

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 580

(SENATOR STOLLINGS, *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 580

WEST VIRGINIA LEGISLATURE
SEN. STAFF OF STATE

2013 MAY -3 PM 2:27

FILED

2013 MAY -3 PM 2:27

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 580

(SENATOR STOLLINGS, *original sponsor*)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to repeal §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27, §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as amended; to repeal §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d and §30-4A-18 of said code; to repeal §30-4B-5, §30-4B-6, §30-4B-7 and §30-4B-8 of said code; to amend and reenact §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7, §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code; to amend and reenact §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of said code; and to amend and reenact §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code, all relating to the practice of dentistry; prohibiting the practice of dentistry without a license; providing other applicable sections; providing definitions; providing for board composition; setting forth the powers and duties of the board; clarifying rule-making authority; continuing a special revenue account; establishing license, certification and permit requirements; continuing a scope of practice; creating temporary permits; establishing renewal requirements;

providing for exemptions from licensure; providing requirements for the display of a board authorization; permitting the board to file an injunction; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; updating the requirements concerning the use of anesthesia; updating the requirements of dental laboratory services; and updating references.

Be it enacted by the Legislature of West Virginia:

That §30-4-8a, §30-4-10a, §30-4-25, §30-4-26, §30-4-27, §30-4-28 and §30-4-29 of the Code of West Virginia, 1931, as amended, be repealed; that §30-4A-6a, §30-4A-6b, §30-4A-6c, §30-4A-6d and §30-4A-18 of said code be repealed; that §30-4B-5, §30-4B-6, §30-4B-7 and §30-4B-8 of said code be repealed; that §30-4-1, §30-4-2, §30-4-3, §30-4-4, §30-4-5, §30-4-6, §30-4-7, §30-4-8, §30-4-9, §30-4-10, §30-4-11, §30-4-12, §30-4-13, §30-4-14, §30-4-15, §30-4-16, §30-4-17, §30-4-18, §30-4-19, §30-4-20, §30-4-21, §30-4-22, §30-4-23 and §30-4-24 of said code be amended and reenacted; that §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of said code be amended and reenacted; and that §30-4B-1, §30-4B-2, §30-4B-3 and §30-4B-4 of said code be amended and reenacted; all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-1. Unlawful acts.

1 (a) It is unlawful for any person to practice or offer to
2 practice dentistry or dental hygiene in this state without a
3 license, issued under the provisions of this article, or

4 advertise or use any title or description tending to convey or
5 give the impression that they are a dentist or dental hygienist,
6 unless the person is licensed under the provisions of this
7 article.

8 (b) A business entity may not render any service or
9 engage in any activity which, if rendered or engaged in by an
10 individual, would constitute the practice of dentistry, except
11 through a licensce.

§30-4-2. Applicable law.

1 The practices authorized under the provisions of this
2 article and the Board of Dentistry are subject to article one of
3 this chapter, the provisions of this article and any rules
4 promulgated hereunder.

§30-4-3. Definitions.

1 As used in articles four, four-a and four-b, the following
2 words and terms have the following meanings:

3 (1) "AAOMS" means the American Association of Oral
4 and Maxillofacial Surgeons;

5 (2) "AAPD" means the American Academy of Pediatric
6 Dentistry;

7 (3) "ACLS" means Advanced Cardiac Life Support;

8 (4) "ADA" means the American Dental Association;

9 (5) "AMA" means the American Medical Association;

10 (6) "ASA" means American Society of Anesthesiologists;

11 (7) “Anxiolysis/minimal sedation” means removing,
12 eliminating or decreasing anxiety by the use of a single
13 anxiety or analgesia medication that is administered in an
14 amount consistent with the manufacturer’s current
15 recommended dosage for the unsupervised treatment of
16 anxiety, insomnia or pain, in conjunction with nitrous oxide
17 and oxygen. This does not include multiple dosing or
18 exceeding current normal dosage limits set by the
19 manufacturer for unsupervised use by the patient at home for
20 the treatment of anxiety;

21 (8) “Approved dental hygiene program” means a program
22 that is approved by the board and is accredited or its
23 educational standards are deemed by the board to be
24 substantially equivalent to those required by the Commission
25 on Dental Accreditation of the American Dental Association;

26 (9) “Approved dental school, college or dental
27 department of a university” means a dental school, college or
28 dental department of a university that is approved by the
29 board and is accredited or its educational standards are
30 deemed by the board to be substantially equivalent to those
31 required by the Commission on Dental Accreditation of the
32 American Dental Association;

33 (10) “Authorize” means that the dentist is giving
34 permission or approval to dental auxiliary personnel to
35 perform delegated procedures in accordance with the
36 dentist’s diagnosis and treatment plan;

37 (11) “BLS” means Basic Life Support;

38 (12) “Board” means the West Virginia Board of
39 Dentistry;

40 (13) “Business entity” means any firm, partnership,
41 association, company, corporation, limited partnership,
42 limited liability company or other entity;

43 (14) "Central Nervous System Anesthesia" means an
44 induced, controlled state of unconsciousness or depressed
45 consciousness produced by a pharmacologic method;

46 (15) "Certificate of qualification" means a certificate
47 authorizing a dentist to practice a specialty;

48 (16) "CPR" means Cardiopulmonary Resuscitation;

49 (17) "Conscious sedation/Moderate sedation" means an
50 induced, controlled state of depressed consciousness,
51 produced through the administration of nitrous oxide and
52 oxygen and/or the administration of other agents whether
53 enteral or parenteral, in which the patient retains the ability
54 to independently and continuously maintain an airway and to
55 respond purposefully to physical stimulation and to verbal
56 command;

57 (18) "CRNA" means Certified Registered Nurse
58 Anesthetist;

59 (19) "Defibrillator" means a device used to sustain
60 asthmatic heartbeat in an emergency and includes an
61 automatic electronic defibrillator (AED)

62 (20) "Delegated procedures" means those procedures
63 specified by law or by rule of the board and performed by
64 dental auxiliary personnel under the supervision of a licensed
65 dentist;

