

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

Committee Substitute for
SENATE BILL NO. 468

(By Senator.....*Palumbo*.....)

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PASSED*March 3,*..... 1986

In Effect.....*90 days from*..... Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 468

(SENATOR PALUMBO ,*original sponsor*)

[Passed March 3, 1986; in effect ninety 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
2 or administer drugs or medicines, perform such surgical
3 operations, administer local anesthetics and use such
4 appliances as may be necessary to the proper treatment of
5 the special class of diseases mentioned in this article as are
6 enjoyed by registered physicians in this state. A licensed
7 dentist may administer general anesthesia and parenteral
8 conscious sedation in accordance with the provisions of
9 article four-a of this chapter. A licensed dentist shall have
10 the same right to execute and sign a death certificate when
11 such is required in the course of his practice as is given to
12 licensed physicians by the laws of this state. Pharmacists of
13 this state shall fill prescriptions of licensed dentists in this
14 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
2 are increasingly administering general anesthesia and
3 parenteral conscious sedation in their offices on an out-
4 patient basis; that the administration of general anesthesia
5 and parenteral conscious sedation carries with it an
6 inherent risk and danger to the patient; that, however, the
7 administration of general anesthesia and parenteral
8 conscious sedation on an out-patient basis by dentists is
9 necessary and for the good of the public; but that because of
10 the inherent dangers in the administration of general
11 anesthesia and parenteral conscious sedation, it is
12 necessary to insure that the persons administering and
13 supervising such general anesthesia or parenteral conscious
14 sedation are competent and trained in the techniques; that
15 it is in the best interests of the public and the dentists of
16 West Virginia to prohibit dentists from administering or
17 supervising the administration of general anesthesia or
18 parenteral conscious sedation unless those dentists meet

19 certain minimal training and competency standards in the
20 administration and supervision of general anesthesia or
21 parenteral conscious sedation; and that requiring a dentist
22 to obtain a special permit before he or she can administer or
23 supervise general anesthesia or parenteral conscious
24 sedation is the best method to preserve the use of general
25 anesthesia and parenteral conscious sedation by dentists on
26 out-patients and, at the same time, insure that such
27 administration and supervision is performed by competent
28 dentists trained in the use of such techniques.

§30-4A-2. Definitions.

1 (a) The scope of practice of a licensed “dentist” is
2 defined in section two, article four of this chapter.

3 (b) “General anesthesia” means a controlled state of
4 unconsciousness produced by any drug or pharmacologic
5 agent accompanied by a partial or complete loss of
6 protective reflexes, including the inability to independently
7 maintain an airway and respond purposefully to physical
8 stimulation of verbal commands.

9 (c) “Nitrous oxide — oxygen analgesia” refers to the
10 administration by inhalation of a combination of nitrous
11 oxide and oxygen gas which produces an altered level of
12 consciousness without the loss of the patient’s ability to
13 independently and continuously maintain an airway and
14 respond appropriately to physical stimulation or verbal
15 commands.

16 (d) “Parenteral conscious sedation” means a depressed
17 state of consciousness produced by the injection of
18 pharmacologic substances that retains the patient’s ability
19 to independently and continuously maintain an airway and
20 respond appropriately to physical stimulation or verbal
21 commands.

22 (e) “State of consciousness” refers to a patient being
23 fully capable of rational response to verbal commands, with
24 all protective reflexes intact, and including the ability to
25 clear and maintain an airway in a patent state.

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

1 No dentist may administer or supervise the
2 administration of general anesthesia and parenteral
3 conscious sedation for dental patients unless such dentist

4 possesses a permit of authorization from the West Virginia
5 board of dental examiners: *Provided*, That no such permit
6 shall be required for the administration of general
7 anesthesia or parenteral conscious sedation by a dentist in a
8 hospital licensed by the state of West Virginia.

