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OFFICE OF WART STREET

STREETARY OF STREET

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985

ENROLLED

Com Sub for HOUSE BILL No. 1157

(By Mar Del Nooton)

Passed Opril 13, 1985
In Effect July 1, 1985
Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1157

(By Delegate Wooton)

[Passed April 13, 1985; in effect July 1, 1985.]

AN ACT to amend and reenact sections four, four-a, four-b, four-c, five, six, ten, fourteen, sixteen, seventeen-a and seventeen-b, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing fees charged by the board of dental examiners; changing the term West Virginia dental society to West Virginia dental association; requiring the annual registration of dental corporations; expanding the voting rights of dental hygienist member of the board; requiring the board to promulgate rules and regulations pursuant to legislative rule-making authority; and increasing the per diem payments to members of the board.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, four-b, four-c, five, six, ten, fourteen, sixteen, seventeen-a and seventeen-b, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-4. Board of dental examiners.

1 The "West Virginia Board of Dental Examiners" heretofore

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2 established shall be continued and shall be composed of six 3 members. The members of the board in office on the date this 4 section takes effect shall, unless sooner removed, continue to 5 serve until their respective terms expire and until their 6 successors have been appointed and have qualified. Members 7 of the board shall serve for a term of five years. In addition 8 to the five practicing dentists appointed to the board, there 9 shall be appointed one dental hygienist with a degree in dental 10 hygiene from an accredited college, who shall be appointed for a term beginning on the first day of July, one thousand nine 11 12 hundred seventy-seven. The member of the board who is a licensed dental hygienist is empowered to participate in and 13 14 vote on all transactions and business of the board.

All members of the board shall be appointed by the governor, by and with the advice and consent of the Senate. Each member of the board, at the time of his appointment and during his term as such member, shall have been a citizen of this state and shall have been either a licensed dentist or a licensed dental hygienist for a period of not less than five years immediately preceding his appointment.

No person may be eligible for appointment to the board who is connected with or interested in any dental college or dental department of any institution of learning or in a dental supply business.

Except for the dental hygienist, any member shall be eligible for reappointment for one additional consecutive term.

28 Each appointment of a licensed dentist, whether for a full 29 term or to fill a vacancy, shall be made by the governor from among three nominees therefor selected by the West Virginia 30 31 dental association and each appointment of a licensed dental 32 hygienist, whether for a full term or to fill a vacancy, shall 33 be made by the governor from among three nominees therefor 34 selected by the West Virginia dental hygienists' association. In 35 the case of an appointment for a full term such nominations shall be submitted to the governor not later than eight months 36 37 prior to the date on which the appointment shall become 38 effective. In the case of an appointment to fill a vacancy, such nominations shall be submitted to the governor within thirty 39 40days after a request for such nominations shall have been made 41 by the governor to the president of the West Virginia dental

- 42 association or the president of the West Virginia dental
- hygienists' association. In the event of the failure of an 43
- association to submit to the governor nominations for an 44
- 45 appointment in accordance with the requirements of this
- 46 section, the governor may make the appointment without such
- 47 nominations.
- 48 Each member of the board shall receive one hundred dollars
- 49 for each day actually spent in attending meetings of the board,
- or of its committees, and shall also be reimbursed for all 50
- 51 reasonable and necessary expenses actually incurred in the
- 52 discharge of his duties under the provisions of this article.

§30-4-4a. Powers and duties of board.