66 (21) "Dentist Anesthesiologist" means a dentist who is
67 trained in the practice of anesthesiology and has completed
68 an additional approved anesthesia education course;

69 (22) "Dental assistant" means a person qualified by
70 education, training or experience who aids or assists a dentist
71 in the delivery of patient care in accordance with delegated

72 procedures as specified by the board by rule or who may
73 perform nonclinical duties in the dental office;

74 (23) "Dental auxiliary personnel" or "auxiliary" means
75 dental hygienists and dental assistants who assist the dentist
76 in the practice of dentistry;

77 (24) "Dental Hygiene" means the performance of
78 educational, preventive or therapeutic dental services and as
79 further provided in section eleven and legislative rule;

80 (25) "Dental hygienist" means a person licensed by the
81 board to practice and who provides dental hygiene and other
82 services as specified by the board by rule to patients in the
83 dental office and in a public health setting;

84 (26) "Dental laboratory" means a business performing
85 dental laboratory services;

86 (27) "Dental laboratory services" means the fabricating,
87 repairing or altering of a dental prosthesis;

88 (28) "Dental laboratory technician" means a person
89 qualified by education, training or experience who has
90 completed a dental laboratory technology education program
91 and who fabricates, repairs or alters a dental prosthesis in
92 accordance with a dentist's work authorization;

93 (29) "Dental office" means the place where the licensed
94 dentist and dental auxiliary personnel are practicing dentistry;

95 (30) "Dental prosthesis" means an artificial appliance
96 fabricated to replace one or more teeth or other oral or
97 peri-oral structure in order to restore or alter function or
98 aesthetics;

99 (31) "Dentist" means an individual licensed by the board
100 to practice dentistry;

101 (32) "Dentistry" means the evaluation, diagnosis,
102 prevention and treatment of diseases, disorders and
103 conditions of the oral cavity, maxillofacial area and the
104 adjacent and associated structures provided by a dentist;

105 (33) "Direct supervision" means supervision of dental
106 auxiliary personnel provided by a licensed dentist who is
107 physically present in the dental office or treatment facility
108 when procedures are being performed;

109 (34) "Facility Permit" means a permit for a facility where
110 sedation procedures are used that correspond with the level
111 of anesthesia provided;

112 (35) "General anesthesia" means an induced, controlled
113 state of unconsciousness in which the patient experiences
114 complete loss of protective reflexes, as evidenced by the
115 inability to independently maintain an airway, the inability to
116 respond purposefully to physical stimulation or the inability
117 to respond purposefully to verbal command.

118 (36) "Deep conscious sedation/general anesthesia"
119 includes partial loss of protective reflexes and the patient
120 retains the ability to independently and continuously maintain
121 an airway;

122 (37) "General supervision" means a dentist is not required
123 to be in the office or treatment facility when procedures are
124 being performed by the auxiliary dental personnel, but has
125 personally diagnosed the condition to be treated, has
126 personally authorized the procedures and will evaluate the
127 treatment provided by the dental auxiliary personnel;

128 (38) "Good moral character" means a lack of history of
129 dishonesty;

130 (39) "Health Care Provider BLS/CPR" means Health
131 Care Provider Basic Life Support/Cardiopulmonary
132 Resuscitation;

133 (40) "License" means a license to practice dentistry or
134 dental hygiene;

135 (41) "Licensee" means a person holding a license;

136 (42) "Mobile Dental Facility" any self-contained facility
137 in which dentistry or dental hygiene will be practiced which
138 may be moved, towed or transported from one location to
139 another;

140 (43) "Portable dental unit" means any nonfacility in
141 which dental equipment, utilized in the practice of dentistry,
142 is transported to and utilized on a temporary basis an out-of-
143 office location, including but not limited to, patients' homes,
144 schools, nursing homes or other institutions;

145 (44) "Other dental practitioner" means those persons
146 excluded from the definition of the practice of dentistry under
147 the provisions of subdivisions (3), (4) and (5), section twenty-
148 four, article four of this chapter and also those persons who
149 hold teaching permits which have been issued to them under
150 the provisions of section fourteen, article four of this chapter;

151 (45) "PALS" means Pediatric Advanced Life Support;

152 (46) "Pediatric patient" means infants and children;

153 (47) "Physician anesthesiologist" means a physician,
154 medical doctor or doctor of osteopathy, who is specialized in
155 the practice of anesthesiology;

156 (48) "Public health practice" means treatment or
157 procedures in a public health setting which shall be
158 designated by a rule promulgated by the board to require
159 direct, general or no supervision of a dental hygienist by a
160 dentist;

161 (49) "Public health setting" means hospitals, schools,
162 correctional facilities, jails, community clinics, long-term
163 care facilities, nursing homes, home health agencies, group
164 homes, state institutions under the West Virginia Department
165 of Health and Human Resources, public health facilities,
166 homebound settings, accredited dental hygiene education
167 programs and any other place designated by the board by
168 rule;

169 (50) "Qualified monitor" means an individual who by
170 virtue of credentialing and/or training is qualified to check
171 closely and document the status of a patient undergoing
172 anesthesia and observe utilized equipment;

173 (51) "Relative analgesia/minimal sedation" means an
174 induced, controlled state of minimally depressed
175 consciousness produced solely by the inhalation of a
176 combination of nitrous oxide and oxygen or single oral
177 premedication without the addition of nitrous oxide and
178 oxygen in which the patient retains the ability to
179 independently and continuously maintain an airway and to
180 respond purposefully to physical stimulation and to verbal
181 command.

182 (52) "Specialty" means the practice of a certain branch of
183 dentistry;

184 (53) "Subcommittee" means West Virginia Board of
185 Dentistry Subcommittee on Anesthesia; and

186 (54) "Work authorization" means a written order for
187 dental laboratory services which has been issued by a
188 licensed dentist or other dental practitioner.

§30-4-4. Board of Dental Examiners.

1 (a) The West Virginia Board of Dental Examiners is
2 continued and on July 1, 2013, the board shall be renamed the
3 West Virginia Board of Dentistry. The members of the board
4 in office on the date this section takes effect shall, unless
5 sooner removed, continue to serve until their respective terms
6 expire and until their successors have been appointed and
7 qualified.

