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
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 or her place of practice or establishing a practice at an additional dental office shall furnish the board with the address of the new or additional dental office.

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

3. (c) A licensed dental hygienist within thirty days of changing his or her place of employment or establishing employment at additional dental office shall furnish the board with the name and address of the new or additional 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, suspend, revoke or limit any license or practice privilege of a licensee and may take disciplinary action against a licensee who, after hearing, has been adjudged by the board as unqualified for any of the following reasons:
(1) The presentation to the board of any diploma, license or certificate illegally or fraudulently obtained, or one obtained from an institution which is not reputable, or one obtained from an unrecognized or irregular institution or state board;

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

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

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

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

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

(7) 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;

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

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

(A) Being guilty of any fraud or deception;

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

(C) Abusing alcohol or drugs;

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

(E) Being grossly immoral;

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

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

(H) Obtaining any fee by fraud or misrepresentation;
(I) Employing directly or indirectly, or directing or permitting any suspended or unlicenced person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof;

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

(K) Having a professional connection or association with, or lending his or her name to another, for the illegal practice of dentistry, or 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;

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

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

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

(O) Advertising to guarantee any dental service;

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

(Q) Soliciting subscriptions from individuals within or without the state for, or advertising or offering to individuals within or without the state, a course or instruction or course materials in any phase, part or branch of dentistry or dental hygiene in any journal, newspaper, magazine or dental publication, or by means of radio, television or United States
mail, or in or by any other means of contacting individuals:  
Provided, That the provisions of this paragraph may not be  
construed so as to prohibit: (i) An individual dentist or dental  
hygienist from presenting articles pertaining to procedures or  
technique to state or national journals or accepted dental  
publications; or (ii) educational institutions approved by the  
board from offering courses or instruction or course materials  
to individual dentists and dental hygienists from within or  
without the state; or  
(R) Engaging in any action or conduct which would have  
warranted the denial of the license.

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

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

§30-4-23. Reinstatement.

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

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

§30-4-28. Dental corporations.
(a) All dental corporations created prior to July 1, 2001, are hereby continued.

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

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

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

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

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

(g) A dental corporation holding a certificate of authorization shall cease to engage in the practice of dentistry upon being notified by the board that any of its shareholders are no longer a duly licensed dentist or when any shares of the corporation have been sold or disposed of to a person who is not a duly licensed dentist: Provided, That the
personal representative of a deceased shareholder has a period, not to exceed twenty-four months from the date of the shareholder's death, to dispose of the shares; but nothing contained herein may be construed as affecting the existence of the corporation or its right to continue to operate for all lawful purposes other than the practice of dentistry.

§30-4-29. Inapplicability of article.

The provisions of this article do not apply to:

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

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

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

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

(6) The practice of dentistry by dentists whose practice is confined exclusively to the service of the United States Army, the United States Navy, the United States Public Health Service, the United States Veteran’s Bureau or any other authorized United States government agency or bureau.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

[Signatures]

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 29th day of November, 2011.

[Signature]

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 11:00 AM