

H. B. 2750

(By Delegate Perdue, Perry, Eldridge,
Ellington, Lawrence, Morgan and Staggers)

[Introduced February 27, 2013; referred to the
Committee on Government Organization then the Judiciary.]

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

1 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; creating a scope of practice; creating a
7 temporary permit; establishing renewal requirements; providing
8 for exemptions from licensure; providing requirements for the
9 display of a board authorization; permitting the board to file
10 an injunction; setting forth grounds for disciplinary actions;
11 allowing for specific disciplinary actions; providing
12 procedures for investigation of complaints; providing for
13 judicial review and appeals of decisions; setting forth
14 hearing and notice requirements; providing for civil causes of
15 action; providing criminal penalties; and updating references.

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

17 That §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27,
18 §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as
19 amended, be repealed; that §30-4A-6a, §30-4A-6b, §30-4A-6c,
20 §30-4A-6d and §30-4A-18 be repealed; that §30-4B-5, §30-4B-6,
21 §30-4B-7 and §30-4B-8, be repealed; that §30-4-1, §30-4-2, §30-4-3,
22 §30-4-4, §30-4-5, §30-4-6, §30-4-7, §30-4-8, §30-4-9, §30-4-10,
23 §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16,
24 §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22,

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

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

9 **§30-4-1. Unlawful acts.**

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

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

19 **§30-4-2. Applicable law.**

20 The practices authorized under the provisions of this article
21 and the Board of Dentistry are subject to article one of this
22 chapter, the provisions of this article and the rules promulgated
23 hereunder.

1 **§30-4-3. Definitions.**

2 As used in article four, four-a and four-b, the following
3 words and terms have the following meanings:

4 (1) "AAOMS" means the American Association of Oral and
5 Maxillofacial Surgeons;

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

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

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

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

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

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

21 (8) "Approved dental hygiene program" means a program that is
22 approved by the board and is accredited or its educational
23 standards are deemed by the board to be substantially equivalent to
24 those required by the Commission on Dental Accreditation of the

1 American Dental Association;

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

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

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

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

14 (13) "Board Authorization" means a license, certificate or
15 permit issued by the board;

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

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

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

24 (17) "CPR" means Cardiopulmonary Resuscitation;

1 (18) "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 (19) "CRNA" means Certified Registered Nurse Anesthetist;

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

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

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

20 (23) "Dental auxiliary personnel" or "auxiliary" means dental
21 hygienists and dental assistants who assist the dentist in the
22 practice of dentistry;

23 (24) "Dental Hygiene" means the performance of educational,
24 preventive or therapeutic dental services and as further provided

1 in section nine and legislative rule;

2 (25) "Dental hygienist" means a person licensed by the board
3 to practice dental hygiene and other services as specified by the
4 board by rule to patients in the dental office and in a public
5 health setting;

6 (26) "Dental laboratory" means a business performing dental
7 laboratory services;

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

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

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

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

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

22 (32) "Dentistry" means the evaluation, diagnosis, prevention
23 and treatment of diseases, disorders and conditions of the oral
24 cavity, maxillofacial area and the adjacent and associated

1 structures provided by a dentist;

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

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

9 (35) "General anesthesia" means an induced controlled state of
10 unconsciousness in which the patient experiences complete loss of
11 protective reflexes, as evidenced by the inability to independently
12 maintain an airway, the inability to respond purposefully to
13 physical stimulation, or the inability to respond purposefully to
14 verbal command. "Deep conscious sedation/general anesthesia"
15 includes partial loss of protective reflexes and the patient
16 retains the ability to independently and continuously maintain an
17 airway;

18 (36) "General supervision" means a dentist is not required to
19 be in the office or treatment facility when procedures or services
20 are being performed by the auxiliary dental personnel, but has
21 personally diagnosed the condition to be treated, has personally
22 authorized the procedures or services and evaluates the treatment
23 provided by the dental auxiliary personnel;

24 (37) "Good moral character" means a lack of history of

1 dishonesty;

2 (38) "Health Care Provider BLS/CPR" means Health Care Provider
3 Basic Life Support/Cardiopulmonary Resuscitation;

4 (39) "License" means a license to practice dentistry or dental
5 hygiene;

6 (40) "Licensee" means a person holding a license;

7 (41) "Mobile Dental Facility" means a self-contained facility
8 in which dentistry shall be practiced which may be moved, towed, or
9 transported from one location to another;

10 (42) "Other dental practitioner" means those persons excluded
11 from the definition of the practice of dentistry under the
12 provisions of subsections (3), (4) and (5), section twenty-nine,
13 and also those persons who hold teaching permits which have been
14 issued to them under the provisions of section fourteen, article
15 four of this chapter;

16 (43) "PALS" means Pediatric Advanced Life Support;

17 (44) "Pediatric Patient" means infants and children;

18 (45) "Physician Anesthesiologist" means a physician, MD or DO,
19 who is specialized in the practice of anesthesiology;

20 (46) "Portable Dental Unit" means a nonfacility in which
21 dental equipment, used in the practice of dentistry, is transported
22 to and used on a temporary basis at an out-of-office location,
23 including, but not limited to, patient's homes, schools, nursing
24 homes, or other institutions;

1 (47) "Public health practice" means treatment or procedures in
2 a public health setting which shall be designated by a rule
3 promulgated by the board to require direct, general or no
4 supervision of a dental hygienist by a dentist;

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

12 (49) "Qualified Monitor" means an individual who by virtue of
13 credentialing and/or training checks closely and documents the
14 status of a patient undergoing anesthesia and observes equipment
15 used;

16 (50) "Relative analgesia/minimal sedation" means an induced
17 controlled state of minimally depressed consciousness, produced
18 solely by the inhalation of a combination of nitrous oxide and
19 oxygen, or single oral premedication without the addition of
20 nitrous oxide and oxygen in which the patient retains the ability
21 to independently and continuously maintain an airway and to respond
22 purposefully to physical stimulation and to verbal command. Dosage
23 of oral premedication is not to exceed the recommended dosage
24 limits set by the manufacturer for the treatment of anxiety,

1 insomnia or pain;

2 (51) "Specialty" means the practice of a certain branch of
3 dentistry;

4 (52) "Subcommittee" means West Virginia Board of Dentistry
5 Subcommittee on Anesthesia;

6 (53) "Treatment Facility" means a location other than a dental
7 office where dental services are provided;

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

11 **§30-4-4. Board of dental examiners.**

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

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

20 (1) Six licensed dentists;

21 (2) One licensed dental hygienist;

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

24 and;

1 (4) One citizen member who is not licensed under the
2 provisions of this article and does not perform services related to
3 the practice of dentistry.