8 (b) The Governor, by and with the advice and consent of
9 the Senate, shall appoint:

10 (1) Six licensed dentists;

11 (2) One licensed dental hygienist;

12 (3) One nationally certified dental assistant or currently
13 practicing dental assistant with a minimum of ten years
14 experience; and

15 (4) One citizen member who is not licensed under the
16 provisions of this article and does not perform any services
17 related to the practice of dentistry.

18 (c) The West Virginia Dental Association may submit
19 recommendations to the Governor for the appointment of the
20 licensed dentists board members, the West Virginia
21 Association of Dental Hygienists may submit
22 recommendations to the Governor for the appointment of an
23 Dental Hygienist board member and the West Virginia Dental
24 Assistant Association may submit recommendations to the
25 Governor for the appointment of a dental assistant board
26 member.

27 (d) A person connected with a commercial entity that
28 may derive financial gain from the profession of dentistry and
29 a person employed as full-time faculty with a dental college,
30 school or dental department of a university are not eligible
31 for appointment to the board.

32 (e) After the initial appointment term, the appointment
33 term is five years. A member may not serve more than two
34 consecutive terms. A member who has served two
35 consecutive full terms may not be reappointed for at least one
36 year after completion of his or her second full term. A
37 member may continue to serve until his or her successor has
38 been appointed and qualified.

39 (f) Each licensed member of the board, at the time of his
40 or her appointment, shall have held a license in this state for
41 a period of not less than five years immediately preceding the
42 appointment.

43 (g) Each member of the board shall be a resident of this
44 state during the appointment term.

45 (h) A vacancy on the board shall be filled by appointment
46 by the Governor for the unexpired term of the member whose
47 office is vacant.

48 (i) The Governor may remove any member from the
49 board for neglect of duty, incompetency or official
50 misconduct.

51 (j) A licensed member of the board immediately and
52 automatically forfeits membership to the board if his or her
53 license to practice is suspended or revoked in any
54 jurisdiction.

55 (k) A member of the board immediately and
56 automatically forfeits membership to the board if he or she is

57 convicted of a felony under the laws of any jurisdiction or
58 becomes a nonresident of this state.

59 (l) The board shall elect annually one of its members as
60 president and one member as secretary who shall serve at the
61 will and pleasure of the board.

62 (m) Each member of the board is entitled to receive
63 compensation and expense reimbursement in accordance with
64 article one of this chapter.

65 (n) A simple majority of the membership serving on the
66 board at a given time is a quorum for the transaction of
67 business.

68 (o) The board shall hold at least two meetings annually.
69 Other meetings shall be held at the call of the president or
70 upon the written request of four members, at the time and
71 place as designated in the call or request.

72 (p) Prior to commencing his or her duties as a member of
73 the board, each member shall take and subscribe to the oath
74 required by section five, article four of the Constitution of
75 this state.

76 (q) The members of the board, when acting in good faith
77 and without malice, shall enjoy immunity from individual
78 civil liability while acting within the scope of their duties as
79 board members.

§30-4-5. Powers of the board.

1 The board has all the powers and duties set forth in this
2 article, by rule, in article one of this chapter and elsewhere in
3 law, including:

4 (1) Hold meetings;

13

[Enr. Com. Sub. for S. B. No. 580

5 (2) Establish procedures for submitting, approving and
6 rejecting applications for a license, certificate and permit;

7 (3) Determine the qualifications of any applicant for a
8 license, certificate and permit;

9 (4) Establish the fees charged under the provisions of this
10 article;

11 (5) Issue, renew, deny, suspend, revoke or reinstate a
12 license, certificate and permit;

13 (6) Prepare, conduct, administer and grade written, oral
14 or written and oral examinations for a license;

15 (7) Contract with third parties to administer the
16 examinations required under the provisions of this article;

17 (8) Maintain records of the examinations the board or a
18 third-party administers, including the number of persons
19 taking the examination and the pass and fail rate;

20 (9) Maintain an office and hire, discharge, establish the
21 job requirements and fix the compensation of employees and
22 contract with persons necessary to enforce the provisions of
23 this article.

24 (10) Employ investigators, attorneys, hearing examiners,
25 consultants and other employees as may be necessary who
26 are exempt from the classified service and who serve at the
27 will and pleasure of the board.

28 (11) Investigate alleged violations of the provisions of
29 this article and articles four-a and four-b of this chapter and
30 legislative rules, orders and final decisions of the board;

31 (12) Conduct disciplinary hearings of persons regulated
32 by the board;

33 (13) Determine disciplinary action and issue orders;

34 (14) Institute appropriate legal action for the enforcement
35 of the provisions of this article;

36 (15) Maintain an accurate registry of names and
37 addresses of all persons regulated by the board;

38 (16) Keep accurate and complete records of its
39 proceedings, and certify the same as may be necessary and
40 appropriate;

41 (17) Propose rules in accordance with the provisions of
42 article three, chapter twenty-nine-a of this code to implement
43 the provisions of this article;

44 (18) Sue and be sued in its official name as an agency of
45 this state; and

46 (19) Confer with the Attorney General or his or her
47 assistant in connection with legal matters and questions.

§30-4-6. Rule-making authority.