- The West Virginia board of dental examiners shall examine
- 2 all qualified applicants for license to practice dentistry or
- 3 dental hygiene, and it shall license all such applicants who are
- qualified under applicable statutes and who pass the exami-4
- 5 nations that may be required by statute or by any legally
- 6 adopted rule or regulation. The board shall examine all
- 7 applications filed in accordance with the provisions of section
- four-b of this article and shall issue certificates of authoriza-
- 9 tion to all applicants legally entitled to receive the same, such
- 10 certificates to be signed by the chairman and secretary of the
- 11 board.
- 12 The said board shall have the power to make such
- 13 examination of all applicants appearing before it for any type
- of license as may be necessary to determine that the applicant 14
- 15 is qualified. The board shall also have authority to license
- 16 dental corporations authorized under the provisions of and
- 17 subject to the limitations of this article, to practice dentistry
- 18 through duly licensed dentists. The said board shall also have
- 19 the power to revoke or suspend any license issued by it, for
- 20 cause, after having given the person whose license is sought
- 21 to be revoked or suspended, an opportunity to be heard in
- 22 the manner provided by section eight, article one, chapter
- 23 thirty of this code. It shall have the power to reinstate any
- 24 license revoked or suspended by it.
- 25 The said board is authorized and empowered to hold and
- 26 conduct hearings and investigations on the issuance, suspen-
- 27 sion, revocation or reinstatement of licenses and on charges
- 28 of unauthorized practice of dentistry or dental hygiene.

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The board shall have the authority to promulgate such rules and regulations as are necessary to carry out the provisions of this article, in accordance with chapter twenty-nine-a of this code.

33 The board, acting by and through its members, employees 34 and agents, is further authorized and empowered, at any time 35 during customary office hours, to enter into the office or place 36 of business of any dental laboratory, licensed dentist, dental 37 corporation or other dental practitioner of this state, and to 38 obtain access to, make inspection of and request information 39 regarding any work authorization which such dental labora-40 tory, licensed dentist, dental corporation or other dental 41 practitioner is required under the provisions of section two-42 a of this article, to retain therein, and is further authorized 43 and empowered to inspect any items of dental technological 44 work then in the course of performance by such dental laboratory or person employed by it, and to inspect any dental 45 prosthesis then in the place of business of, or upon the 46 47 premises occupied by, such dental laboratory for making, 48 production, reproduction, construction, repair, alteration or 49 restoration, and to request any information which it, its 50 members, employees or agents deem to be pertinent relating 51 to any such dental technological work and any such dental 52 prosthesis. For the purpose of this paragraph the definition 53 of terms contained in subsection-a, section two-a of this article 54 is made expressly applicable.

The said board shall have the power to hire, fix the compensation of and discharge such employees as are necessary for the performance of the powers and duties vested in the said board by law and to expend such sums as said board may deem necessary to maintain an office and to carry out and enforce the provisions of this article.

All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of carrying out the provisions of this article. The compensation provided for in this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against or payable out of the general revenue fund of this state.

§30-4-4b. Registration of dental corporations.

- 1 When any one or more dentists duly licensed to practice
- 2 dentistry in the state of West Virginia wish to form a dental
- 3 corporation, such dentist or dentists shall file a written
- 4 application with the board of dental examiners, on a form
- 5 prescribed by the board, and shall furnish proof satisfactory
- 6 to the board that the signer is such a duly licensed dentist,
- 7 or if there be more than one that all of the signers of such
- 8 application are such duly licensed dentists. A fee of two
- 9 hundred dollars shall accompany each such application, no
- 10 part of which shall be returnable.
- If the board finds that the signer is a duly licensed dentist,
- 12 or if there be more than one that all of the signers of such
- 13 application are such duly licensed dentists, the board shall
- 14 notify the secretary of state that a certificate of authorization
- 15 has been issued to the individual or individuals signing such
- 16 application to form a dental corporation.
- 17 When the secretary of state receives notification from the
- 18 board of dental examiners that a person or persons have been
- 19 issued a certificate of authorization, he shall attach such
- 20 authorization to the agreement of incorporation and upon
- 21 compliance by the corporation with the applicable provisions
- 22 of chapter thirty-one of this code, shall notify the incorpor-
- 23 ators that such corporation, through a duly licensed dentist
- 24 or dentists, may engage in the practice of dentistry.

§30-4-4c. Practice of dentistry by dental corporations; limitations; dentist-patient relationship not affected; biennial registration; penalty; severability.