4 (c) A person connected with a commercial entity that may
5 derive financial gain from the profession of dentistry and a person
6 employed as full-time faculty with a dental college, school or
7 dental department of a university are not eligible for appointment
8 to the board.

9 (d) After the initial appointment term, the appointment term
10 is five years. A member may not serve more than two consecutive
11 terms. A member who has served two consecutive full terms may not
12 be reappointed for at least one year after completion of his or her
13 second full term. A member may continue to serve until his or her
14 successor has been appointed and qualified.

15 (e) Each licensed member of the board, at the time of his or
16 her appointment, shall have held a license in this state for a
17 period of not less than five years immediately preceding the
18 appointment.

19 (f) Each member of the board shall be a resident of this state
20 during the appointment term.

21 (g) A vacancy on the board shall be filled by appointment by
22 the Governor for the unexpired term of the member whose office is
23 vacant.

24 (h) The Governor may remove a member from the board for

1 neglect of duty, incompetency or official misconduct.

2 (i) A licensed member of the board immediately and
3 automatically forfeits membership to the board if his or her
4 license to practice is suspended or revoked in any jurisdiction.

5 (j) A member of the board immediately and automatically
6 forfeits membership to the board if he or she is convicted of a
7 felony under the laws of any jurisdiction or becomes a nonresident
8 of this state.

9 (k) The board shall elect annually one of its members as
10 president and one member as secretary who shall serve at the will
11 and pleasure of the board.

12 (l) Each member of the board is entitled to receive
13 compensation and expense reimbursement in accordance with article
14 one of this chapter.

15 (m) A simple majority of the membership serving on the board
16 at a given time is a quorum for the transaction of business.

17 (n) The board shall hold at least two meetings annually.
18 Other meetings shall be held at the call of the president or upon
19 the written request of four members, at the time and place as
20 designated in the call or request.

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

24 (p) The members of the board when acting in good faith and

1 without malice shall enjoy immunity from individual civil liability
2 while acting within the scope of their duties as board members.

3 **§30-4-5. Powers of the board.**

4 The board has all the powers and duties set forth in this
5 article, by rule, in article one of this chapter and elsewhere in
6 law, including to:

7 (1) Hold meetings;

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

10 (3) Determine the qualifications of a applicant for a license,
11 certificate and permit;

12 (4) Establish the fees charged under the provisions of this
13 article;

14 (5) Issue, renew, deny, suspend, revoke, limit or reinstate a
15 license, certificate and permit;

16 (6) Prepare, conduct, administer and grade written, oral or
17 written and oral examinations for a license;

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

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

23 (9) Maintain an office, and hire, discharge, establish the job
24 requirements and fix the compensation of employees and contract

1 with persons necessary to enforce the provisions of this article.

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

6 (11) Investigate alleged violations of the provisions of this
7 article, article four-a and article four-b of this chapter,
8 legislative rule, orders and final decisions of the board;

9 (12) Conduct disciplinary hearings of persons regulated by the
10 board;

11 (13) Determine disciplinary action and issue orders;

12 (14) Institute appropriate legal action for the enforcement of
13 the provisions of this article;

14 (15) Maintain an accurate registry of names and addresses of
15 all persons authorized or licensed by the board;

16 (16) Keep accurate and complete records of its proceedings,
17 and certify the same as may be necessary and appropriate;

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

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

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

1 **§30-4-6. Rule-making authority.**

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

6 (1) Standards and requirements for licenses, certifications
7 and permits;

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

10 (3) Educational and experience requirements;

11 (4) Continuing education requirements and approval of
12 continuing education courses;

13 (5) Procedures for the issuance and renewal of licenses,
14 certifications and permits;

15 (6) Establish a fee schedule;

16 (7) Regulate dental specialities;

17 (8) Delegate procedures to be performed by a dental hygienist;

18 (9) Delegate procedures to be performed by a dental assistant;

19 (10) Designate the services and procedures performed under
20 direct supervision, general supervision in public health practice;

21 (11) Designate additional public health settings;

22 (12) Regulate the use of firm or trade names;

23 (13) Regulate dental corporations;

24 (14) Regulate professional limited liability companies;

- 1 (15) Establish professional conduct requirements;
- 2 (16) Establish the procedures for denying, suspending,
3 revoking, reinstating or limiting the practice of licensees,
4 certifications and permitees;
- 5 (17) Establish requirements for inactive or revoked licenses,
6 certifications and permits;
- 7 (18) Regulate dental anesthesia, including:
- 8 (A) Fees;
- 9 (B) Evaluations;
- 10 (C) Equipment;
- 11 (D) Emergency Drugs;
- 12 (E) Definitions;
- 13 (F) Qualified Monitor Requirements; and
- 14 (G) Education;
- 15 (19) Any other rules necessary to implement this article.
- 16 (b) All of the board's rules in effect and not in conflict
17 with these provisions, shall remain in effect until they are
18 amended or rescinded.
- 19 **§30-4-7. Fees; special revenue account; administrative fines.**
- 20 (a) All fees and other moneys, except administrative fines,
21 received by the board shall be deposited in a separate special
22 revenue fund in the State Treasury designated the "Board of
23 Dentists and Dental Hygienist Special Fund", which is continued and
24 shall be known as the "Board of Dentistry Special Fund". The fund

1 is used by the board for the administration of this article. Except
2 as may be provided in article one of this chapter, the board
3 retains the amount in the special revenue account from year to
4 year. No compensation or expense incurred under this article is a
5 charge against the General Revenue Fund.

6 (b) Amounts received as administrative fines imposed pursuant
7 to this article shall be deposited into the general revenue fund of
8 the State Treasury.

9 **§30-4-8. License to practice dentistry.**

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

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

13 (2) Is of good moral character;

14 (3) Is a graduate of and has a diploma from a Commission on
15 Dental Accreditation or equivalent approved dental college, school
16 or dental department of a university;

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

20 (5) Has not been found guilty of cheating, deception or fraud
21 on the examination or on the application;

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

23 (7) Is not an alcohol or drug abuser, as these terms are
24 defined in section eleven, article one-a, chapter twenty-seven of

1 this code: *Provided*, That an applicant in an active recovery
2 process, which may, in the discretion of the board, be evidenced by
3 participation in a twelve-step program or other similar group or
4 process, may be considered.

