WEST VIRGINIA CODE: §30-4-19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Being guilty of any fraud or deception;

(B) Abusing alcohol or drugs;

(C) Violating or improperly disclosing any professional confidence;

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

(E) Obtaining any fee by fraud or misrepresentation;

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

(G) Practicing or offering or undertaking to practice dentistry under any firm name or trade

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name not approved by the board;

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

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

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

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

(L) Advertising to guarantee any dental service;

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Suspension;

(5) Revocation;

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

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

(8) Practicing under supervision or other restriction; or

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

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

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

(k) A person authorized to practice under this article who reports or otherwise provides evidence of the negligence, impairment, or incompetence of another member of this profession to the board or to any peer review organization is not liable to any person for

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making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

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