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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2011



**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**House Bill No. 2498**

(By Delegates Morgan, Stephens, Hartman, Hatfield,  
Martin, D. Poling, Staggers and Rowan)



Passed March 10, 2011

In Effect Ninety Days From Passage

HB 2498

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**H. B. 2498**

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(BY DELEGATES MORGAN, STEPHENS, HARTMAN, HATFIELD,  
MARTIN, D. POLING, STAGGERS AND ROWAN)

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[Passed March 10, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §30-4-19, §30-4-20, §30-4-23, §30-4-28 and §30-4-29, of the Code of West Virginia, 1931, as amended, all relating to the practice of dentistry; requiring notification of a dentist's death to the dental board by the deceased's personal representative; requiring dentists to notify the board of a life threatening occurrence, serious injury or death to patient as a result of dental treatment or related complications; providing for disciplinary action for failing to report; certain actions of dentists subject to disciplinary action by board; providing the board with the authority to require a licensee have a psychological evaluation prior to reinstatement of license; increasing personal representative's length of time to dispose of shares of a deceased shareholder in a dental corporation after dentist's death; and permitting a dental

student to work in a public health setting under certain conditions.

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

That §30-4-19, §30-4-20, §30-4-23, §30-4-28 and §30-4-29, of the Code of West Virginia, 1931, as amended, be amended reenacted, all to read as follows:

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

**§30-4-19. Dental Office.**

1 (a) A licensed dentist within thirty days of changing his  
2 or her place of practice or establishing a practice at an  
3 additional dental office shall furnish the board with the  
4 address of the new or additional dental office.

5 (b) A personal representative of a deceased dentist shall  
6 notify the board of a dentist's death no later than 60 days  
7 from the death of the dentist.

8 (c) A licensed dental hygienist within thirty days of  
9 changing his or her place of employment or establishing  
10 employment at additional dental office shall furnish the board  
11 with the name and address of the new or additional  
12 employers.

**§30-4-20. Refusal to issue or renew, suspension or revocation of  
license; disciplinary action.**

1 (a) The board may refuse to issue, refuse to renew,  
2 suspend, revoke or limit any license or practice privilege of  
3 a licensee and may take disciplinary action against a licensee  
4 who, after hearing, has been adjudged by the board as  
5 unqualified for any of the following reasons:

6 (1) The presentation to the board of any diploma, license  
7 or certificate illegally or fraudulently obtained, or one  
8 obtained from an institution which is not reputable, or one  
9 obtained from an unrecognized or irregular institution or state  
10 board;

11 (2) Suspension or revocation of a license issued by  
12 another state or territory on grounds which would be the basis  
13 of discipline in this state;

14 (3) Incompetent, negligent or willful misconduct in the  
15 practice of dentistry or dental hygiene, which shall include  
16 the departure from, or the failure to conform to, the minimal  
17 standards of acceptable and prevailing dental or dental  
18 hygiene practice in their area of expertise as shall be  
19 determined by the board. The board need not establish actual  
20 injury to the patient in order to adjudge a licensee guilty of  
21 this conduct;

22 (4) Engaging in conduct that indicates a lack of  
23 knowledge of, an inability to apply or the negligent  
24 application of principles or skills of dentistry or dental  
25 hygiene;

26 (5) Being guilty of gross ignorance or gross inefficiency  
27 in his or her profession;

28 (6) Being convicted of a felony; and a certified copy of  
29 the record of the court of conviction shall be sufficient proof  
30 of conviction;

31 (7) Announcing or otherwise holding himself or herself  
32 out to the public as a specialist or as being specially qualified  
33 in any particular branch of dentistry or as giving special  
34 attention to any branch of dentistry or as limiting his or her  
35 practice to any branch of dentistry without first complying

36 with the requirements established by the board for the  
37 specialty and having been issued a certificate of qualification  
38 in the specialty by the board;

39 (8) Failing to report to the board within 72 hours of  
40 becoming aware thereof any life threatening occurrence,  
41 serious injury or death of a patient resulting from dental  
42 treatment or complications following a dental procedure; or

43 (9) Being guilty of unprofessional conduct as contained  
44 in the American Dental Association principles of ethics and  
45 code of professional conduct. The following acts or any of  
46 them are conclusively presumed to be unprofessional  
47 conduct:

48 (A) Being guilty of any fraud or deception;

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

51 (C) Abusing alcohol or drugs;

52 (D) Violating any professional confidence or disclosing  
53 any professional secret;

54 (E) Being grossly immoral;

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

58 (G) Employing what are known as "cappers" or "steerers"  
59 to obtain business;

60 (H) Obtaining any fee by fraud or misrepresentation;

61 (I) Employing directly or indirectly, or directing or  
62 permitting any suspended or unlicensed person so employed,  
63 to perform operations of any kind or to treat lesions of the  
64 human teeth or jaws or correct malimposed formations  
65 thereof;

66 (J) Practicing, or offering, or undertaking to practice  
67 dentistry under any firm name or trade name not approved by  
68 the board;

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

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

76 (M) Advertising to practice dentistry or perform any  
77 operation thereunder without causing pain;

78 (N) Advertising professional superiority or the  
79 performance of professional services in a superior manner;

80 (O) Advertising to guarantee any dental service;

81 (P) Advertising in any manner that is false or misleading  
82 in any material respect;

83 (Q) Soliciting subscriptions from individuals within or  
84 without the state for, or advertising or offering to individuals  
85 within or without the state, a course or instruction or course  
86 materials in any phase, part or branch of dentistry or dental  
87 hygiene in any journal, newspaper, magazine or dental  
88 publication, or by means of radio, television or United States

89 mail, or in or by any other means of contacting individuals:  
90 *Provided*, That the provisions of this paragraph may not be  
91 construed so as to prohibit: (i) An individual dentist or dental  
92 hygienist from presenting articles pertaining to procedures or  
93 technique to state or national journals or accepted dental  
94 publications; or (ii) educational institutions approved by the  
95 board from offering courses or instruction or course materials  
96 to individual dentists and dental hygienists from within or  
97 without the state; or

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

100 (b) The term advertising, as used in this section, shall be  
101 construed to include any type of public media.