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

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

13 **§30-4-9. Scope of practice of a dentist.**

14 The practice of dentistry includes the following:

15 (1) Coordinate dental services to meet the oral health needs
16 of the patient;

17 (2) Examine, evaluate and diagnose diseases, disorders and
18 conditions of the oral cavity, maxillofacial area and adjacent and
19 associated structures;

20 (3) Treat diseases, disorders and conditions of the oral
21 cavity, maxillofacial area and the adjacent and associated
22 structures;

23 (4) Provide services to prevent diseases, disorders and
24 conditions of the oral cavity, maxillofacial area and the adjacent

1 and associated structures;

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

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

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

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

8 (9) Employ and supervise dental auxiliary personnel;

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

11 (11) Perform other work included in the curriculum of an
12 approved dental school, college or dental department of a
13 university.

14 **§30-4-10. License to practice dental hygiene.**

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

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

18 (2) Is of good moral character;

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

22 (4) Has passed the national board dental hygiene examination,
23 a regional or state clinical examination and a state law
24 examination that tests the applicant's knowledge of subjects

1 specified by the board by rule;

2 (5) Has not been found guilty of cheating, deception or fraud
3 on the examination or on the application;

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

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

11 (b) A dental hygienist license issued by the board shall for
12 all purposes be considered a dental hygienist license issued under
13 this section: Provided, That a person holding a dental hygienist
14 license shall renew the license.

15 **§30-4-11. Scope of practice for a dental hygienist.**

16 The practice of dental hygiene includes the following:

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

20 (2) Apply a medicinal agent to a tooth for a prophylactic
21 purpose;

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

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

24 (5) Place sealants on a patient's teeth without a prior

1 examination by a licensed dentist: Provided, That for this
2 subdivision, the dental hygienist has a public health practice
3 permit issued by the board, and is subject to a collaborative
4 agreement with a supervising dentist and the patient is referred
5 for a dental examination within six months of sealant application;

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

8 (7) Perform all delegated procedures of a dental assistant
9 specified by rule by the board.

10 **§30-4-12. License renewal.**

11 (a) All persons regulated by this article shall annually or
12 biannually, renew his or her board authorization by completing a
13 form prescribed by the board and submitting other information
14 required by the board.

15 (b) The board shall charge a fee for a renewal of a board
16 authorization and shall charge a late fee for a renewal not paid by
17 the due date.

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

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

23 **§30-4-13. Board authorizations shall be displayed.**

24 (a) The board shall prescribe the form for a board

1 authorization, and may issue a duplicate upon payment of a fee.

2 (b) A person regulated by the article shall conspicuously
3 display his or her board authorization at his or her principal
4 business location.

5 **§30-4-14. Dental intern, resident, or teaching permit.**

6 (a) The board may issue a dental intern or dental resident
7 permit to an applicant who has been accepted as a dental intern or
8 dental resident by a licensed hospital or dental school in this
9 state which maintains an established dental department under the
10 supervision of a licensed dentist and meets the following
11 qualifications:

12 (1) Has graduated from a Commission on Dental Accreditation or
13 equivalent approved dental college, school or dental department of
14 a university with a degree in dentistry;

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

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

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

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

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

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

1 (1) Has authorization or has been eligible for an
2 authorization to practice dentistry in another jurisdiction;

3 (2) Has met or been approved under the credentialing standards
4 of a dental school or an academic medical center with which the
5 person is to be affiliated and which the dental school or academic
6 medical center is accredited by the Commission on Dental
7 Accreditation or Joint Commission on Accreditation of Health Care
8 Organizations;

9 (3) The permittee may teach and practice dentistry in or on
10 behalf of a dental school or college offering a doctoral degree in
11 dentistry operated and conducted in this state and approved by the
12 board, in connection with an academic medical center or at a
13 teaching hospital adjacent to a dental school or an academic
14 medical center;

15 (4) May be renewed annually with a written recommendation from
16 the dental school dean;

17 (5) Shall successfully complete the West Virginia Dental Law
18 Examination;

19 (6) Shall pay annual renewal fees to the board;

20 (7) Shall comply with continuing education requirements; and

21 (8) Has had no disciplinary actions taken or pending against
22 him or her by another jurisdiction.

23 (d) While in effect, a permittee is subject to the
24 restrictions and requirements imposed by this article. In

1 addition, a permittee may not receive any fee for service other
2 than a salary paid by the hospital or dental school.

3 **§30-4-15. Special volunteer dentist or dental hygienist license;**
4 **civil immunity for voluntary services rendered to**
5 **indigents.**

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

22 (1) The dentist or dental hygienist's practice under the
23 special volunteer dentist or dental hygienist license shall be
24 exclusively devoted to providing dentistry or dental hygiene care

1 to needy and indigent persons in West Virginia;

2 (2) The dentist or dental hygienist may not receive payment or
3 compensation, either direct or indirect, or have the expectation of
4 payment or compensation, for any dentistry or dental hygiene
5 services rendered under the special volunteer dentist or dental
6 hygienist license;

7 (3) The dentist or dental hygienist shall supply supporting
8 documentation that the board may reasonably require; and

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

12 (b) The dentist or dental hygienist who renders dentistry or
13 dental hygiene service to indigent and needy patients of a clinic
14 organized, in whole or in part, for the delivery of health care
15 services without charge under a special volunteer dentist or dental
16 hygienist license authorized under subsection (a) of this section
17 without payment or compensation or the expectation or promise of
18 payment or compensation is immune from liability for a civil action
19 arising out of an act or omission resulting from the rendering of
20 the dental hygiene service at the clinic unless the act or omission
21 was the result of the dentist's or dental hygienist's gross
22 negligence or willful misconduct. In order for the immunity under
23 this subsection to apply, there shall be a written agreement
24 between the dentist or dental hygienist and the clinic pursuant to

1 which the dentist or dental hygienist provides voluntary
2 uncompensated dental hygiene services under the control of the
3 clinic to patients of the clinic before the rendering of services
4 by the dentist or dental hygienist at the clinic: *Provided, That*
5 a clinic entering into a written agreement is required to maintain
6 liability coverage of not less than \$1 million dollars per
7 occurrence.

