 2 permit
7 holders. The board reserves the right to conduct an on-site
8 inspection whenever it deems necessary for all permit holders. All
9 on-site inspections shall be held during regular business hours.

10 (b) Cancellation or failure to appear or be present for a
11 scheduled evaluation by a permit holder, for an unexplained or
12 unexcusable reason, shall be assessed a penalty fee two times the
13 permit holders normal annual renewal fee. The penalty fee shall be
14 separate from the annual renewal fees.

15 **§30-4A-9. Office evaluations.**

16 (a) The in-office evaluation shall include:

17 (1) Observation of one or more cases of anesthesia to
18 determine the appropriateness of technique and adequacy of patient
19 evaluation and care;

20 (2) Inspection of facilities, which shall include but not be
21 limited to, the inspection of equipment, drugs and patient records
22 and qualified monitor's certifications and documentation; and

23 (3) The evaluation shall be performed by a team appointed by
24 the board and shall include a member of the subcommittee who holds

1 a current anesthesia permit in the same class or in a higher class
2 than that held by the permit holder being evaluated.

3 (4) Class 2 permit holders may be audited periodically as
4 determined by the committee; and

5 (5) Class 3 and 4 permit holders shall be evaluated once every
6 five years.

7 (b) A dentist utilizing a licensed dentist who holds a current
8 anesthesia permit issued by the board shall have his or her office
9 inspected to the level of a Class 4 permit as specified by section
10 twelve of this article. The office is only approved at that level
11 when the anesthesia permit holder is present and shall have the
12 number of qualified monitors present as required by this article.

13 (c) In addition to the requirements of this article, a
14 treating dentist who applies for a certificate to allow a CRNA to
15 administer anesthesia and sedation to a patient shall maintain a
16 permit as follows:

17 (1) A treating dentist who allows a CRNA to administer limited
18 enteral sedation to a patient shall maintain a Class 3a permit for
19 themselves and the administration site shall be inspected to a
20 Class 4 permit level;

21 (2) A treating dentist who allows a CRNA to administer
22 comprehensive parenteral sedation to a patient shall maintain a
23 Class 3b permit for themselves and the administration site shall be
24 inspected to a Class 4 permit level; and

1 (3) A treating dentist who allows a CRNA to administer general
2 anesthesia/deep conscious sedation to a patient shall maintain a
3 Class 4 permit for themselves and the administration site shall be
4 inspected to a Class 4 permit level.

5 **§30-4A-10. Reporting of Death, Serious Complications or Injury.**

6 If a death, any serious complication or any injury occurs
7 which may have resulted from the administration of general
8 anesthesia/deep conscious sedation, conscious sedation/moderate
9 sedation, anxiolysis/minimal sedation, or relative
10 analgesia/minimal sedation, the licensee performing the dental
11 procedure shall submit a written detailed report to the board
12 within seventy-two hours of the incident along with copies of the
13 patient's original complete dental records. If the anesthetic
14 agent was administered by a person other than the person performing
15 the dental procedure, that person shall also submit a detailed
16 written report. The detailed report(s) shall include:

- 17 (1) Name, age and address of patient;
- 18 (2) Name of the licensee and other persons present during the
19 incident along with their names and addresses;
- 20 (3) Address where the incident took place;
- 21 (4) Type of anesthesia and dosages of drugs administered to
22 the patient including local anesthesia;
- 23 (5) A narrative description of the incident including
24 approximate times and evolution of symptoms; and

1 (6) The anesthesia record and the signed informed consent form
2 for the anesthesia.

3 **§30-4A-11. Immunity from liability.**

4 (a) Notwithstanding any other provision of law, no person
5 providing information to the board or to the subcommittee may be
6 held, by reason of having provided the information, to be civilly
7 liable under any law unless the information was false and the
8 person providing information knew or had reason to believe the such
9 information was false.

10 (b) No member or employee of the board or the subcommittee may
11 be held by reason of the performance by him or her of any duty,
12 function or activity authorized or required of the board or the
13 subcommittee to be civilly liable. The foregoing provisions of
14 this subsection do not apply with respect to any action taken by
15 any individual if the individual, in taking the action, was
16 motivated by malice toward any person affected by the action.

17 **§30-4A-12. Facility Inspections.**

18 (a) The board shall perform an onsite evaluation of Class 3
19 and 4 applicants dental facilities, equipment, techniques and
20 personnel prior to issuing a permit. The board may conduct further
21 on-site evaluations.

22 (b) The board may inspect Class 2 applicants facilities.

23 **§30-4A-13. Issuance of regular annual permits.**

24 Upon the recommendation of the subcommittee, the board shall

1 issue permits to applicable dentists. An anesthesia permit shall
2 be renewed annually: *Provided*, That the permittee meets the
3 requirements of this article and has not been subject to
4 disciplinary action prohibiting issuance of the permit.

5 **§30-4A-14. Waiting period for reapplication or reinspection of**
6 **facilities.**

7 A dentist whose application has been denied for failure to
8 satisfy the requirements in the application procedure or the on-
9 site evaluation shall wait thirty days from the date of the denial
10 prior to reapplying and shall submit to another on-site evaluation
11 prior to receiving a permit. The board and the subcommittee shall
12 promptly reinspect the applicant dentist's facilities, techniques,
13 equipment and personnel within ninety days after the applicant has
14 made reapplication.