102 (c) Disciplinary action includes, but is not limited to, a  
103 reprimand, censure, probation, administrative fine not to  
104 exceed \$1,000 per day per violation and mandatory  
105 attendance at continuing professional education seminars.

#### **§30-4-23. Reinstatement.**

1 (a) Any dentist or dental hygienist against whom  
2 disciplinary action has been taken under the provisions of this  
3 article shall be afforded an opportunity to demonstrate the  
4 qualifications to resume practice. The application for  
5 reinstatement shall be in writing and subject to the  
6 procedures specified by the board by rule.

7 (b) The board may require a licensee to undergo a  
8 psychological evaluation to determine a licensee is competent  
9 to make decisions or if the licensee is impaired by drugs or  
10 alcohol.

#### **§30-4-28. Dental corporations.**

1       (a) All dental corporations created prior to July 1, 2001,  
2 are hereby continued.

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

7       (c) No corporation may practice dentistry, or any of its  
8 branches, or hold itself out as being capable of doing so  
9 without a certificate of authorization from the board.

10       (d) When the Secretary of State receives a certificate of  
11 authorization to act as a dental corporation from the board, he  
12 or she shall attach the authorization to the corporation  
13 application and, upon compliance with the applicable  
14 provisions of chapter thirty-one of this code, the Secretary of  
15 State shall issue to the incorporators a certificate of  
16 incorporation for the dental corporation.

17       (e) A corporation holding a certificate of authorization  
18 must register annually, on or before June 30, on a form  
19 prescribed by the board and pay an annual registration fee in  
20 an amount specified by rule.

21       (f) A dental corporation may practice dentistry only  
22 through an individual dentist or dentists duly licensed to  
23 practice dentistry in this state, but the dentist or dentists may  
24 be employees rather than shareholders of the corporation.

25       (g) A dental corporation holding a certificate of  
26 authorization shall cease to engage in the practice of dentistry  
27 upon being notified by the board that any of its shareholders  
28 are no longer a duly licensed dentist or when any shares of  
29 the corporation have been sold or disposed of to a person  
30 who is not a duly licensed dentist: *Provided*, That the



31 personal representative of a deceased shareholder has a  
32 period, not to exceed twenty-four months from the date of the  
33 shareholder's death, to dispose of the shares; but nothing  
34 contained herein may be construed as affecting the existence  
35 of the corporation or its right to continue to operate for all  
36 lawful purposes other than the practice of dentistry.

**§30-4-29. Inapplicability of article.**

1 The provisions of this article do not apply to:

2 (1) A duly licensed physician or surgeon in the practice  
3 of his or her profession when rendering dental relief in  
4 emergency cases, unless he or she undertakes to reproduce or  
5 reproduces lost parts of the human teeth or to restore or  
6 replace lost or missing teeth in the human mouth;

7 (2) A dental laboratory in the performance of dental  
8 laboratory services as that term is defined in section one,  
9 article four-b of this chapter while the dental laboratory, in  
10 the performance of the work, conforms in all respects to the  
11 requirements of article four-b and further does not apply to  
12 persons performing dental laboratory services under the  
13 direct supervision of a licensed dentist or under the direct  
14 supervision of a person authorized under this article to  
15 perform any of the acts in this article defined to constitute the  
16 practice of dentistry while the work is performed in  
17 connection with, and as a part of, the dental practice of the  
18 licensed dentist or other authorized person and for his or her  
19 dental patients;

20 (3) Students enrolled in and regularly attending any  
21 dental college recognized by the state board of dental  
22 examiners, provided their acts are done in the dental college  
23 and under the direct and personal supervision of their  
24 instructor;

25       (4) Students enrolled in and regularly attending any  
26 dental college recognized by the state board of dental  
27 examiners may practice dentistry in a public health setting,  
28 provided their acts are done under the direct supervision of  
29 their instructor, adjunct instructor or a dentist;

30       (5) Licensed or registered dentists of another state  
31 temporarily operating a clinic under the auspices of a duly  
32 organized and reputable dental college or reputable dental  
33 society, or to one lecturing before a reputable society  
34 composed exclusively of dentists; or

35       (6) The practice of dentistry by dentists whose practice is  
36 confined exclusively to the service of the United States  
37 Army, the United States Navy, the United States Public  
38 Health Service, the United States Veteran's Bureau or any  
39 other authorized United States government agency or bureau.

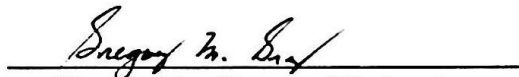
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

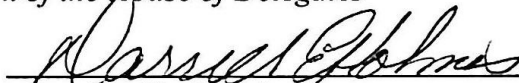
  
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Chairman, House Committee

  
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Chairman, Senate Committee

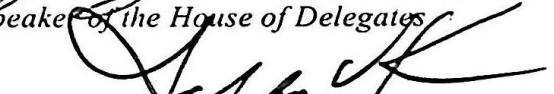
Originating in the House.

To take effect ninety days from passage.

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

  
\_\_\_\_\_  
Acting President of the Senate

The within is approved this the 24<sup>th</sup>  
day of March, 2011.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 1110 am