8 (c) Notwithstanding the provisions of subsection (b) of this
9 section, a clinic organized, in whole or in part, for the delivery
10 of health care services without charge is not relieved from imputed
11 liability for the negligent acts of a dentist or dental hygienist
12 rendering voluntary dental hygiene services at or for the clinic
13 under a special volunteer dentist or dental hygienist license
14 authorized under subsection (a) of this section.

15 (d) For purposes of this section, "otherwise eligible for
16 licensure" means the satisfaction of all the requirements for
17 licensure as listed in section ten of this article and in the
18 legislative rules promulgated thereunder, except the fee
19 requirements of subdivision six of that section and of the
20 legislative rules promulgated by the board relating to fees.

21 (e) This section may not be construed as requiring the board
22 to issue a special volunteer dentist or dental hygienist license to
23 a dentist or dental hygienist whose license is or has been subject
24 to any disciplinary action or to a dentist or dental hygienist who

1 has surrendered a license or caused such license to lapse, expire
2 and become invalid in lieu of having a complaint initiated or other
3 action taken against his or her dentist or dental hygienist
4 license, or who has elected to place a dentist or dental hygienist
5 license in inactive status in lieu of having a complaint initiated
6 or other action taken against his or her license, or who has been
7 denied a dentist or dental hygienist license.

8 (f) A policy or contract of liability insurance providing
9 coverage for liability sold, issued or delivered in this state to
10 a dentist or dental hygienist covered under the provisions of this
11 article shall be read so as to contain a provision or endorsement
12 whereby the company issuing such policy waives or agrees not to
13 assert as a defense on behalf of the policyholder or the
14 beneficiary thereof, to a claim covered by the terms of such policy
15 within the policy limits, the immunity from liability of the
16 insured by reason of the care and treatment of needy and indigent
17 patients by a dentist or dental hygienist who holds a special
18 volunteer dentist or dental hygienist license.

19 **§30-4-16. Dental corporations.**

20 (a) Dental corporations are continued.

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

1 (c) A corporation may not practice dentistry, or any of its
2 branches, or hold itself out as being capable of doing so without
3 a certificate of authorization from the board.

4 (d) When the Secretary of State receives a certificate of
5 authorization to act as a dental corporation from the board, he or
6 she shall attach the authorization to the corporation application
7 and, upon compliance with the applicable provisions of chapter
8 thirty-one of this code, the Secretary of State shall issue to the
9 incorporators a certificate of incorporation for the dental
10 corporation.

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

14 (f) A dental corporation may practice dentistry only through
15 an individual dentist or dentists licensed to practice dentistry in
16 this state, but the dentist or dentists may be employees rather
17 than shareholders of the corporation.

18 (g) A dental corporation holding a certificate of
19 authorization shall cease to engage in the practice of dentistry
20 upon being notified by the board that any of its shareholders is no
21 longer a licensed dentist or when any shares of the corporation
22 have been sold or disposed of to a person who is not a licensed
23 dentist: Provided, That the personal representative of a deceased
24 shareholder has a period, not to exceed twenty-four months from the

1 date of the shareholder's death, to dispose of the shares; but
2 nothing contained herein may be construed as affecting the
3 existence of the corporation or its right to continue to operate
4 for all lawful purposes other than the practice of dentistry.

5 **§30-4-17. Reinstatement.**

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

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

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

19 **§30-4-18. Actions to enjoin violations.**

20 (a) If the board obtains information that a person has engaged
21 in, is engaging in or is about to engage in an act which
22 constitutes or will constitute a violation of the provisions of
23 this article, the rules promulgated pursuant to this article, or a
24 final order or decision of the board, it may issue a notice to the

1 person to cease and desist in engaging in the act and/or apply to
2 the circuit court in the county of the alleged violation for an
3 order enjoining the act.

4 (b) The circuit court may issue a temporary injunction pending
5 a decision on the merits, and may issue a permanent injunction
6 based on its findings in the case.

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

11 **§30-4-19. Complaints; investigations; due process procedure;**
12 **grounds for disciplinary action.**

13 (a) The board may initiate a complaint upon receipt of
14 credible information, and shall upon the receipt of a written
15 complaint of a person, cause an investigation to be made to
16 determine whether grounds exist for disciplinary action under this
17 article or the legislative rules promulgated pursuant to this
18 article.

19 (b) After reviewing the information obtained through an
20 investigation, the board shall determine if probable cause exists
21 that the licensee, certificate holder or permittee has violated
22 subsection (g) of this section or rules promulgated pursuant to
23 this article.

24 (c) Upon a finding of probable cause to go forward with a

1 complaint, the board shall provide a copy of the complaint to the
2 licensee, certificate holder or permittee.

3 (d) Upon a finding that probable cause exists that the
4 licensee, certificate holder or permittee has violated subsection
5 (g) of this section or rules promulgated pursuant to this article,
6 the board may enter into a consent decree or hold a hearing for
7 disciplinary action against the licensee, certificate holder or
8 permittee. A hearing shall be held in accordance with the
9 provisions of this article, and shall require a violation to be
10 proven by a preponderance of the evidence.

11 (e) A member of the complaint committee, president, secretary
12 or the executive director of the board may issue subpoenas and
13 subpoenas duces tecum to obtain testimony and documents to aid in
14 the investigation of allegations against a person regulated by the
15 article.

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

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

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

1 (2) Being convicted of a felony or other crime involving
2 drugs, violent crime, or moral turpitude, or engaging in an act
3 involving moral turpitude or gross immorality;

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

6 (4) Intentional violation of a lawful order or legislative
7 rule of the board;

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

12 (6) Aiding or abetting unlicensed practice;

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

16 (8) Incapacity that prevents a licensee from engaging in the
17 practice of dentistry or dental hygiene, with reasonable skill,
18 competence, and safety to the public;

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

21 (10) Failure to report to the board one's surrender of a
22 license or authorization to practice dentistry or dental hygiene in
23 another jurisdiction while under disciplinary investigation by any
24 of those authorities or bodies for conduct that would constitute

1 grounds for action as defined in this section;

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

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

10 (A) Being guilty of fraud or deception;

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

13 (C) Abusing alcohol or drugs;

14 (D) Violating a professional confidence or disclosing a
15 professional secret;

16 (E) Being grossly immoral;