- 1 (1) A dental corporation may practice dentistry only
- 2 through an individual dentist or dentists duly licensed to
- 3 practice dentistry in the state of West Virginia, but such dentist
- 4 or dentists may be employees rather than shareholders of such
- 5 corporation, and nothing herein contained shall be construed
- 6 to require a license or other legal authorization of any
- 7 individual employed by such corporation to perform services
- 8 for which no license or other legal authorization is otherwise
- 9 required. Nothing contained in this article is meant or intended
- 10 to change in any way the rights, duties, privileges, responsi-
- bilities and liabilities incident to the dentist-patient relationship
- 12 nor is it meant or intended to change in any way the personal

- 13 character of the dentist-patient relationship. A corporation
- 14 holding such certificate of authorization shall register annually,
- 15 on or before the thirtieth day of June, on a form prescribed
- 16 by the board of dental examiners and shall pay an annual
- 17 registration fee of one hundred fifty dollars.
- 18 (2) A dental corporation holding a certificate of authoriza-19 tion shall cease to engage in the practice of dentistry upon 20 being notified by the board of dental examiners that any of 21 its shareholders is no longer a duly licensed dentist, or when 22 any shares of such corporation have been sold or disposed of 23 to a person who is not a duly licensed dentist: Provided, That 24 the personal representative of a deceased shareholder shall
- 25 have a period, not to exceed twelve months from the date of
- 26 such shareholder's death, to dispose of such shares; but 27 nothing contained herein shall be construed as affecting the
- 28 existence of such corporation or its right to continue to
- 29 operate for all lawful purposes other than the practice of
- 30 dentistry.
- 31 (3) No corporation shall practice dentistry, or any of its 32 branches, or hold itself out as being capable of doing so,
- 33 without a certificate from the board of dental examiners, nor
- 34 shall any corporation practice dentistry, or any of its branches,
- 35 or hold itself out as being capable of doing so, after its
- 36 certificate has been revoked, or if suspended, during the term
- 37 of such suspension. A certificate signed by the secretary of the
- 38 board of dental examiners to which is affixed the official seal
- 39 of the board to the effect that it appears from the records of
- 40 the board that no such certificate to practice dentistry or any 41 of its branches in the state has been issued to any such
- 42 corporation specified therein or that such certificate has been
- 43 revoked or suspended shall be admissible in evidence in all
- 44 courts of this state and shall be prima facie evidence of the
- 45 facts stated therein.
- 46 (4) Any officer, shareholder or employee of such corpora-47 tion who participates in a violation of any provision of this 48 section shall be guilty of a misdemeanor, and, upon conviction,
- 49 shall be fined not exceeding one thousand dollars.
- 50 (5) If any provision of section four-b or four-c of this article
- 51 be held to be invalid, such invalidity shall not affect the other
- 52 provisions of said sections, and to this end the provisions of

53 said sections are severable.

§30-4-5. License required as prerequisite to practice dentistry; exceptions; temporary and special permits.

- 1 Except as otherwise provided in this section, no person shall
- practice or offer to practice dentistry or dental hygiene in this
- state until a license for such purpose shall be issued to him 3
- by the board of dental examiners, nor shall any person so
- practice after the first anniversary of the issuance of such 5
- 6 license until he shall have in his possession a current renewal
- 7 certificate issued by the board.

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The board of dental examiners under such regulations as it may prescribe may issue a temporary permit to practice dentistry or dental hygiene to graduates of schools of dentistry or dental hygiene approved by the board who are certified to the board of directors of dental clinics established by law, by the chief executive of any hospital or sanitarium licensed or operated by the state or by the chief dental officer of the health department of the state. Such permits shall expire thirty days 15 after the date of the next examination given by the board for licenses in dentistry or dental hygiene and shall not be subject to renewal. Such permits shall terminate when the holder thereof ceases to be employed by the person certifying him. A fee of one hundred dollars shall be paid to the board upon issuance of such permit by the person certifying the applicant.

