WEST virginia legislature

2021 regular session

Committee Substitute

for

House Bill 2962

By Delegates Steele and J. Pack

[Originating in the Committee on Government Organization; March 23, 2021]

A BILL to amend and reenact §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; requiring a board authorization be present in the place of practice; making technical corrections to special volunteer dentists; permitting a dentist or group of dentists to form professional limited liability companies; requiring dentists offering anesthesia services to have a valid permit to offer such services; updating and making other technical corrections to the complaint process without removing any notice or other requirements of the board; updating the criteria used when considering disciplinary action and the availability of certain disciplinary sanctions; requiring any person who is a practicing dentist or dental hygienist have a valid license or otherwise be subject to criminal penalties; requiring any person who holds himself or herself out to the public as a dentist or dental hygienist have a valid license or otherwise be subject to 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 other technical changes for clarification or modernization.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§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 ~~the~~ this article shall conspicuously display his or her board authorization at his or her principal ~~business location~~ 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~~s~~ 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 ~~boards~~ 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~~ 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 ~~for~~ in any civil action arising out of any act or omission ~~resulting from the~~ incident to rendering ~~of the dental hygiene~~ 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 ~~dental hygiene~~ services under the control of the clinic to patients of the clinic, ~~before~~ 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 ~~dental hygiene~~ uncompensated services at or for the clinic under a special volunteer dentist or dental hygienist license ~~authorized~~ 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 ~~and~~ or become ~~invalid~~ ~~i~~nactive in lieu of having a complaint initiated or other action taken against his or her ~~dentist or dental hygienist~~ license, ~~or who has elected to place a dentist or dental hygienist license in inactive status 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 thirty-one~~ 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 ~~an individual dentist or~~ 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 ~~a licensee~~ the applicant is competent to practice ~~or if the licensee is impaired by drugs or alcohol~~ 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~~(a)~~ (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 ~~the~~ 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 ~~of moral turpitude~~ related to the practice of dentistry or dental hygiene;

(3) Being guilty of ~~unprofessional conduct which placed the public at risk, as defined by legislative rule of the board~~ malpractice or neglect in the practice of dentistry or dental hygiene;

(4) ~~Intentional violation~~ 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, ~~or~~ abetting, or supervising the ~~unlicensed~~ practice of dentistry or dental hygiene by an unlicensed person;

(7) Engaging in ~~an act~~ 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 ~~a licensee~~ 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 ~~arising~~ 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) Committing a criminal operation or being convicted of a crime involving moral turpitude;~~

(~~C~~)(B) Abusing alcohol or drugs;

(~~D~~)(C) Violating or improperly disclosing any professional confidence ~~or disclosing any professional secret~~;

~~(E) Being grossly immoral;~~

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

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

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

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

(~~J~~)(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;

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

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

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

(~~N)~~(L) Advertising to guarantee any dental service;

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

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

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

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

(~~Q)~~(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 ~~any relevant~~ 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 ~~or complications following a dental procedure~~;

(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;

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

(~~20)(~~22) Violation of any of the terms or conditions of any order entered in any disciplinary action.

~~(i)~~ (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.

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

~~(k)~~ (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.

~~(l)~~ (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 ~~section eight, article one of this chapter~~ §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 ~~a~~ 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 ~~authorized under this article~~ has committed a criminal offense ~~under~~ in violation of this article, the board may bring ~~its~~ such information to the attention of an appropriate law-enforcement official.

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

~~(1) Expired, suspended or lapsed; or~~

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

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 ~~article four-a or article four-b~~ §30-4A-1 *et seq.* or §30-4B-1 *et seq.* of this code ~~any proceeding initiated under this article,~~ evidence of the commission of a single act prohibited by ~~this~~ 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 ~~or under the direct supervision of a person authorized under this article to perform any of the acts in this article defined to constitute the practice of dentistry while the work is performed in connection with, and as a part of, the dental practice of the licensed dentist or other authorized person and for his or her dental patients~~;

(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; ~~and regularly attending any dental college recognized by the board, provided their acts are done in the dental college and under the direct and personal supervision of their instructor;~~

~~(4) A student enrolled in and regularly attending any dental college, recognized by the board, practicing dentistry in a public health setting, provided their acts are done under the direct supervision of their instructor, adjunct instructor or a dentist;~~

~~(5)~~ (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

~~(6)~~ (5) A dentist~~s~~ 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.

NOTE: The purpose of this bill is to define the practice of dentistry, to add necessary definitions, to revise certain definitions, and to remove unnecessary definitions, to revise and make consistent the requirements for a dental license, dental hygiene license, dental intern permit, dental resident permit, and teaching permit, to revise the scope of practice of dentistry and dental hygiene, to account for the existence of dental professional limited liability companies, to revise the grounds for disciplinary action and the availability of certain disciplinary sanctions, to revise the criminal offenses related to dentistry, to clarify who is exempt from this article, to add the statutorily required provisions regarding telehealth services, and to correct typographical and grammatical errors where necessary and use plain language where appropriate.

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