1 (a) The board shall propose rules for legislative approval,
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article and articles four-a and four-b of this chapter including:

5 (1) Standards and requirements for licenses, certifications
6 and permits;

15

[Enr. Com. Sub. for S. B. No. 580

7 (2) Requirements for third parties to prepare and/or
8 administer examinations and reexaminations;

9 (3) Educational and experience requirements;

10 (4) Continuing education requirements and approval of
11 continuing education courses;

12 (5) Procedures for the issuance and renewal of licenses,
13 certifications and permits;

14 (6) Establish a fee schedule;

15 (7) Regulate dental specialities;

16 (8) Delegate procedures to be performed by a dental
17 hygienist;

18 (9) Delegate procedures to be performed by a dental
19 assistant;

20 (10) Designate the services and procedures performed
21 under direct supervision, general supervision in public health
22 practice;

23 (11) Designate additional public health settings;

24 (12) Regulate the use of firm or trade names;

25 (13) Regulate dental corporations;

26 (14) Regulate mobile dental facilities;

27 (15) Regulate portable dental units;

28 (16) Regulate professional limited liability companies;

- 29 (17) Establish professional conduct requirements;
- 30 (18) Establish the proccdures for denying, suspending,
31 revoking, reinstating or limiting the practice of licensees,
32 certifications and permittees;
- 33 (19) Establish requirements for inactive or revoked
34 licenses, certifications and permits;
- 35 (20) Regulate dental anesthesia, including:
- 36 (A) Fccs;
- 37 (B) Evaluations;
- 38 (C) Equipment;
- 39 (D) Emergency drugs;
- 40 (E) Definitions;
- 41 (F) Qualified monitor requirements; and
- 42 (G) Education;
- 43 (21) Any other rules necessary to implement this article.
- 44 (b) All of the board's rules in effect and not in conflict
45 with these provisions shall remain in effect until they arc
46 amended or rescinded.

§30-4-7. Fees; special revenue account; administrative fines.

- 1 (a) All fccs and other monecys, except administrative
2 fines, received by the board shall be deposited in a separate
3 special revcnue fund in the State Treasury designated the
4 Board of Dentists and Dental Hygicnist Special Fund, which

5 is continued and shall be known as the Board of Dentistry
6 Special Fund. The fund is used by the board for the
7 administration of this article. Except as may be provided in
8 article one of this chapter, the board retains the amount in the
9 special revenue account from year to year. No compensation
10 or expense incurred under this article is a charge against the
11 General Revenue Fund.

12 (b) Any amounts received as administrative fines imposed
13 pursuant to this article shall be deposited into the general
14 revenue fund of the State Treasury.

§30-4-8. License to practice dentistry.

1 (a) The board shall issue a license to practice dentistry to
2 an applicant who meets the following requirements:

3 (1) Is at least eighteen years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate of and has a diploma from a school
6 accredited by the Commission on Dental Accreditation or
7 equivalently approved dental college, school or dental
8 department of a university as determined by the board;

9 (4) Has passed the National Board examination as given
10 by the Joint Commission on National Dental Examinations
11 and a clinical examination as specified by the board by rule;

12 (5) Has not been found guilty of cheating, deception or
13 fraud in the examination or any part of the application;

14 (6) Has paid the application fee specified by rule; and

15 (7) Not be an alcohol or drug abuser, as these terms are
16 defined in section eleven, article one-a, chapter twenty-seven

17 of this code: *Provided*, That an applicant in an active
18 recovery process, which may, in the discretion of the board,
19 be evidenced by participation in a twelve-step program or
20 other similar group or process, may be considered.

21 (b) A dentist may not represent to the public that he or
22 she is a specialist in any branch of dentistry or limit his or her
23 practice to any branch of dentistry unless first issued a
24 certificate of qualification in that branch of dentistry by the
25 board.

26 (c) A license to practice dentistry issued by the board
27 shall for all purposes be considered a license issued under
28 this section: *Provided*, That a person holding a license shall
29 renew the license.

§30-4-9. Scope of practice of a dentist.

1 The practice of dentistry includes the following:

2 (1) Coordinate dental services to meet the oral health
3 needs of the patient;

4 (2) Examine, evaluate and diagnose diseases, disorders
5 and conditions of the oral cavity, maxillofacial area and
6 adjacent and associated structures;

7 (3) Treat diseases, disorders and conditions of the oral
8 cavity, maxillofacial area and the adjacent and associated
9 structures;

10 (4) Provide services to prevent diseases, disorders and
11 conditions of the oral cavity, maxillofacial area and the
12 adjacent and associated structures;

13 (5) Fabricate, repair or alter a dental prosthesis;

19

[Enr. Com. Sub. for S. B. No. 580

14 (6) Administer anesthesia in accordance with the
15 provisions of article four-a of this chapter;

16 (7) Prescribe drugs necessary for the practice of dentistry;

17 (8) Execute and sign a death certificate when it is
18 required in the practice of dentistry;

19 (9) Employ and supervise dental auxiliary personnel;

20 (10) Authorize delegated procedures to be performed by
21 dental auxiliary personnel; and

22 (11) Perform any other work included in the curriculum
23 of an approved dental school, college or dental department of
24 a university.

§30-4-10. License to practice dental hygiene.

1 (a) The board shall issue a dental hygienist license to an
2 applicant who meets the following requirements:

3 (1) Is at least eighteen years of age;

4 (2) Is of good moral character;

5 (3) Is a graduate with a degree in dental hygiene from an
6 approved dental hygiene program of a college, school or
7 dental department of a university;

8 (4) Has passed the national board dental hygiene
9 examination, a regional or state clinical examination and a
10 state law examination that tests the applicant's knowledge of
11 subjects specified by the board by rule;

12 (5) Has not been found guilty of cheating, deception or
13 fraud in the examination or any part of the application;

14 (6) Has paid the application fee specified by rule; and

15 (7) Not be an alcohol or drug abuser, as these terms are
16 defined in section eleven, article one-a, chapter twenty-seven
17 of this code: *Provided*, That an applicant in an active
18 recovery process, which may, in the discretion of the board,
19 be evidenced by participation in a twelve-step program or
20 other similar group or process, may be considered.

21 (b) A dental hygienist license issued by the board and in
22 good standing on the effective date of the amendments to this
23 section shall for all purposes be considered a dental hygienist
24 license issued under this section: *Provided*, That a person
25 holding a dental hygienist license shall renew the license.

§30-4-11. Scope of practice for a dental hygienist.

