WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

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ENROLLED
Committee Substitute for
SENATE BILL NO. 468

(By Senator Palmero)

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PASSED March 3, 1986
In Effect 90 days from Passage
AN ACT to amend and reenact section eleven, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article four-a, all relating to the administration of general anesthesia and parenteral conscious sedation by dentists; legislative findings and purposes; definitions; requiring permits for the administration and supervision of general anesthesia and parenteral conscious sedation by dentists on an out-patient basis; providing for review of general anesthesia and parenteral conscious sedation permits; providing qualifications for eligibility for permits; providing for reporting of adverse anesthesia and conscious sedation occurrences; providing procedures for applications for anesthesia and parenteral conscious sedation permits; and providing penalties for violations.

Be it enacted by the Legislature of West Virginia:

That section eleven, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter thirty be amended by adding thereto a new article, designated article four-a, all to read as follows:
ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-11. Right of dentist to prescribe drugs and perform surgical operations; sign death certificates; prescriptions.

1 A licensed dentist shall have the same rights to prescribe or administer drugs or medicines, perform such surgical operations, administer local anesthetics and use such appliances as may be necessary to the proper treatment of the special class of diseases mentioned in this article as are enjoyed by registered physicians in this state. A licensed dentist may administer general anesthesia and parenteral conscious sedation in accordance with the provisions of article four-a of this chapter. A licensed dentist shall have the same right to execute and sign a death certificate when such is required in the course of his practice as is given to licensed physicians by the laws of this state. Pharmacists of this state shall fill prescriptions of licensed dentists in this state for any drugs necessary for the practice of dentistry.

ARTICLE 4A. ADMINISTRATION OF GENERAL ANESTHESIA AND PARENTERAL CONSCIOUS SEDATION BY DENTISTS.

§30-4A-1. Legislative findings and declaration of purpose.

1 The Legislature hereby finds and declares that dentists are increasingly administering general anesthesia and parenteral conscious sedation in their offices on an out-patient basis; that the administration of general anesthesia and parenteral conscious sedation carries with it an inherent risk and danger to the patient; that, however, the administration of general anesthesia and parenteral conscious sedation on an out-patient basis by dentists is necessary and for the good of the public; but that because of the inherent dangers in the administration of general anesthesia and parenteral conscious sedation, it is necessary to insure that the persons administering and supervising such general anesthesia or parenteral conscious sedation are competent and trained in the techniques; that it is in the best interests of the public and the dentists of West Virginia to prohibit dentists from administering or supervising the administration of general anesthesia or parenteral conscious sedation unless those dentists meet
certain minimal training and competency standards in the
administration and supervision of general anesthesia or
parenteral conscious sedation; and that requiring a dentist
to obtain a special permit before he or she can administer or
supervise general anesthesia or parenteral conscious
sedation is the best method to preserve the use of general
anesthesia and parenteral conscious sedation by dentists on
out-patients and, at the same time, insure that such
administration and supervision is performed by competent
dentists trained in the use of such techniques.

§30-4A-2. Definitions.

(a) The scope of practice of a licensed “dentist” is
defined in section two, article four of this chapter.
(b) “General anesthesia” means a controlled state of
unconsciousness produced by any drug or pharmacologic
agent accompanied by a partial or complete loss of
protective reflexes, including the inability to independently
maintain an airway and respond purposefully to physical
stimulation of verbal commands.
(c) “Nitrous oxide — oxygen analgesia” refers to the
administration by inhalation of a combination of nitrous
oxide and oxygen gas which produces an altered level of
consciousness without the loss of the patient’s ability to
independently and continuously maintain an airway and
respond appropriately to physical stimulation or verbal
commands.
(d) “Parenteral conscious sedation” means a depressed
state of consciousness produced by the injection of
pharmacologic substances that retains the patient’s ability to
independently and continuously maintain an airway and
respond appropriately to physical stimulation or verbal
commands.
(e) “State of consciousness” refers to a patient being
fully capable of rational response to verbal commands, with
all protective reflexes intact, and including the ability to
clear and maintain an airway in a patent state.