The board of dental examiners under such regulations as it may prescribe may issue a dental intern or dental residency permit to graduates of dental schools approved by the board who are not licensed to practice dentistry in this state and who have not failed an examination for a license to practice dentistry in this state. Applicants for such permits shall be certified to the board by the director of a hospital operated or licensed by the state which maintains a dental intern or residency program. Such permits shall authorize the holder thereof to serve as a dental intern or a dental resident for a period of not more than one year in any hospital licensed or operated by the state which maintains an established dental department under the supervision of a licensed dentist. The holder of such a permit shall function under the supervision of the dental staff of the hospital and shall limit his practice to patients selected by the hospital. The holder of such a

- 38 permit shall not be entitled to receive any fee or other
- 39 compensation other than such salary as may be paid by such
- 40 hospital. Permits may be revoked by the board for cause and
- 41 shall expire at the end of one year or on the date the dental
- 42 internship or residency is discontinued, whichever first occurs.
- 43 A fee of fifty dollars shall be paid to the board upon the
- 44 issuance of such a permit by the hospital nominating him.
- 45 The board of dental examiners under such regulations as it
- 46 may prescribe may issue teaching permits to persons who are
- 47 graduates of a school of dentistry or dental hygiene approved
- 48 by the board where such persons are not licensed to practice
- 49 dentistry or dental hygiene in this state. Such permits shall be
- 50 issued only upon the certification of the dean of a dental
- 51 school located in this state that the applicant is a bona fide
- 52 member of the staff of that school. Such permits shall be valid
- for one year and may be reissued by the board in its 53
- 54 descretion. The holder of such a permit shall be entitled to
- 55 perform all operations which a person licensed to practice
- 56 dentistry or dental hygiene in this state would be entitled to
- 57 perform, but only within the facilities of the dental school and
- 58 as an adjunct to his teaching functions in such school. A fee
- 59 of one hundred dollars shall be paid to the board on the
- 60 issuance of a teaching permit or upon each renewal thereof
- by the school nominating the applicant. 61
- 62 Nothing in this article shall be deemed to prohibit the
- 63 practice of dentistry or dental hygiene by persons licensed in
- 64 another state who, at the request of an approved dental school
- 65 or any regularly organized dental society, may give a clinic at
- such school or at a scientific meeting of such dental society 66
- 67 for the purpose of advancing the professional knowledge of
- 68 members of the dental profession or members of the student
- 69 body of a dental school.
- 70 An applicant for a permit under this section shall transmit
- 71 with his application a fee of fifty dollars which sum the board
- 72 is authorized to expend in an investigation of the applicant's
- 73 qualifications. No portion of this fee is refundable.

§30-4-6. Qualifications of applicant for license; examinations; examination fee; licensing.

- 1 An applicant for a dental license shall be of good moral
- character, a citizen of the United States or an individual who 2

- 3 has declared his intention to become and who shows progress
- 4 toward becoming a citizen of the United States, at least
- 5 eighteen years of age at the time of making application, and
- be a graduate of, and possess an acceptable dental diploma 6
- from the faculty of a dental school approved by the board.
- The board may require the application to be accompanied by 8
- 9 sufficient evidence of these qualifications.
- 10 The applicant shall transmit with his application an
- examination fee of fifty dollars, which sum the board is 11
- 12 authorized to expend in an investigation of the applicant's
- qualifications. No portion of this fee is refundable. 13
- 14 An applicant whose application has been accepted by the
- 15 board shall be given an examination on subjects selected by
- the board from among those currently being taught in 16
- approved dental schools which shall test the qualifications of 17
- the applicant to practice dentistry. The testing body for such 18
- 19 examinations shall be decided by the board under rules and
- regulations promulgated by it. 20
- 21 The board may recognize a certificate granted by the
- national board of dental examiners in lieu of the written 22
- portion of the required examination. 23
- 24 'An applicant obtaining a satisfactory grade on such
- examination and otherwise fulfilling the requirements of the 25
- board shall be granted a license by the board to practice 26
- dentistry, which license shall bear a serial number, the full 27
- 28 name of the licensee, the date of issuance of the license, the
- seal of the board and the signatures of a majority of the 29
- 30 members of the board.
- 31 The board shall not issue a license to any person found
- guilty of cheating, deception or fraud in the examination or 32
- on any part of the application. All manuscripts used in any 33
- examination and all applications for licensure shall be filed for 34
- 35 a period of two years by the secretary of the board for the
- purpose of reference and inspection. 36

§30-4-10. Fees for licenses and certificates issued under §§30-4-8 and 30-4-9.