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

20 (G) Obtaining a fee by fraud or misrepresentation;

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

1 (I) Practicing, or offering, or undertaking to practice
2 dentistry under a firm name or trade name not approved by the
3 board;

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

9 (K) Making use of advertising relating to the use of a drug or
10 medicine of unknown formula;

11 (L) Advertising to practice dentistry or perform an operation
12 without causing pain;

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

15 (N) Advertising to guarantee any dental service;

16 (O) Advertising in a manner that is false or misleading in any
17 material respect;

18 (P) Soliciting subscriptions from individuals within or
19 without the state for, or advertising or offering to individuals
20 within or without the state, a course or instruction or course
21 materials in any phase, part or branch of dentistry or dental
22 hygiene in a journal, newspaper, magazine or dental publication, or
23 by means of radio, television or United States mail, or in or by
24 any other means of contacting individuals: Provided, That the

1 provisions of this paragraph may not be construed so as to
2 prohibit:

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

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

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

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

15 (16) Illegal use or disclosure of protected health
16 information;

17 (17) Engaging in conduct that subverts or attempts to subvert
18 a licensing examination or the administration of a licensing
19 examination;

20 (18) Failure to furnish to the board or its representatives
21 information legally requested by the board, or failure to cooperate
22 with or engaging in any conduct which obstructs an investigation
23 being conducted by the board;

24 (19) Announcing or otherwise holding himself or herself out to

1 the public as a specialist or as being specially qualified in any
2 particular branch of dentistry or as giving special attention to
3 any branch of dentistry or as limiting his or her practice to any
4 branch of dentistry without first complying with the requirements
5 established by the board for the specialty and having been issued
6 a certificate of qualification in the specialty by the board;

7 (20) Failing to report to the board within 72 hours of
8 becoming aware thereof a life threatening occurrence, serious
9 injury or death of a patient resulting from dental treatment or
10 complications following a dental procedure;

11 (21) Failing to report to the board a Driving Under the
12 Influence and/or Driving While Intoxicated offense; or

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

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

17 (1) Reprimand;

18 (2) Probation;

19 (3) Restrictions;

20 (4) Suspension;

21 (5) Revocation;

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

24 (7) Mandatory attendance at continuing education seminars or

1 other training;

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

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

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

7 (j) Nothing herein bars criminal prosecutions for violations
8 of this article.

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

16 **§30-4-20. Procedures for hearing; right of appeal.**

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

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

21 (c) If the hearing is conducted by an administrative law
22 judge, at the conclusion of a hearing he or she shall prepare a
23 proposed written order containing findings of fact and conclusions
24 of law. The proposed order may contain proposed disciplinary

1 actions if the board so directs. The board may accept, reject or
2 modify the decision of the administrative law judge.

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

5 (e) If, after a hearing, the board determines the licensee,
6 certificate holder or permittee has violated provisions of this
7 article or the board's rules, a formal written decision shall be
8 prepared which contains findings of fact, conclusions of law and a
9 specific description of the disciplinary actions imposed.

10 **§30-4-21. Judicial review.**

11 A person adversely affected by a decision of the board denying
12 an application or entered after a hearing may obtain judicial
13 review of the decision in accordance with section four, article
14 five, chapter twenty-nine-a of this code, and may appeal the ruling
15 resulting from judicial review in accordance with article six,
16 chapter twenty-nine-a of this code.

17 **§30-4-22. Criminal proceedings; penalties.**

18 (a) When, as a result of an investigation under this article
19 or otherwise, the board has reason to believe that a person
20 authorized under this article has committed a criminal offense
21 under this article, the board may bring its information to the
22 attention of an appropriate law-enforcement official.

23 (b) A person who intentionally practices, or holds himself or
24 herself out as qualified to practice dentistry or dental hygiene,

1 or uses any title, word or abbreviation to indicate to or induce
2 others to believe he or she is licensed to practice as a dentist or
3 dental hygienist without obtaining an active, valid license to
4 practice that profession or with a license that is:

5 (1) Expired, suspended or lapsed; or

6 (2) Inactive, revoked, suspended as a result of disciplinary
7 action, or surrendered, is guilty of a felony and, upon conviction
8 thereof, may not be fined more than \$10,000 or imprisoned in a
9 state correctional facility for not less than one year nor more
10 than five years, or both fined and imprisoned.

11 **§30-4-23. Single act evidence of practice.**

12 In an action brought under this article, article four-a or
13 article four-b any proceeding initiated under this article,
14 evidence of the commission of a single act prohibited by this
15 article is sufficient to justify a penalty, injunction, restraining
16 order or conviction without evidence of a general course of
17 conduct.

18 **§30-4-24. Inapplicability of article.**

19 The provisions of this article do not apply to:

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

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

12 (3) A student enrolled in and regularly attending a dental
13 college recognized by the board, provided their acts are done in
14 the dental college and under the direct and personal supervision of
15 their instructor;

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

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

24 (6) A dentists whose practice is confined exclusively to the

1 service of the United States Army, the United States Navy, the
2 United States Air Force, The United States Coast Guard, the United
3 States Public Health Service, the United States Veteran's Bureau or
4 other authorized United States government agency or bureau.

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

6 **§30-4A-1. Requirement for anesthesia permit.**

7 (a) A dentist may not induce central nervous system anesthesia
8 without first having obtained an anesthesia permit for the level of
9 anesthesia being induced.

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

13 (c) Permits shall be issued to coincide with the annual
14 renewal dates.

15 (d) Permit holders shall report the names and qualifications
16 of each qualified monitor. Qualified monitors shall apply for
17 certification and pay the appropriate application fees and renewal
18 fees. Qualified monitors are required to renew annually by June
19 30th. Qualified monitor requirements for each level of sedation
20 are as specified by rule.

21 (e) A dentist shall hold a class permit equivalent to or
22 exceeding the anesthesia level being provided, unless the provider
23 of anesthesia is a physician anesthesiologist or licensed dentist
24 who holds a current anesthesia permit issued by the board.

1 **§30-4A-2. Presumption of Degree of Central Nervous System**

2 **Depression.**

3 (1) In a hearing where a question exists as to the degree of
4 central nervous system depression a permittee has induced, the
5 board may base its findings on, among other things, the types,
6 dosages and routes of administration of drugs administered to the
7 patient and what result can reasonably be expected from those drugs
8 in those dosages and routes administered in a patient of that
9 physical and psychological status.