§30-4A-3. Permit of authorization required for both general or
parenteral conscious sedation.

No dentist may administer or supervise the
administration of general anesthesia and parenteral
conscious sedation for dental patients unless such dentist
possesses a permit of authorization from the West Virginia board of dental examiners: Provided, That no such permit shall be required for the administration of general anesthesia or parenteral conscious sedation by a dentist in a hospital licensed by the state of West Virginia.

§30-4A-4. Eligibility requirements for general anesthesia permit.

To receive a permit for the use of general anesthesia and parenteral conscious sedation, a dentist shall:

(a) Be a dentist licensed by the West Virginia board of dental examiners, hereinafter sometimes referred to as the "board," or as "board of dental examiners" and registered to practice dentistry in the state of West Virginia;

(b) Apply to the West Virginia board of dental examiners on an application form prescribed by the board;

(c) Include with the application an application fee in the amount of three hundred dollars;

(d) Have a properly equipped facility for the administration of general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto as outlined in the office anesthesia evaluation manual as adopted and amended by the board of dental examiners;

(e) In the case of any dentist who treats children who applies for any permit under this section, such dentist must document his or her competency to administer general anesthesia and parenteral conscious sedation to children by demonstrating to the satisfaction of the board his or her familiarity with the "Guidelines for the elective use of conscious sedation, deep sedation and general anesthesia in pediatric patients" of American Academy of Pediatrics and the American Academy of Pediatric Dentistry; and

(f) Produce evidence showing at least one of the following:

(1) He or she has completed a minimum of one year of advanced training in an approved anesthesia residency;

(2) He or she is a diplomate of the American board of oral and maxillofacial surgery;

(3) He or she is eligible for an examination by the American board of oral and maxillofacial surgery (ABOMS);
(4) He or she is a fellow of the American association of oral and maxillofacial surgery (AAOMS);
(5) He or she has successfully completed an American dental association accredited oral and maxillofacial surgery program as evidenced by a letter from the program director stating that said applicant is qualified to perform such anesthesia techniques;
(6) He or she is a fellow of the American dental society of anesthesiology; or
(7) He or she employs or works in conjunction with a licensed and trained doctor of medicine or osteopathic physician who is a member of the anesthesiology staff of a hospital licensed by the state of West Virginia, provided such anesthesiologist personally supervises or administers said general anesthesia and remains on the premises of the dental facility until any patient given a general anesthetic or parenteral conscious sedation regains consciousness.

§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.

1 To receive a permit for use of parenteral conscious sedation only, the dentist shall:
   (a) Be a dentist licensed by the West Virginia board of dental examiners and registered to practice dentistry in the state of West Virginia;
   (b) Apply to the West Virginia board of dental examiners on an application form prescribed by the board for the use of parenteral conscious sedation only;
   (c) Include with the application a fee in the amount of three hundred dollars;
   (d) Maintain a properly equipped facility for the administration of parenteral conscious sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto as outlined in the office anesthesia evaluation manual specified in section four of this article;
   (e) In the case of any dentist who treats children who applies for any permit under this section, such dentist must document his or her competency to administer parenteral conscious sedation to children by demonstrating to the satisfaction of the board his or her familiarity with the
"Guidelines for the elective use of conscious sedation, deep sedation and general anesthesia in pediatric patients" of the American Academy of Pediatrics and the American Academy of Pediatric Dentistry; and

(f) Produce evidence showing at least one of the following:

(1) He or she meets at least one of the criteria described in subdivisions (1) through (7) of subsection (e) of section four of this article;

(2) He or she has satisfactorily completed at least one year of post-doctoral dental training in a dental residency or speciality program approved by the American dental association or the American medical association which must include didactic studies and practical experience in the administration of general anesthesia and parenteral conscious sedation. A letter from the chief of the approved residency program verifying that said dentist has satisfactorily completed said training and is competent to administer parenteral conscious sedation may be deemed acceptable evidence thereof; or

(3) He or she has satisfactorily completed a continuing education course or program regarding the administration of parenteral conscious sedation which meets or exceeds the American dental association council on dental education’s current "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry."