1 The practice of dental hygiene includes the following:

2 (1) Perform a complete prophylaxis, including the
3 removal of any deposit, accretion or stain from supra and
4 subgingival, the surface of a tooth or a restoration;

5 (2) Apply a medicinal agent to a tooth for a prophylactic
6 purpose;

7 (3) Take a radiograph for interpretation by a dentist;

8 (4) Instruct a patient on proper oral hygiene practice;

9 (5) Place sealants on a patient's teeth without a prior
10 examination by a licensed dentist: *Provided*, That for this
11 subdivision, the dental hygienist has a public health practice
12 permit issued by the board, and subject to a collaborative
13 agreement with a supervising dentist and the patient is
14 referred for a dental examination within six months of sealant
15 application;

16 (6) Perform all delegated procedures of a dental hygienist
17 specified by rule by the board; and

18 (7) Performing all delegated procedures of a dental
19 assistant specified by rule by the board.

§30-4-12. License renewal.

1 (a) All persons regulated by this article shall annually or
2 biannually, renew his or her board authorization by
3 completing a form prescribed by the board and submitting
4 any other information required by the board.

5 (b) The board shall charge a fee for each renewal of a
6 board authorization and shall charge a late fee for any
7 renewal not paid by the due date.

8 (c) The board shall require as a condition of renewal that
9 each licensee, certificate holder or permittee complete
10 continuing education.

11 (d) The board may deny an application for renewal for
12 any reason which would justify the denial of an original
13 application.

§30-4-13. Board authorizations shall be displayed.

1 (a) The board shall prescribe the form for a board
2 authorization, and may issue a duplicate upon payment of a
3 fee.

4 (b) Any person regulated by the article shall
5 conspicuously display his or her board authorization at his or
6 her principal business location.

§30-4-14. Dental intern, resident, or teaching permit.

1 (a) The board may issue a dental intern or dental resident
2 permit to an applicant who has been accepted as a dental
3 intern or dental resident by a licensed hospital or dental
4 school in this state which maintains an established dental
5 department under the supervision of a licensed dentist and
6 meets the following qualifications:

7 (1) Has graduated from a Commission on Dental
8 Accreditation or equivalent approved dental college, school
9 or dental department of a university with a degree in
10 dentistry;

11 (2) Has paid the application fee specified by rule; and

12 (3) Meets the other qualifications specified by rule.

13 (b) The dental intern or dental resident permit may be
14 renewed and expires on the earlier of:

15 (1) The date the permit holder ceases to be a dental intern
16 or dental resident; or

17 (2) One year after the date of issue.

18 (c) The board may issue a teaching permit to an applicant
19 who is not otherwise licensed to practice dentistry in this
20 state and who meets the following conditions:

21 (1) Is authorized or is eligible, as determined by the
22 board, for a authorization to practice dentistry in another
23 jurisdiction;

24 (2) Has met or been approved under the credentialing
25 standards of a dental school or an academic medical center
26 with which the person is to be affiliated: *Provided*, That the
27 dental school or academic medical center is accredited by the
28 Commission on Dental Accreditation or Joint Commission on
29 Accreditation of Health Care Organizations;

30 (3) The permittee may teach and practice dentistry in or
31 on behalf of a dental school or college offering a doctoral
32 degree in dentistry operated and conducted in this state, in
33 connection with an academic medical center or at any
34 teaching hospital adjacent to a dental school or an academic
35 medical center;

36 (4) Shall successfully complete the West Virginia Dental
37 Law Examination;

38 (5) Shall pay annual renewal fees to the board;

39 (6) Shall comply with continuing education requirements;
40 and

41 (7) Has had no disciplinary actions taken or pending
42 against him or her by any other jurisdiction.

43 (d) A teaching permit may be renewed annually with a
44 written recommendation from the dental school dean.

45 (e) While in effect, a permittee is subject to the
46 restrictions and requirements imposed by this article to the
47 same extent as a licensee. In addition, a permittee may not
48 receive any fee for service other than a salary paid by the
49 hospital or dental school.

**§30-4-15. Special volunteer dentist or dental hygienist license;
civil immunity for voluntary services rendered to
indigents.**

1 (a) There is continued a special volunteer dentist and
2 dental hygienist license for dentist and dental hygienists
3 retired or retiring from the active practice of dentistry and
4 dental hygiene who wish to donate their expertise for the care
5 and treatment of indigent and needy patients in the clinic
6 setting of clinics organized, in whole or in part, for the

7 delivery of health care services without charge. The special
8 volunteer dentist or dental hygienist license shall be issued by
9 the board to dentist or dental hygienists licensed or otherwise
10 eligible for licensure under this article and the legislative
11 rules promulgated hereunder without the payment of an
12 application fee, license fee or renewal fee, shall be issued for
13 the remainder of the licensing period and renewed consistent
14 with the boards other licensing requirements. The board shall
15 develop application forms for the special license provided in
16 this subsection which shall contain the dental hygienist's
17 acknowledgment that:

18 (1) The dentist or dental hygienist's practice under the
19 special volunteer dentist or dental hygienist license will be
20 exclusively devoted to providing dentistry or dental hygiene
21 care to needy and indigent persons in West Virginia;

22 (2) The dentist or dental hygienist will not receive any
23 payment or compensation, either direct or indirect, or have
24 the expectation of any payment or compensation, for any
25 dentistry or dental hygiene services rendered under the
26 special volunteer dentist or dental hygienist license;

27 (3) The dentist or dental hygienist will supply any
28 supporting documentation that the board may reasonably
29 require; and

30 (4) The dentist or dental hygienist agrees to continue to
31 participate in continuing professional education as required
32 by the board for the special volunteer dentist or dental
33 hygienist.

34 (b) Any dentist or dental hygienist who renders any
35 dentistry or dental hygiene service to indigent and needy
36 patients of a clinic organized, in whole or in part, for the
37 delivery of health care services without charge under a

38 special volunteer dentist or dental hygienist license
39 authorized under subsection (a) of this section without
40 payment or compensation or the expectation or promise of
41 payment or compensation is immune from liability for any
42 civil action arising out of any act or omission resulting from
43 the rendering of the dental hygiene service at the clinic unless
44 the act or omission was the result of the dentist's or dental
45 hygienist's gross negligence or willful misconduct. In order
46 for the immunity under this subsection to apply, there shall be
47 a written agreement between the dentist or dental hygienist
48 and the clinic pursuant to which the dentist or dental
49 hygienist will provide voluntary uncompensated dental
50 hygiene services under the control of the clinic to patients of
51 the clinic before the rendering of any services by the dentist
52 or dental hygienist at the clinic: *Provided*, That any clinic
53 entering into such written agreement is required to maintain
54 liability coverage of not less than one million dollars per
55 occurrence.