10 (2) A permittee may not have more than one person under
11 conscious sedation/moderate sedation and/or general anesthesia/deep
12 conscious sedation at the same time, exclusive of recovery.

13 **§30-4A-3. Classes of anesthesia permits.**

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

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

17 (2) Class 3 Permit: A Class 3 Permit authorizes a dentist to
18 induce conscious sedation/moderate sedation as limited enteral (3a)
19 and/or comprehensive parenteral (3b), and anxiolysis/minimal
20 sedation.

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

24 (b) When anesthesia services are provided in a dental office

1 by a MD or DO physician anesthesiologist, dentist anesthesiologist,
2 or CRNA, the dental office shall be inspected and approved for a
3 Class 4 permit, and the dentist shall have a minimum of a Class 2
4 permit. If anesthesia services are provided by a CRNA, the dental
5 facility shall be inspected and approved for a Class 4 permit and
6 the supervising dentist shall have the same level of permit for the
7 level of anesthesia provided by the CRNA.

8 **§30-4A-4. Qualifications, standards, and continuing education**
9 **requirements for relative analgesia/minimal sedation**
10 **use.**

11 (a) The board shall allow administration of relative analgesia
12 if the practitioner:

13 (1) Is a licensed dentist in this state;

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

16 (3) Has completed a training course of instruction in dental
17 school, continuing education or as a postgraduate in the
18 administration of relative analgesia.

19 (b) A practitioner who administers relative analgesia shall
20 have the following facilities, equipment and drugs available during
21 the procedure and during recovery:

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

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

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

9 (4) Suction equipment which permits aspiration of the oral and
10 pharyngeal cavities;

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

15 (6) A nitrous oxide delivery system with a fail-safe mechanism
16 that shall insure appropriate continuous oxygen delivery and a
17 scavenger system; and

18 (7) A defibrillator device.

19 All equipment used shall be appropriate for the height and
20 weight and age of the patient.

21 (c) Before inducing relative analgesia/minimal sedation by
22 means of nitrous oxide or a single pre-med agent, a practitioner
23 shall:

24 (1) Evaluate the patient;

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

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

6 (d) A practitioner who administers relative analgesia/minimal
7 sedation shall see that the patient's condition is visually
8 monitored. At all times, the patient shall be observed by a
9 qualified monitor until discharge criteria have been met. The
10 documented requirements of a qualified monitor monitoring relative
11 analgesia/minimal sedation cases are as specified by rule.

12 (e) A qualified monitor's record shall include documentation
13 of all medications administered with dosages, time intervals and
14 route of administration including local anesthesia.

15 (f) A discharge entry shall be made in the patient's record
16 indicating the patient's condition upon discharge.

17 (g) A qualified monitor shall hold valid and current
18 documentation:

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

21 (2) Have received training and be competent in the recognition
22 and treatment of medical emergencies, monitoring vital signs, the
23 operation of nitrous oxide delivery systems and the use of the
24 sphygmomanometer and stethoscope.

1 (h) The practitioner shall assess the patient's responsiveness
2 using preoperative values as normal guidelines and discharge the
3 patient only when the following criteria are met:

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

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

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

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

12 (5) The patient does not have uncontrollable nausea, vomiting
13 or dizziness.

14 **§30-4A-5. Qualifications, standards, and continuing education**
15 **requirements for a Class 2 Permit.**

16 (a) The board shall issue a Class 2 Permit to an applicant
17 who:

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

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

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

24 (b) A dentist who induces relative analgesia/minimal sedation

1 and anxiolysis/minimal sedation shall have the following
2 facilities, properly maintained equipment and appropriate drugs
3 available during the procedures and during recovery:

4 (1) An operating room large enough to adequately accommodate
5 the patient on an operating table or in an operating chair and to
6 allow an operating team of at least two individuals to freely move
7 about the patient;

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

13 (3) A lighting system which permits evaluation of the
14 patient's skin and mucosal color and a backup lighting system of
15 sufficient intensity to permit completion of an operation underway
16 in the event of a general power failure;

17 (4) Suction equipment which permits aspiration of the oral and
18 pharyngeal cavities;

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

23 (6) A nitrous oxide delivery system with a fail-safe mechanism
24 that insures appropriate continuous oxygen delivery and a

1 scavenger system;

2 (7) A recovery area that has available oxygen, adequate
3 lighting, suction and electrical outlets. The recovery area may be
4 the operating room;

5 (8) Sphygmomanometer, stethoscope, and pulse oximeter;

6 (9) Emergency drugs as specified by rule;

7 (10) A defibrillator device; and

8 (11) All equipment and medication dosages shall be in
9 accordance with the height and weight and age of the patient being
10 treated.

11 (c) Before inducing anxiolysis, a dentist shall:

12 (1) Evaluate the patient and certify by using the ASA Patient
13 Physical Status Classification of the ASA that the patient is an
14 appropriate candidate for anxiolysis sedation; and

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

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

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

1 (1) Patients shall have continuous monitoring using pulse
2 oximetry. The patient's blood pressure, heart rate and respiration
3 shall be recorded at least once before, during and after the
4 procedure, and these recordings shall be documented in the patient
5 record. At all times, the patient shall be observed by a qualified
6 monitor until discharge criteria have been met. If the dentist is
7 unable to obtain this information, the reasons shall be documented
8 in the patient's record. The record shall also include
9 documentation of all medications administered with dosages, time
10 intervals and route of administration including local anesthesia.

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

13 (f) A permit holder who uses anxiolysis shall see that the
14 patient's condition is visually monitored. The patient shall be
15 monitored as to response to verbal stimulation, oral mucosal color
16 and preoperative and postoperative vital signs.

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

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

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

24 (3) The patient can talk and respond coherently to verbal

1 questioning, or to preoperative neurological status;

2 (4) The patient can sit up unaided, or to preoperative
3 neurological status;

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

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

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

11 **§30-4A-6. Qualifications, standards, and continuing education**
12 **requirements for Class 3 Anesthesia Permit.**

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

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

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

19 (3) Satisfies one of the following criteria:

20 (A) Certificate of completion of a comprehensive training
21 program in conscious sedation that satisfies the requirements
22 described in the ADA Guidelines for Teaching Pain Control and
23 Sedation to Dentists and Dental Students and the ADA Guidelines for
24 the Use of Sedation and General Anesthesia by Dentists at the time

1 training was commenced.