The administration of nitrous oxide - oxygen inhalation analgesia shall not require a special permit for use by a licensed dentist. However, a licensed dentist rendering such treatment to their patients shall have a properly equipped facility for the administration of nitrous oxide-oxygen inhalation analgesia. The dentist and their office personnel shall have instruction in the administration of cardia life support. The nitrous oxide-oxygen inhalation equipment shall have fail-safe features and a minimum twenty-five percent oxygen flow.

§30-4A-7. Authority of the West Virginia board of dental examiners to review, inspect and reinspect dentists for issuance of permits.

By making application to the board of dental examiners
for a general anesthesia or parenteral conscious sedation permit, said dentist consents and authorizes the board of dental examiners to review his or her credentials, inspect or reinspect his or her facilities, and investigate any alleged anesthesia mortalities, misadventures, or other adverse occurrences which the board feels is justified in the best interest of the public and the board. The board of dental examiners shall have the authority and right to conduct an in-office review or on-site inspection of any dentist applying for or holding a permit to administer general anesthesia or parenteral conscious sedation at any time the board deems necessary.

§30-4A-8. Appointment of subcommittee by the West Virginia board of dental examiners; credentials review; and on-site inspections.

The West Virginia board of dental examiners shall appoint a five member subcommittee to carry out the review and on-site inspection of any dentist applying for or renewing a permit under this article. The subcommittee shall also make a recommendation for issuing or revoking a permit under this article. This subcommittee shall be known as the “West Virginia Board of Dental Examiners Subcommittee on General Anesthesia and Parenteral Conscious Sedation,” hereinafter referred to as the “subcommittee.” The subcommittee shall consist of one member of the board of dental examiners who shall act as chairman of the subcommittee, one diplomate of the American board of oral and maxillofacial surgery; one fellow of the American dental society of anesthesiology or fellow of the American association of oral and maxillofacial surgery; one general dental practitioner engaged in providing out-patient general anesthesia or parenteral conscious sedation services; and one dental practitioner specializing in pediatric dentistry. Four members of the subcommittee must be practitioners possessing a current general anesthesia or parenteral conscious sedation permit. During the first year of the existence of the subcommittee, the four members of the subcommittee shall possess qualifications as described herein for a temporary provisional permit. No subcommittee member shall serve longer than a four-year term. Initial members of the
subcommittee may be appointed to longer or shorter terms at the discretion of the board of dental examiners so that the terms may be staggered and the subcommittee may maintain experienced and qualified members at all times.


Prior to issuing a permit, the board of dental examiners has the right to conduct an on-site inspection of facility, equipment, and auxiliary personnel of the applicant to determine if, in fact, all the requirements for such permit have been met. This inspection or evaluation, if required, shall be carried out by at least two members of the subcommittee directly appointed by the board of dental examiners as prescribed in section eight of this article. This evaluation is to be carried out in a manner following the principles, but not necessarily the procedures, set forth by the current edition of the office anesthesia evaluation manual of the West Virginia board of dental examiners. On-site inspections are required and shall be performed for all initial applicants. Thereafter, the board may reinspect annually, at its discretion, but must perform an on-site inspection for all permit holders at least once every five years. The board reserves the right to conduct an on-site inspection whenever it deems necessary. However, all on-site inspections shall be held during regular business hours and with at least forty-eight hours’ notification.

§30-4A-10. Immunity from liability.

(a) Notwithstanding any other provision of law, no person providing information to the board of dental examiners or to the subcommittee may be held, by reason of having provided such information, to be civilly liable under any law unless such information was false and the person providing such information knew or had reason to believe that such information was false.