56 (c) Notwithstanding the provisions of subsection (b) of
57 this section, a clinic organized, in whole or in part, for the
58 delivery of health care services without charge is not relieved
59 from imputed liability for the negligent acts of a dentist or
60 dental hygienist rendering voluntary dental hygiene services
61 at or for the clinic under a special volunteer dentist or dental
62 hygienist license authorized under subsection (a) of this
63 section.

64 (d) For purposes of this section, "otherwise eligible for
65 licensure" means the satisfaction of all the requirements for
66 licensure as listed in section eight of this article and in the
67 legislative rules promulgated thereunder, except the fee
68 requirements of subdivision (6) of said section and of the
69 legislative rules promulgated by the board relating to fees.

70 (e) Nothing in this section may be construed as requiring
71 the board to issue a special volunteer dentist or dental

72 hygienist license to any dental hygienist whose license is or
73 has been subject to any disciplinary action or to any dentist
74 or dental hygienist who has surrendered a license or caused
75 such license to lapse, expire and become invalid in lieu of
76 having a complaint initiated or other action taken against his
77 or her dentist or dental hygienist license, or who has elected
78 to place a dentist or dental hygienist license in inactive status
79 in lieu of having a complaint initiated or other action taken
80 against his or her license, or who has been denied a dentist or
81 dental hygienist license.

82 (f) Any policy or contract of liability insurance providing
83 coverage for liability sold, issued or delivered in this state to
84 any dentist or dental hygienist covered under the provisions
85 of this article shall be read so as to contain a provision or
86 endorsement whereby the company issuing such policy
87 waives or agrees not to assert as a defense on behalf of the
88 policyholder or any beneficiary thereof, to any claim covered
89 by the terms of such policy within the policy limits, the
90 immunity from liability of the insured by reason of the care
91 and treatment of needy and indigent patients by a dentist or
92 dental hygienist who holds a special volunteer dentist or
93 dental hygienist license.

§30-4-16. Dental corporations.

1 (a) Dental corporations are continued.

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

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

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

16 (c) A corporation holding a certificate of authorization
17 shall renew annually, on or before June 30, on a form
18 prescribed by the board and pay an annual fee in an amount
19 specified by rule.

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

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

§30-4-17. Reinstatement.

1 (a) A licensee against whom disciplinary action has been
2 taken under the provisions of this article shall be afforded an
3 opportunity to demonstrate the qualifications to resume

4 practice. The application for reinstatement shall be in writing
5 and subject to the procedures specified by the board by rule.

6 (b) A licensee who does not complete annual renewal, as
7 specified by the board by rule, and whose license has lapsed
8 for one year or longer, shall make application for
9 reinstatement as specified by the board by rule.

10 (c) The board, at its discretion and for cause, may require
11 an applicant for reinstatement to undergo a physical and/or
12 mental evaluation to determine a licensee is competent to
13 practice or if the licensee is impaired by drugs or alcohol.

§30-4-18. Actions to enjoin violations.

1 (a) If the board obtains information that any person has
2 engaged in, is engaging in or is about to engage in any act
3 which constitutes or will constitute a violation of the
4 provisions of this article, the rules promulgated pursuant to
5 this article or a final order or decision of the board, it may
6 issue a notice to the person to cease and desist in engaging in
7 the act and/or apply to the circuit court in the county of the
8 alleged violation for an order enjoining the act.

9 (b) The circuit court may issue a temporary injunction
10 pending a decision on the merits and may issue a permanent
11 injunction based on its findings in the case.

12 (c) The judgment of the circuit court on an application
13 permitted by the provisions of this section is final unless
14 reversed, vacated or modified on appeal to the West Virginia
15 Supreme Court of Appeals.

**§30-4-19. Complaints; investigations; due process procedure;
grounds for disciplinary action.**

1 (a) The board may initiate a complaint upon receipt of
2 credible information and shall, upon the receipt of a written
3 complaint of any person, cause an investigation to be made
4 to determine whether grounds exist for disciplinary action
5 under this article or the legislative rules promulgated
6 pursuant to this article.

7 (b) After reviewing any information obtained through an
8 investigation, the board shall determine if probable cause
9 exists that the licensee, certificate holder or permittee has
10 violated subsection (g) of this section or rules promulgated
11 pursuant to this article.

12 (c) Upon a finding of probable cause to go forward with
13 a complaint, the board shall provide a copy of the complaint
14 to the licensee, certificate holder or permittee.

15 (d) Upon a finding that probable cause exists that the
16 licensee, certificate holder or permittee has violated
17 subsection (g) of this section or rules promulgated pursuant
18 to this article, the board may enter into a consent decree or
19 hold a hearing for disciplinary action against the licensee,
20 certificate holder or permittee. Any hearing shall be held in
21 accordance with the provisions of this article and shall
22 require a violation to be proven by a preponderance of the
23 evidence.

24 (e) A member of the complaint committee or the
25 executive director of the board may issue subpoenas and
26 subpoenas duces tecum to obtain testimony and documents to
27 aid in the investigation of allegations against any person
28 regulated by the article.

29 (f) Any member of the board or its executive director may
30 sign a consent decree or other legal document on behalf of
31 the board.