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

1 To receive a permit for the use of general anesthesia and
2 parenteral conscious sedation, a dentist shall:
3 (a) Be a dentist licensed by the West Virginia board of
4 dental examiners, hereinafter sometimes referred to as the
5 "board," or as "board of dental examiners" and registered
6 to practice dentistry in the state of West Virginia;
7 (b) Apply to the West Virginia board of dental
8 examiners on an application form prescribed by the board;
9 (c) Include with the application an application fee in the
10 amount of three hundred dollars;
11 (d) Have a properly equipped facility for the
12 administration of general anesthesia, staffed with a
13 supervised team of auxiliary personnel capable of
14 reasonably handling procedures, problems, and
15 emergencies incident thereto as outlined in the office
16 anesthesia evaluation manual as adopted and amended by
17 the board of dental examiners;
18 (e) In the case of any dentist who treats children who
19 applies for any permit under this section, such dentist must
20 document his or her competency to administer general
21 anesthesia and parenteral conscious sedation to children by
22 demonstrating to the satisfaction of the board his or her
23 familiarity with the "Guidelines for the elective use of
24 conscious sedation, deep sedation and general anesthesia in
25 pediatric patients" of American Academy of Pediatrics and
26 the American Academy of Pediatric Dentistry; and
27 (f) Produce evidence showing at least one of the
28 following:
29 (1) He or she has completed a minimum of one year of
30 advanced training in an approved anesthesia residency;
31 (2) He or she is a diplomate of the American board of
32 oral and maxillofacial surgery;
33 (3) He or she is eligible for an examination by the
34 American board of oral and maxillofacial surgery
35 (ABOMS);

36 (4) He or she is a fellow of the American association of
37 oral and maxillofacial surgery (AAOMS);

38 (5) He or she has successfully completed an American
39 dental association accredited oral and maxillofacial
40 surgery program as evidenced by a letter from the program
41 director stating that said applicant is qualified to perform
42 such anesthesia techniques;

43 (6) He or she is a fellow of the American dental society of
44 anesthesiology; or

45 (7) He or she employs or works in conjunction with a
46 licensed and trained doctor of medicine or osteopathic
47 physician who is a member of the anesthesiology staff of a
48 hospital licensed by the state of West Virginia, provided
49 such anesthesiologist personally supervises or administers
50 said general anesthesia and remains on the premises of the
51 dental facility until any patient given a general anesthetic
52 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
2 sedation only, the dentist shall:

3 (a) Be a dentist licensed by the West Virginia board of
4 dental examiners and registered to practice dentistry in the
5 state of West Virginia;

6 (b) Apply to the West Virginia board of dental
7 examiners on an application form prescribed by the board
8 for the use of parenteral conscious sedation only;

9 (c) Include with the application a fee in the amount of
10 three hundred dollars;

11 (d) Maintain a properly equipped facility for the
12 administration of parenteral conscious sedation, staffed
13 with a supervised team of auxiliary personnel capable of
14 reasonably handling procedures, problems, and
15 emergencies incident thereto as outlined in the office
16 anesthesia evaluation manual specified in section four of
17 this article;

18 (e) In the case of any dentist who treats children who
19 applies for any permit under this section, such dentist must
20 document his or her competency to administer parenteral
21 conscious sedation to children by demonstrating to the
22 satisfaction of the board his or her familiarity with the

23 “Guidelines for the elective use of conscious sedation, deep
24 sedation and general anesthesia in pediatric patients” of
25 the American Academy of Pediatrics and the American
26 Academy of Pediatric Dentistry; and

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

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

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

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

§30-4A-6. Nitrous oxide — Oxygen analgesia exclusion.

1 The administration of nitrous oxide — oxygen inhalation
2 analgesia shall not require a special permit for use by a
3 licensed dentist. However, a licensed dentist rendering such
4 treatment to their patients shall have a properly equipped
5 facility for the administration of nitrous oxide-oxygen
6 inhalation analgesia. The dentist and their office personnel
7 shall have instruction in the administration of cardiac life
8 support. The nitrous oxide-oxygen inhalation equipment
9 shall have fail-safe features and a minimum twenty-five
10 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.**