- 1 The fee for issuing the license to a legal practitioner from
- another state, as provided in section eight of this article, shall 2
- be one hundred dollars, and the fee for issuing a certificate

- 4 to a legal practitioner in this state, as provided in section nine
- of this article, shall be ten dollars, and in each case the fee
- 6 shall be paid before the license or certificate, respectively, is
- 7 issued. No portion of these fees are refundable.

§30-4-14. Prerequisites to practice dental hygiene; examination fee; licensing.

- 1 No person who has not been licensed as a dental hygienist
- 2 in this state on or before the first day of September, one
- 3 thousand nine hundred thirty-seven, shall practice as a dental
- 4 hygienist until he has first passed an examination or
- 5 examinations selected by the West Virginia board of dental
- 6 examiners and otherwise qualifies under such rules and
- 7 regulations as the board may establish. Such examination or
- 8 examinations shall be both practical and theoretical. The fee
- 9 for the examination shall be thirty-five dollars and shall
- 10 accompany the application. An applicant failing to pass the
- 11 first examination shall be entitled to one reexamination at the
- 12 next regular meeting of the board without additional cost. The
- 13 fee for every reexamination after that shall be ten dollars. No
- 14 portion of these fees are refundable.
- 15 The board of dental examiners shall issue a license to
- 16 practice dental hygiene in this state to any person who has
- 17 passed such an examination and who has otherwise qualified
- 18 to practice dental hygiene under the rules and regulations
- 19 established by the board: *Provided*, That no person shall be
- 20 entitled to such dental hygiene license unless he be: (a) At least
- 21 eighteen years of age, (b) of good moral character, (c) a
- 22 graduate of a first class high school of this state or its
- 23 equivalent and (d) be a graduate of, and possess an acceptable
- 24 diploma in dental hygiene from a school having a course in
- 25 dental hygiene approved by the board of dental examiners.

§30-4-16. Dental hygienists from other states who desire to practice in this state; qualifications.

- 1 The board of dental examiners may, at its discretion,
- 2 without the examination herein provided, issue a license to
- 3 practice dental hygiene to any applicant therefor, who shall
- 4 furnish proof satisfactory to the board that he has been duly
- 5 licensed to practice as a dental hygienist in another state after
- 6 full compliance with the requirements of its dental laws:
- 7 Provided, That his professional and preliminary education

- shall not be less than that required in this state, and that he
- shall have been in active practice at least two years previous
- to his application for a license. The fee for issuing a license 10
- to a legal practitioner of dental hygiene from another state 11
- 12 shall be fifty dollars, which shall be paid before the license
- 13 is issued. No portion of this fee is refundable.

§30-4-17a. Specialties; qualifications; application for certificate; fee; limitation of practice.

- 1 No licensee shall announce or otherwise hold himself out 2
 - to the public as a specialist or as being specially qualified in
- 3 any particular branch of dentistry, or as giving special
- attention to any branch of dentistry, or as limiting his practice 4
- 5 to any branch of dentistry, unless he has first complied with
- the requirements established by the board of dental examiners
- 7 for such specialty and has been issued a certificate of
- qualification authorizing him so to do.
- 9 The board of dental examiners may establish higher
- 10 standards and additional requirements for any licensee who
- desires to announce or otherwise hold himself out to the public 11
- 12 as being specially qualified in a branch or specialty of dentistry
- 13 recognized by the board. The board may give such examina-
- tions and secure such assistance as it may deem necessary in 14
- 15 determining the qualifications of applicants.
- 16 The state board of dental examiners may appoint not more
- 17 than three specialists to examine the credentials of applicants, and each specialist so appointed shall receive ten dollars for 18
- each day actually spent in examining the credentials of 19
- 20 applicants and shall be entitled to be reimbursed for all
- reasonable and necessary expenses actually incurred in 21
- 22 discharging such duties. The state board of dental examiners
- may appoint not more than three specialists to administer and 23
- grade the specialty examination given to applicants, and each 24
- specialist so appointed shall receive forty dollars for each day 25
- actually spent in administering and grading such examination. 26
- 27 Application to the board for a certificate of qualification in
- 28 a specialty of dentistry shall be upon such form and contain
- 29 such information as the board may require and shall be
- accompanied by a fee of three hundred dollars. No portion 30
- 31 of this fee is refundable. A licensee found by the board to be
- 32 qualified under the standards and other requirements