32 (g) The board may, after notice and opportunity for
33 hearing, deny or refuse to renew, suspend, restrict or revoke
34 the license, certificate or permit of, or impose probationary
35 conditions upon or take disciplinary action against, any
36 licensee, certificate holder or permittee for any of the
37 following reasons:

38 (1) Obtaining a board authorization by fraud,
39 misrepresentation or concealment of material facts;

40 (2) Being convicted of a felony or a misdemeanor crime
41 of moral turpitude;

42 (3) Being guilty of unprofessional conduct which placed
43 the public at risk, as defined by legislative rule of the board;

44 (4) Intentional violation of a lawful order or legislative
45 rule of the board;

46 (5) Having had a board authorization revoked or
47 suspended, other disciplinary action taken, or an application
48 for a board authorization denied by the proper authorities of
49 another jurisdiction;

50 (6) Aiding or abetting unlicensed practice;

51 (7) Engaging in an act while acting in a professional
52 capacity which has endangered or is likely to endanger the
53 health, welfare or safety of the public;

54 (8) Having an incapacity that prevents a licensee from
55 engaging in the practice of dentistry or dental hygiene, with
56 reasonable skill, competence and safety to the public;

57 (9) Committing fraud in connection with the practice of
58 dentistry or dental hygiene;

59 (10) Failing to report to the board one's surrender of a
60 license or authorization to practice dentistry or dental hygiene
61 in another jurisdiction while under disciplinary investigation
62 by any of those authorities or bodies for conduct that would
63 constitute grounds for action as defined in this section;

64 (11) Failing to report to the board any adverse judgment,
65 settlement or award arising from a malpractice claim arising
66 related to conduct that would constitute grounds for action as
67 defined in this section;

68 (12) Being guilty of unprofessional conduct as contained
69 in the American Dental Association principles of ethics and
70 code of professional conduct. The following acts are
71 conclusively presumed to be unprofessional conduct:

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

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

75 (C) Abusing alcohol or drugs;

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

78 (E) Being grossly immoral;

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

82 (G) Obtaining any fee by fraud or misrepresentation;

83 (H) Employing directly or indirectly, or directing or
84 permitting any suspended or unlicensed person so employed,
85 to perform operations of any kind or to treat lesions of the

86 human teeth or jaws or correct malimposed formations
87 thereof;

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

91 (J) Having a professional connection or association with,
92 or lending his or her name to another, for the illegal practice
93 of dentistry, or professional connection or association with
94 any person, firm or corporation holding himself or herself,
95 themselves or itself out in any manner contrary to this article;

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

98 (L) Advertising to practice dentistry or perform any
99 operation thereunder without causing pain;

100 (M) Advertising professional superiority or the
101 performance of professional services in a superior manner;

102 (N) Advertising to guarantee any dental service;

103 (O) Advertising in any manner that is false or misleading
104 in any material respect;

105 (P) Soliciting subscriptions from individuals within or
106 without the state for, or advertising or offering to individuals
107 within or without the state, a course or instruction or course
108 materials in any phase, part or branch of dentistry or dental
109 hygiene in any journal, newspaper, magazine or dental
110 publication, or by means of radio, television or United States
111 mail, or in or by any other means of contacting individuals:
112 *Provided*, That the provisions of this paragraph may not be
113 construed so as to prohibit:

114 (i) An individual dentist or dental hygienist from
115 presenting articles pertaining to procedures or technique to
116 state or national journals or accepted dental publications; or

117 (ii) educational institutions approved by the board from
118 offering courses or instruction or course materials to
119 individual dentists and dental hygienists from within or
120 without the state; or

121 (Q) Engaging in any action or conduct which would have
122 warranted the denial of the license.

123 (13) Knowing or suspecting that a licensee is incapable
124 of engaging in the practice of dentistry or dental hygiene,
125 with reasonable skill, competence and safety to the public,
126 and failing to report any relevant information to the board;

127 (14) Using or disclosing protected health information in
128 an unauthorized or unlawful manner;

129 (15) Engaging in any conduct that subverts or attempts to
130 subvert any licensing examination or the administration of
131 any licensing examination;

132 (16) Failing to furnish to the board or its representatives
133 any information legally requested by the board or failing to
134 cooperate with or engaging in any conduct which obstructs
135 an investigation being conducted by the board;

136 (17) Announcing or otherwise holding himself or herself
137 out to the public as a specialist or as being specially qualified
138 in any particular branch of dentistry or as giving special
139 attention to any branch of dentistry or as limiting his or her
140 practice to any branch of dentistry without first complying
141 with the requirements established by the board for the
142 specialty and having been issued a certificate of qualification
143 in the specialty by the board;

144 (18) Failing to report to the board within seventy-two
145 hours of becoming aware thereof any life threatening
146 occurrence, serious injury or death of a patient resulting from
147 dental treatment or complications following a dental
148 procedure;

149 (19) Failing to report to the board any driving under the
150 influence and/or driving while intoxicated offense; or

151 (20) Violation of any of the terms or conditions of any
152 order entered in any disciplinary action.

153 (h) For the purposes of subsection (g) of this section,
154 effective July 1, 2013, disciplinary action may include:

155 (1) Reprimand;

156 (2) Probation;

157 (3) Restrictions;

158 (4) Suspension;

159 (5) Revocation;

160 (6) Administrative fine, not to exceed \$1,000 per day per
161 violation;

162 (7) Mandatory attendance at continuing education
163 seminars or other training;

164 (8) Practicing under supervision or other restriction; or

165 (9) Requiring the licensee or permittee to report to the
166 board for periodic interviews for a specified period of time.

167 (i) In addition to any other sanction imposed, the board
168 may require a licensee or permittee to pay the costs of the
169 proceeding.

170 (j) A person authorized to practice under this article who
171 reports or otherwise provides evidence of the negligence,
172 impairment or incompetence of another member of this
173 profession to the board or to any peer review organization is
174 not liable to any person for making the report if the report is
175 made without actual malice and in the reasonable belief that
176 the report is warranted by the facts known to him or her at the
177 time.

§30-4-20. Procedures for hearing; right of appeal.

1 (a) Hearings are governed by the provisions of section
2 eight, article one of this chapter.

3 (b) The board may conduct the hearing or elect to have an
4 administrative law judge conduct the hearing.

5 (c) If the hearing is conducted by an administrative law
6 judge, at the conclusion of a hearing he or she shall prepare
7 a proposed written order containing findings of fact and
8 conclusions of law. The proposed order may contain
9 proposed disciplinary actions if the board so directs. The
10 board may accept, reject or modify the decision of the
11 administrative law judge.