15 **§30-4A-15. Application and annual renewal of regular permits;**
16 **fees.**

17 The board shall require an initial application fee and an
18 annual renewal fee for Class 2, Class 3 and 4 Permits. Permits
19 expire annually. The board shall renew permits for the use of
20 anesthesia after the permittee satisfies the application for
21 renewal.

22 **§30-4A-16. Violations of article; penalties for practicing**
23 **anesthesia without a permit.**

24 Violations of any of the provisions of this article, whether

1 intentional or unintentional, may result in the revocation or
2 suspension of the dentist's permit to administer anesthesia;
3 multiple or repeated violations or gross infractions, such as
4 practicing anesthesia without a valid permit may result in
5 suspension of the dentist's license to practice dentistry for up to
6 one year as well as other disciplinary measures as deemed
7 appropriate by the board.

8 **§30-4A-17. Appointment of Subcommittee; credentials review; and**
9 **on-site inspections.**

10 (a) The board shall appoint a subcommittee to carry out the
11 review and on-site inspection of any dentist applying for or
12 renewing a permit under this article.

13 (b) The subcommittee shall make a recommendation for issuing
14 or revoking a permit under this article.

15 (c) This subcommittee shall be known as the West Virginia
16 Board of Dentistry Subcommittee on Anesthesia. The subcommittee
17 shall, at a minimum, consist of one member of the board who shall
18 act as chairman of the subcommittee and two members holding a Class
19 4 permit and two members holding a Class 3 permit.

20 (d) The subcommittee shall adopt policies and procedures
21 related to the regulation of general anesthesia/deep conscious
22 sedation, conscious sedation/moderate sedation, anxiolysis/minimal
23 sedation, and relative analgesia/minimal sedation with the same
24 being approved by the board. The subcommittee members shall be

1 paid and reimbursed expenses pursuant to article one of this
2 chapter.

3 **ARTICLE 4B. DENTAL LABORATORY SERVICES.**

4 **§30-4B-1. Unlawful acts.**

5 (a) It is unlawful for any person, other than a dentist or
6 other dental practitioner, to sell, offer for sale or furnish any
7 dental prosthesis or other dental laboratory service to any person
8 who is not a dentist or other dental practitioner.

9 (b) It is unlawful for any person to perform dental laboratory
10 services without a work authorization: *Provided*, That this
11 subsection does not apply to a dentist or other dental
12 practitioner, or to their employees working under their direct
13 supervision, performing dental laboratory services as a part of
14 their own dental practice and for their own dental patients.

15 (c) It is unlawful for any dental laboratory to perform any
16 dental laboratory service without the issuance of a work
17 authorization by a dentist or other dental practitioner.

18 (d) It is unlawful for any dental laboratory or dentist who
19 fabricates a full upper or full lower set of prosthetic dentures
20 not to affix upon the dentures, in a nonremovable manner, the name
21 of the patient, the initials of the dentist's state of practice and
22 license identification.

23 (e) It is unlawful for any dental laboratory either directly
24 or indirectly:

1 (1) To advertise that it is engaged in the business of
2 performing dental laboratory services;

3 (2) To advertise it performs dental laboratory services for
4 members of the public;

5 (3) To advertise a price for the performance of dental
6 laboratory services; or

7 (4) To advertise techniques used or materials employed by it
8 in the performance of dental laboratory services: *Provided*, That
9 this subsection does not prevent dental laboratories from
10 advertising in dental journals or in other professional dental
11 publications or from communicating directly to a dentist and other
12 dental practitioner or from listing the dental laboratory in
13 business and telephone directories if the business and telephone
14 directory announcements are limited to name, address and telephone
15 number and do not occupy more than the number of lines necessary to
16 disclose the information, or from displaying the trade name and
17 address of the dental laboratory on the door of its place of
18 business or on name plates or door plates exhibited on the interior
19 or exterior of the place of business.

20 **§30-4B-2. Work authorization required; contents; retention.**

21 (a) No dental laboratory technician may perform any dental
22 laboratory service without the issuance of a work authorization by
23 a dentist or other dental practitioner.

24 (b) Each work authorization shall contain:

1 (1) The name and address of the dental laboratory to which it
2 is directed;

3 (2) The case identification;

4 (3) A specification of the materials to be used;

5 (4) A description of the work to be done and, if necessary,
6 diagrams thereof;

7 (5) The date of issue; and

8 (6) The signature and address of the dentist or other dental
9 practitioner issuing the work authorization.

10 (c) A separate work authorization shall be issued for each
11 patient of the dentist or other dental practitioner for whom a
12 dental laboratory service is to be performed.

13 (d) Every work authorization shall be made in duplicate with
14 the original being delivered to the dental laboratory to which it
15 is directed and the copy being retained in the office of the
16 issuing dentist or other dental practitioner. A work authorization
17 shall be saved for a period of two years from its date of issue.

18 **§30-4B-3. Denture identification.**

19 A dental laboratory or a dentist who engages in dental
20 laboratory services and who fabricates any full upper or full lower
21 set of prosthetic dentures shall affix upon the dentures, in a
22 nonremovable manner, the name of the patient for whom the dentures
23 are made and the initials of the dentist's state of practice and
24 license identification number.

1 **§30-4B-4. Review of dental laboratory services.**

2 The board may review the dental laboratory services of a
3 dental laboratory on a random and general basis without any
4 requirement of a formal complaint or suspicion of impropriety.