WEST virginia legislature

2021 regular session

ENROLLED

Committee Substitute

for

House Bill 2962

By Delegates Steele and J. Pack

[Passed April 10, 2021; in effect ninety days from passage.]

AN ACT to amend and reenact §30-4-8, §30-4-10, §30-4-13, §30-4-15, §30-4-16, §30-4-17, §30-4-19, §30-4-20, §30-4-22, §30-4-23, and §30-4-24 of the Code of West Virginia, 1931, as amended, all relating to the practice of dentistry; updating the requirements for a license to practice dentistry; updating the requirements for a license to practice as a dental hygienist; requiring a board authorization be present in the place of practice; making technical corrections to special volunteer dentists; requiring payment for certain examinations; permitting the formation of a professional limited liability companies; updating the complaint process; updating the criteria used when considering disciplinary action; updating the types of disciplinary sanctions; requiring providing criminal penalties; clarifying that a student enrolled in an accredited dental program may, under the supervision of a licensed dentist or dental hygienist perform certain tasks under certain conditions without necessitating a license; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

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

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

(1) Is at least 18 years of age;

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

(3) Is a graduate of and has a diploma from a school accredited by the Commission on Dental Accreditation or equivalently approved dental college, school, or dental department of a university as determined by the board;

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

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

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

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

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

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

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

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

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

(8) Meets the other requirements specified by rule.

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

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

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

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

(1) Is at least 18 years of age;

(2) Does not have any criminal convictions which would bar the applicant’s licensure pursuant to [§30-1-24](https://code.wvlegislature.gov/30-1-24) of this code;

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

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

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

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

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

(8) Meets the other requirements specified by rule.

(b) A dental hygienist license issued by the board and in good standing on the effective date of the amendments to this section shall for all purposes be considered a dental hygienist license issued under this section: *Provided*, That a person holding a dental hygienist license shall renew the license.

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

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

(b) Any person regulated by this article shall conspicuously display his or her board authorization at his or her principal place of practice.

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

(a) There is continued a special volunteer dentist and dental hygienist license for dentists and dental hygienists retired or retiring from the active practice of dentistry and dental hygiene who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer dentist or dental hygienist license shall be issued by the board to a dentist or dental hygienist licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period and renewed consistent with the board’s other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the dentist’s or dental hygienist’s acknowledgment that:

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

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

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

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

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

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

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

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

(f) Nothing in this section may be construed as requiring the board to issue a special volunteer dentist or dental hygienist license to any dentist or dental hygienist whose license is or has been subject to any disciplinary action or to any dentist or dental hygienist who has surrendered a license or caused such license to lapse, expire or become inactive in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a dentist or dental hygienist license.

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

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

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

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

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

(d) When the Secretary of State receives a certificate of authorization to act as a dental corporation or professional limited liability company from the board, he or she shall attach the authorization to the corporation application and, upon compliance with the applicable provisions of Chapter 31 or Chapter 31B of this code, the Secretary of State shall issue to the incorporators a certificate of incorporation for the dental corporation or to the organizers a certificate of organization for the professional limited liability company.

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

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

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

§30-4-17. Reinstatement.

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

(b) A licensee who does not complete annual renewal, as specified herein and by the board by rule, and whose license has lapsed for one year or longer, shall make application for reinstatement as specified by the board by rule.

(c) The board, at its discretion and for cause, may require an applicant for reinstatement to undergo a physical and/or mental evaluation, at his or her expense, to determine whether the applicant is competent to practice dentistry or dental hygiene.

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

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

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

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

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

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

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

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

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

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

(3) Being guilty of malpractice or neglect in the practice of dentistry or dental hygiene;

(4) Violation of a lawful order or legislative rule of the board;

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

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

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

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

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

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

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

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

(A) Being guilty of any fraud or deception;

(B) Abusing alcohol or drugs;

(C) Violating or improperly disclosing any professional confidence;

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

(E) Obtaining any fee by fraud or misrepresentation;

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

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

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

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

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

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

(L) Advertising to guarantee any dental service;

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

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

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

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

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

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

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

(18) Failing to report to the board within 72 hours of becoming aware of any life threatening occurrence, serious injury, or death of a patient resulting from the licensee’s or permittee’s dental treatment;

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

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

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

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

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

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Suspension;

(5) Revocation;

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

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

(8) Practicing under supervision or other restriction; or

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

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the board’s costs incurred in investigating and adjudicating a disciplinary matter, including the board’s legal fees.

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

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

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

(a) Hearings are governed by the provisions of §30-1-8 of this code and the legislative rules promulgated pursuant to this article.

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

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

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

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

§30-4-22. Criminal offenses.

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

(b) Any person who practices dentistry or dental hygiene in this state and (1) has never been licensed by the board under this article, (2) holds a license that has been classified by the board as expired or lapsed, or (3) holds a license that has been inactive, revoked, or suspended as a result of disciplinary action, or surrendered to the board, is guilty of a felony and, upon conviction, shall be fined not more than $10,000 or imprisoned in a correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

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

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

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

§30-4-24. Inapplicability of article.

The provisions of this article do not apply to:

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

(2) A dental laboratory in the performance of dental laboratory services, while the dental laboratory, in the performance of the work, conforms in all respects to the requirements of article four-b of this chapter, and further does not apply to persons performing dental laboratory services under the direct supervision of a licensed dentist;

(3) A student enrolled in an accredited D.D.S. or D.M.D. degree program or an accredited dental hygiene program practicing under the direct supervision of an instructor licensed by the board and (A) within a school, college, or university in this State; (B) in a dental clinic operated by a nonprofit organization providing indigent care; (C) in governmental or indigent care clinics in which the student is assigned to practice during his or her final academic year rotations; or (D) in a private dental office for a limited time during the student’s final academic year: *Provided*, That the supervising dentist holds appointment on the faculty of the school in which the student is enrolled;

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

(5) A dentist whose practice is confined exclusively to the service of the United States Army, the United States Navy, the United States Air Force, The United States Coast Guard, the United States Public Health Service, the United States Veteran’s Bureau or any other authorized United States government agency or bureau.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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 *Chairman, House Committee*

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 *Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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 *Clerk of the House of Delegates*

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 *Clerk of the Senate*

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 *Speaker of the House of Delegates*

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 *President of the Senate*

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day of ..........................................................................................................., 2021.

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 *Governor*