1 By making application to the board of dental examiners

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

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

1 The West Virginia board of dental examiners shall
2 appoint a five member subcommittee to carry out the
3 review and on-site inspection of any dentist applying for or
4 renewing a permit under this article. The subcommittee
5 shall also make a recommendation for issuing or revoking a
6 permit under this article. This subcommittee shall be
7 known as the "West Virginia Board of Dental Examiners
8 Subcommittee on General Anesthesia and Parenteral
9 Conscious Sedation," hereinafter referred to as the
10 "subcommittee." The subcommittee shall consist of one
11 member of the board of dental examiners who shall act as
12 chairman of the subcommittee, one diplomate of the
13 American board of oral and maxillofacial surgery; one
14 fellow of the American dental society of anesthesiology or
15 fellow of the American association of oral and maxillofacial
16 surgery; one general dental practitioner engaged in
17 providing out-patient general anesthesia or parenteral
18 conscious sedation services; and one dental practitioner
19 specializing in pediatric dentistry. Four members of the
20 subcommittee must be practitioners possessing a current
21 general anesthesia or parenteral conscious sedation permit.
22 During the first year of the existence of the subcommittee,
23 the four members of the subcommittee shall possess
24 qualifications as described herein for a temporary
25 provisional permit. No subcommittee member shall serve
26 longer than a four-year term. Initial members of the

27 subcommittee may be appointed to longer or shorter terms
28 at the discretion of the board of dental examiners so that the
29 terms may be staggered and the subcommittee may
30 maintain experienced and qualified members at all times.

§30-4A-9. On-site inspection by West Virginia board of dental examiners.

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

§30-4A-10. Immunity from liability.

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

8 (b) No member or employee of the board of dental
9 examiners or the subcommittee may be held by reason of the
10 performance by him or her of any duty, function or activity
11 authorized or required of the board or the subcommittee to
12 be civilly liable. The foregoing provisions of this subsection
13 shall not apply with respect to any action taken by any

14 individual if such individual, in taking such action, was
15 motivated by malice toward any person affected by such
16 action.

§30-4A-11. Effect on practicing dentists who are currently administering or supervising general anesthesia or parenteral conscious sedation; issuance of temporary provisional permits.

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

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

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

§30-4A-13. New applicants.

1 On the effective date of this article and from that date
2 forward, any dentist not previously administering or
3 supervising general anesthesia or parenteral conscious
4 sedation techniques but wishing to do so, shall make
5 application to the board as prescribed herein. The board
6 and the subcommittee shall then review the applicant's
7 credentials and further will require an on-site evaluation of

8 the dentist's facilities, equipment, techniques, and
9 personnel prior to issuing a regular annual permit. After the
10 initial on-site inspection, the board, at its discretion, will
11 conduct further on-site evaluations as described in section
12 nine of this article.

§30-4A-14. Issuance of regular annual permits.

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

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

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

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

1 The board of dental examiners shall require an
2 application for annual renewal of a previously issued
3 general anesthesia or parenteral conscious sedation permit
4 and will require a renewal fee of one hundred dollars. The
5 board shall renew permits for the use of general anesthesia
6 or parenteral conscious sedation after receiving the renewal
7 fee, unless the permit holder has been informed in writing
8 within sixty days prior to such renewal date that a
9 reevaluation of his or her credentials is required. In
10 determining whether such reevaluation is necessary, the
11 board may consider such factors as it deems appropriate,
12 including, but not limited to, patient, dentist or physician
13 complaints and reports of adverse occurrences or
14 misadventures. Reevaluation may also include a yearly
15 on-site inspection of the facility, equipment, personnel,
16 licentiate and procedures utilized by the holder of such

17 permit. However, an on-site inspection of the facility,
18 equipment, personnel, licentiate and procedures utilized by
19 the holder of such a permit will be required for all permit
20 holders within a five-year period from the permit holder's
21 last on-site inspection.

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

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

[Handwritten signatures and initials]

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Gene O. Williams
.....
Chairman Senate Committee

Floyd Fuller
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Mills
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Sam. Tamborini
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

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

Acha. Shaver
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/6/86

Time 12:28 PM

RECEIVED

1986 MAR 26 PM 4: 28

OFFICE OF THE
SECRETARY OF STATE

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86