(b) No member or employee of the board of dental examiners or the subcommittee may be held by reason of the performance by him or her of any duty, function or activity authorized or required of the board or the subcommittee to be civilly liable. The foregoing provisions of this subsection shall not apply with respect to any action taken by any
§30-4A-11. Effect on practicing dentists who are currently administering or supervising general anesthesia or parenteral conscious sedation; issuance of temporary provisional permits.

Within ninety days following the effective date of this article, all dentists currently administering or supervising general anesthesia or parenteral conscious sedation and desiring to continue such practice shall make application to the board of dental examiners for the issuance of an immediate temporary provisional permit. This temporary provisional permit shall be valid for up to a maximum of one year. This temporary provisional permit will only be valid until the board is able to conduct a thorough review of the applicant’s credentials and an on-site evaluation of the dentist’s facilities, equipment, techniques, and personnel as described herein, but in no event will the permit be valid for more than one year. Failure to apply within ninety days shall cause the board to consider the currently practicing dentist as a new applicant.

§30-4A-12. Revocation of temporary provisional permits.

Failure of the dentist to meet the minimal credentials or failure to pass the on-site inspection or evaluation prescribed in this article may result in the immediate revocation of the temporary provisional permit. A dentist who has had a temporary provisional permit revoked shall be required to wait thirty days from the date of revocation prior to reapplying for another permit as described in section fifteen of this article.


On the effective date of this article and from that date forward, any dentist not previously administering or supervising general anesthesia or parenteral conscious sedation techniques but wishing to do so, shall make application to the board as prescribed herein. The board and the subcommittee shall then review the applicant’s credentials and further will require an on-site evaluation of
the dentist's facilities, equipment, techniques, and personnel prior to issuing a regular annual permit. After the initial on-site inspection, the board, at its discretion, will conduct further on-site evaluations as described in section nine of this article.


Upon the recommendations of the subcommittee to the board of dental examiners, the board shall issue regular permits to applicable dentists. A general anesthesia or parenteral conscious sedation permit must be renewed annually as described in section sixteen of this article.

§30-4A-15. Waiting period for reapplication or reinspections of facilities.

A dentist whose application has been denied for failure to satisfy the requirements in the application procedure or the on-site evaluation must wait thirty days from the date of such denial prior to reapplying and must submit to another on-site evaluation prior to receiving a regular annual permit. It is the responsibility of the board and the subcommittee to promptly reinspect the applicant dentist's facilities, techniques, equipment, and personnel within ninety days after said applicant has made reapplication.

§30-4A-16. Annual renewal of regular permits; fees.

The board of dental examiners shall require an application for annual renewal of a previously issued general anesthesia or parenteral conscious sedation permit and will require a renewal fee of one hundred dollars. The board shall renew permits for the use of general anesthesia or parenteral conscious sedation after receiving the renewal fee, unless the permit holder has been informed in writing within sixty days prior to such renewal date that a reevaluation of his or her credentials is required. In determining whether such reevaluation is necessary, the board may consider such factors as it deems appropriate, including, but not limited to, patient, dentist or physician complaints and reports of adverse occurrences or misadventures. Reevaluation may also include a yearly on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of such
permit. However, an on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of such a permit will be required for all permit holders within a five-year period from the permit holder's last on-site inspection.

§30-4A-17. Violations of article; penalties for practicing general anesthesia or parenteral conscious sedation without a permit.

Violations of any of the provisions of this article, whether intentional or unintentional, may result in the revocation or suspension of the dentist's permit to administer general anesthesia or parenteral conscious sedation; multiple or repeated violations or gross infractions, such as practicing general anesthesia or parenteral conscious sedation without a valid permit may result in suspension of the dentist's license to practice dentistry for up to one year as well as other disciplinary measures as deemed appropriate by the board of dental examiners.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 25th day of March, 1986.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/6/86
Time 12:24 P.M.