- 33 promulgated by the board in the specialty indicated in his
- 34 application shall be issued a certificate of qualification
- 35 authorizing the licensee to announce or otherwise hold himself
- 36 out to the public as specially qualified in the indicated specialty
- under such terms and in a manner approved by the board. 37

Annual information and renewal fee; notice; reinstate-§30-4-17b. ment; penalty fee; waiver of payment of fee on retirement or disability; change of address.

On or before the first day of February of each year, every 1 2

dentist licensed to practice dentistry in this state, and every

- dental hygienist licensed to practice dental hygiene in this state, 3
- 4 shall transmit to the secretary of the board upon a form
- prescribed by the board, his signature, post-office address,
- office address, the serial number of his license certificate, 6
- whether he has been engaged during the preceding year in the
- active and continuous practice of dentistry or dental hygiene,
- as the case may be, whether within or without this state, and 9
- such other information as may be required by the board, 10
- 11 together with an information and renewal fee herein provided
- 12
- 13 The annual information and renewal fee for a dentist shall 14 be fifty dollars and for a dental hygienist shall be twenty-five
- 15 dollars.
- 16 Upon receipt of the required information and the payment
- 17 of the proper renewal fee, the licensee shall be issued a renewal
- 18 certificate authorizing him to continue the practice of dentistry
- 19 or the practice of dental hygiene in this state for a period of
- 20 one year from the first day of February.
- 21 A license to practice dentistry or dental hygiene granted
- 22 under the authority of this article shall be canceled on the first
- 23 day of May if the holder thereof fails to secure a current
- 24 renewal certificate by that date. Any licensee whose license is
- 25 thus canceled by reason of the failure, neglect or refusal to
- 26 secure the proper renewal certificate may be reinstated by the
- 27 board at any time within six months from the date of the 28 cancellation of said license upon the payment of the proper
- 29 renewal fee and an additional fee of twenty-five dollars. If the
- 30 licensee shall not apply for renewal of his license as herein
- 31 required within the said six months, that person shall, at the
- 32 discretion of said board, be required to file an application for

and take the examination provided in this article should he desire to practice dentistry or dental hygiene in this state.

35 Upon failure of any licensee to submit the required 36 information and pay the annual renewal fee as herein required 37 by the statutory date, the board shall attempt to notify such 38 licensee in writing by mailing to his last registered address a 39 notice of the requirements of this section apprising him of the 40 fact that his license to practice will be canceled on the statutory 41 date: Provided, That failure to mail or receive such notice shall 42 not affect the cancellation of his license.

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The board may waive the annual payment of the renewal fee herein required, and issue a renewal certificate to any West Virginia licensee who has held a West Virginia license for at least twenty-five years and is presently retired from active practice, or to any West Virginia licensee who has retired for reasons of physical disability, so long as such retirement continues: *Provided*, That the licensee provides the board with the information required by this section.

Every licensed dentist within thirty days of changing his place of practice or establishing additional offices shall furnish the secretary of the board with his new professional address.

Every licensed dental hygienist within thirty days of changing his place of employment shall furnish the secretary of the board with his new professional address and the name of his employer.

Enr. Com. Sub. for H. B. 1157] 14

The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.
Darred E. Helmes
Chairman Senate Committee
Hoyel Filk Chairman House Committee
Originating in the House.
Takes effect July 1, 1985.
Sed ONuch
Clerk of the Senate
Clerk of the House of Delegates
Dan Tonkine
President of the Senate
Speaker of the House of Delegates
<u> </u>
The within Appened this the Dree
day of, 1985.
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PRESENTED TO THE GOVERNOR

Time 2:27pm