2 (B) Certificate of completion of an ADA accredited
3 postdoctoral training program which affords comprehensive and
4 appropriate training necessary to administer and manage conscious
5 sedation, commensurate with these guidelines.

6 (C) In lieu of these requirements, the board may accept
7 documented evidence of equivalent training or experience in
8 conscious sedation anesthesia for Limited Enteral Permit as Class
9 3a or comprehensive Parenteral Permit as Class 3b as specified by
10 rule.

11 (b) A dentist who induces conscious sedation shall have the
12 following facilities, properly maintained age appropriate equipment
13 and age appropriate medications available during the procedures and
14 during recovery:

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

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

24 (3) A lighting system which permits evaluation of the

1 patient's skin and mucosal color and a backup lighting system of
2 sufficient intensity to permit completion of an operation underway
3 in the event of a general power failure;

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

7 (5) An oxygen delivery system with adequate age appropriate
8 full face mask 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 shall insure appropriate continuous oxygen delivery and a
13 scavenger system;

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

17 (8) Sphygmomanometer, pulse oximeter, oral and nasopharyngeal
18 airways, intravenous fluid administration equipment and/or
19 equipment required for the standard of care or as specified by
20 rule;

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

22 (10) A defibrillator device.

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

24 (1) Evaluate the patient and document, using the ASA Patient

1 Physical Status Classifications, that the patient is an appropriate
2 candidate for conscious sedation;

3 (2) Give written preoperative and postoperative instructions
4 to the patient or, when appropriate due to age or neurological
5 status of the patient, the patient's guardian; and

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

8 (d) The dentist shall ensure that the patient's condition is
9 monitored and recorded on a contemporaneous record. The dentist
10 shall use a Qualified Monitor to monitor and record the patient's
11 condition in addition to the chair side dental assistant. A
12 Qualified Monitor shall be present to monitor the patient at all
13 times.

14 (e) 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 documented requirements of a Qualified Monitor
19 monitoring limited enteral or comprehensive parenteral sedations
20 cases are as specified by rule. The patient's blood pressure,
21 heart rate, and respiration shall be recorded every five minutes,
22 and these recordings shall be documented in the patient record. The
23 record shall also include documentation of preoperative and
24 postoperative vital signs, all medications administered with

1 dosages, time intervals and route of administration including local
2 anesthesia. If the dentist is unable to obtain this information,
3 the reasons shall be documented in the patient's record.

4 (2) During the recovery phase, the patient shall be monitored
5 by a qualified monitor.

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

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

13 (g) When discharging a pediatric patient the dentist shall
14 follow the current edition of AAPD Guidelines for Monitoring and
15 Management of Pediatric Patients During and After Sedation for
16 Diagnostic and Therapeutic Procedures.

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

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

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

24 (3) The patient can talk and respond coherently to verbal

1 questioning, or to preoperative neurological status;

2 (4) The patient can sit up unaided, or to preoperative
3 neurological status;

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

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

8 (i) A dentist who induces conscious sedation shall employ the
9 services of a Qualified Monitor and a chair side dental assistant
10 at all times who each shall hold a valid BLS/CPR certification and
11 maintains certification as specified by rule.

12 **§30-4A-7. Qualifications, standards, and continuing education**
13 **requirements for Class 4 Anesthesia Permit.**

14 (a) A Class 4 Permit permits the use of general
15 anesthesia/deep conscious sedation, conscious sedation/moderate
16 sedation, and anxiolysis/minimal sedation.

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

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

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

24 (3) Satisfies one of the following criteria:

1 (A) Completion of an advanced training program in anesthesia
2 and related subjects beyond the undergraduate dental curriculum
3 that satisfies the requirements described in the ADA Guidelines for
4 Teaching Pain Control and Sedation to Dentists and Dental Students
5 and the ADA Guidelines for the Use of Sedation and General
6 Anesthesia by Dentists at the time training was commenced;

7 (B) Completion of an ADA or AMA accredited postdoctoral
8 training program which affords comprehensive and appropriate
9 training necessary to administer and manage general anesthesia,
10 commensurate with these guidelines;

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

14 (c) A dentist who induces general anesthesia/deep conscious
15 sedation shall have the following facilities, properly maintained
16 age appropriate equipment and age appropriate drugs available
17 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 an operating team of at least three individuals to freely
21 move about the patient;

22 (2) An operating table or chair which permits the patient to
23 be positioned so the operating team can maintain the patient's
24 airway, quickly alter the patient's position in an emergency, and

1 provide a firm platform for the administration of basic life
2 support;

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

7 (4) Suction equipment which permits aspiration of the oral and
8 pharyngeal cavities and a backup suction device which shall
9 function in the event of a general power failure;

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

14 (6) A nitrous oxide delivery system with a fail-safe mechanism
15 that shall insure appropriate continuous oxygen delivery and a
16 scavenger system;

17 (7) A recovery area that has available oxygen, adequate
18 lighting, suction and electrical outlets. The recovery area may be
19 the operating room;

20 (8) Equipment as specified by rule;

21 (9) Emergency drugs as specified by rule

22 (10) A defibrillator device.

23 (d) Before inducing general anesthesia/deep conscious sedation
24 the dentist shall:

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

4 (2) Shall give written preoperative and postoperative
5 instructions to the patient or, when appropriate due to age or
6 neurological status of the patient, the patient's guardian; and

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

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

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

19 (1) Patients shall have continuous monitoring using pulse
20 oximetry and/or equipment required for the standard of care or as
21 specified by rule by a Qualified Monitor until discharge criteria
22 have been met. The patient's blood pressure, heart rate and oxygen
23 saturation shall be assessed every five minutes, and shall be
24 contemporaneously documented in the patient record. The record

1 shall also include documentation of preoperative and postoperative
2 vital signs, all medications administered with dosages, time
3 intervals and route of administration including local anesthesia.

4 The person administering the anesthesia may not leave the patient
5 while the patient is under general anesthesia;

6 (2) During the recovery phase, the patient shall be monitored,
7 including the use of pulse oximetry, by a Qualified Monitor; and

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

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

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

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

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

22 (3) The patient can talk and respond coherently to verbal
23 questioning, or to preoperative neurological status;

24 (4) The patient can sit up unaided, or to preoperative

1 neurological status;

2 (5) The patient can ambulate with minimal assistance, or to
3 preoperative neurological status; and

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

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

10 (h) A dentist who induces general anesthesia shall employ the
11 services of a qualified monitor and a chair side dental assistant
12 at all times, who each shall hold a valid BLS/CPR certification and
13 maintain certification as specified by rule.

14 **§30-4A-8. Board to review, inspect and reinspect dentists for**
15 **issuance of permits.**

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

23 Prior to issuing a permit, the board shall conduct an on-site
24 inspection of facility, equipment, and auxiliary personnel of the

1 applicant to determine if, in fact, all the requirements for the
2 permit have been met. This inspection or evaluation, if required,
3 shall be carried out by at least two members of the subcommittee.
4 This evaluation is to be carried out in a manner following the
5 principles, but not necessarily the procedures, set forth by the
6 current edition of the AAOMS Office Anesthesia Evaluation Manual.
7 On-site inspections are required and shall be performed for all
8 Class 3a, 3b and 4 permittees. The board may reinspect annually, at
9 its discretion, but shall perform an on-site inspection for all
10 permit holders at least once every five years except Class 2 permit
11 holders. The board reserves the right to conduct an on-site
12 inspection whenever it deems necessary for all permit holders. All
13 on-site inspections shall be held during regular business hours.

14 (B) Cancellation or failure to appear or present for a
15 scheduled evaluation by a permit holder, for an unexplained or
16 unexcusable reason, shall be assessed a penalty fee two times the
17 permit holders normal annual renewal fee. The penalty fee shall be
18 separate from the annual renewal fees.

19 **§30-4A-9. Office evaluations.**

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

21 (1) Observation of one or more cases of anesthesia to
22 determine the appropriateness of technique and adequacy of patient
23 evaluation and care;

24 (2) Inspection of facilities, which shall include but not be

1 limited to, the inspection of equipment, drugs and patient records
2 and qualified monitor's certifications and documentation; and

3 (3) The evaluation shall be performed by a team appointed by
4 the board and shall include a member of the subcommittee who holds
5 a current anesthesia permit in the same class or in a higher class
6 than that held by the permit holder being evaluated.

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

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

11 (b) A dentist using a licensed dentist who holds a current
12 anesthesia permit issued by the board shall have his or her office
13 inspected to the level of a class 4 permit as specified by section
14 ten of this article. The office is only approved at that level when
15 the anesthesia permit holder is present and shall have the number
16 of qualified monitors present as required by this article.

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

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

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

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

9 **§30-4A-10. Reporting of Death, Serious Complications or Injury.**

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

21 (1) Name, age and address of patient;

22 (2) Name of the licensee and other persons present during the
23 incident along with their names and addresses;

24 (3) Address where the incident took place;

1 (4) Type of anesthesia and dosages of drugs administered to
2 the patient including local anesthesia;

3 (5) A narrative description of the incident including
4 approximate times and evolution of symptoms; and

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

7 **§30-4A-11. Immunity from liability.**

8 (a) Notwithstanding any other provision of law, a person
9 providing information to the board or to the subcommittee may not
10 be held, by reason of having provided the information, to be
11 civilly liable under any law unless the information was false and
12 the person providing information knew or had reason to believe the
13 information was false.

14 (b) A member or employee of the board or the subcommittee may
15 not be held by reason of the performance by him or her of a duty,
16 function or activity authorized or required of the board or the
17 subcommittee to be civilly liable. The foregoing provisions of this
18 subsection do not apply with respect to an action taken by an
19 individual if the individual, in taking the action, was motivated
20 by malice toward any person affected by the action.

21 **§30-4A-12. Facility Inspections.**

22 (a) The board shall perform an onsite evaluation of Class 3
23 and 4 applicants' dental facilities, equipment, techniques, and
24 personnel prior to issuing a permit. The board may conduct further

1 on-site evaluations.

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

3 **§30-4A-13. Issuance of regular annual permits.**

4 Upon the recommendation of the subcommittee, the board shall
5 issue permits to applicable dentists. An anesthesia permit shall be
6 renewed annually.

7 **§30-4A-14. Waiting period for reapplication or reinspection of**
8 **facilities.**

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

17 **§30-4A-15. Application and annual renewal of regular permits;**
18 **fees.**

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

1 **§30-4A-16. Violations of article; penalties for practicing**
2 **anesthesia without a permit.**

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

11 **§30-4A-17. Appointment of Subcommittee; credentials review; and**
12 **on-site inspections.**

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

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

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

23 (d) The subcommittee shall adopt policies and procedures

1 related to the regulation of general anesthesia/deep conscious
2 sedation, conscious sedation/moderate sedation, anxiolysis/minimal
3 sedation, and relative analgesia/minimal sedation with the same
4 being approved by the board. The subcommittee members shall be paid
5 and reimbursed expenses pursuant to article one of this chapter.

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

7 **§30-4B-1. Unlawful acts.**

8 (a) It is unlawful for a person, other than a dentist or other
9 dental practitioner, to sell, offer for sale or furnish a dental
10 prosthesis or other dental laboratory service to a person who is
11 not a dentist or other dental practitioner.

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

18 (c) It is unlawful for a dental laboratory to perform a dental
19 laboratory service without the issuance of a work authorization by
20 a dentist or other dental practitioner.

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

1 license identification.

2 (e) It is unlawful for a dental laboratory either directly or
3 indirectly:

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

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

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

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

23 **§30-4B-2. Work authorization required; contents; retention.**

24 (a) A dental laboratory technician may not perform a dental

1 laboratory service without the issuance of a work authorization by
2 a dentist or other dental practitioner.

3 (b) Each work authorization shall contain:

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

6 (2) The case identification;

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

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

10 (5) The date of issue; and

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

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

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

21 **§30-4B-3. Denture identification.**

22 A dental laboratory and a dentist who engages in dental
23 laboratory services and who fabricates a full upper or full lower
24 set of prosthetic dentures shall affix upon the dentures, in a

1 nonremovable manner, the name of the patient for whom the dentures
2 are made and the initials of the dentist's state of practice and
3 license identification number.

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

5 The board may review the dental laboratory services of a
6 dental laboratory on a random and general basis without a formal
7 complaint or suspicion of impropriety.

NOTE: The purpose of this bill is to update and revise the law governing the practice of dentistry.

This article has been completely rewritten; therefore, the entire article is underscored.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the House Committee on Health.