12 (d) Any member or the executive director of the board
13 has the authority to administer oaths, examine any person
14 under oath.

15 (e) If, after a hearing, the board determines the licensee
16 or permittee has violated provisions of this article or the
17 board's rules, a formal written decision shall be prepared

18 which contains findings of fact, conclusions of law and a
19 specific description of the disciplinary actions imposed.

§30-4-21. Judicial review.

1 A person adversely affected by a decision of the board
2 denying an application or entered after a hearing may obtain
3 judicial review of the decision in accordance with section
4 four, article five, chapter twenty-nine-a of this code and may
5 appeal any ruling resulting from judicial review in
6 accordance with article six of said chapter.

§30-4-22. Criminal offenses.

1 (a) When, as a result of an investigation under this article
2 or otherwise, the board has reason to believe that a person
3 authorized under this article has committed a criminal offense
4 under this article, the board may bring its information to the
5 attention of an appropriate law-enforcement official.

6 (b) Any person who intentionally practices, or holds
7 himself or herself out as qualified to practice dentistry or
8 dental hygiene, or uses any title, word or abbreviation to
9 indicate to or induce others to believe he or she is licensed to
10 practice as a dentist or dental hygienist without obtaining an
11 active, valid West Virginia license to practice that profession
12 or with a license that is:

13 (1) Expired, suspended or lapsed; or

14 (2) Inactive, revoked, suspended as a result of
15 disciplinary action, or surrendered, is guilty of a
16 misdemeanor and, upon conviction thereof, shall be fined not
17 more than \$10,000.

§30-4-23. Single act evidence of practice.

1 In any action brought under this article, article four-a or
2 article four-b any proceeding initiated under this article,
3 evidence of the commission of a single act prohibited by this
4 article is sufficient to justify a penalty, injunction, restraining
5 order or conviction without evidence of a general course of
6 conduct.

§30-4-24. Inapplicability of article.

1 The provisions of this article do not apply to:

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

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

19 (3) A student enrolled in and regularly attending any
20 dental college recognized by the board, provided their acts
21 are done in the dental college and under the direct and
22 personal supervision of their instructor;

23 (4) A student enrolled in and regularly attending any
24 dental college, recognized by the board, practicing dentistry

25 in a public health setting, provided their acts are done under
26 the direct supervision of their instructor, adjunct instructor or
27 a dentist;

28 (5) An authorized dentist of another state temporarily
29 operating a clinic under the auspices of a organized and
30 reputable dental college or reputable dental society, or to one
31 lecturing before a reputable society composed exclusively of
32 dentists; or

33 (6) A dentists whose practice is confined exclusively to
34 the service of the United States Army, the United States
35 Navy, the United States Air Force, The United States Coast
36 Guard, the United States Public Health Service, the United
37 States Veteran's Bureau or any other authorized United
38 States government agency or bureau.

**ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY
DENTISTS.**

**§30-4A-1. Requirement for anesthesia permit; qualifications
and requirements for qualified monitors.**

1 (a) No dentist may induce central nervous system
2 anesthesia without first having obtained an anesthesia permit
3 for the level of anesthesia being induced.

4 (b) The applicant for an anesthesia permit shall pay the
5 appropriate permit fees and renewal fees, submit a completed
6 board-approved application and consent to an office
7 evaluation.

8 (c) Permits shall be issued to coincide with the annual
9 renewal dates for licensure.

10 (d) Permit holders shall report the names and
11 qualifications of each qualified monitor providing services to

12 that permit holder. A qualified monitor may not perform the
13 functions and responsibilities specified in this article for any
14 level of anesthesia, other than relative analgesia/minimal
15 sedation, without certification by the board. Qualified
16 monitors shall apply for certification and pay the appropriate
17 application fees and renewal fees. Qualified monitors are
18 required to renew annually by the 30th day of June. To be
19 certified as a qualified monitor, the applicant must meet the
20 following minimum qualifications:

21 (1) Possess a current health care provider BLS/CPR
22 certification;

23 (2) For monitoring, conscious sedation/moderate sedation
24 or general anesthesia/deep conscious sedation procedures,
25 successful completion of an AAOMS or AAPD anesthesia
26 assistants certification program; and

27 (3) For monitoring a nitrous oxide unit, successful
28 completion of a board-approved course in nitrous oxide
29 monitoring.

30 (c) A dentist shall hold a class permit equivalent to or
31 exceeding the anesthesia level being provided unless the
32 provider of anesthesia is a physician anesthesiologist or
33 another licensed dentist who holds a current anesthesia permit
34 issued by the board.

**§30-4A-2. Presumption of Degree of Central Nervous System
Depression.**

1 (a) In any hearing where a question exists as to the level
2 of central nervous system depression a licensee has induced,
3 as outlined in this article, the board may base its findings on,
4 among other things, the types, dosages and routes of
5 administration of drugs administered to the patient and what
6 result can reasonably be expected from those drugs in those

7 dosages and routes administered in a patient of that physical
8 and psychological status.

9 (b) No permit holder may have more than one person
10 under conscious sedation/moderate sedation and/or general
11 anesthesia/deep conscious sedation at the same time,
12 exclusive of recovery.

§30-4A-3. Classes of anesthesia permits.

1 (a) The board shall issue the following permits:

2 (1) Class 2 Permit: A Class 2 Permit authorizes a dentist
3 to induce anxiolysis/minimal sedation.

4 (2) Class 3 Permit: A Class 3 Permit authorizes a dentist
5 to induce conscious sedation/moderate sedation as limited
6 enteral (3a) and/or comprehensive parenteral (3b) and
7 anxiolysis/minimal sedation.

8 (3) Class 4 Permit: A Class 4 Permit authorizes a dentist
9 to induce general anesthesia/deep conscious sedation,
10 conscious sedation/moderate sedation and anxiolysis/minimal
11 sedation.

12 (b) When anesthesia services are provided in dental
13 facilities by a medical doctor or doctor of osteopathy
14 physician anesthesiologist or dentist anesthesiologist, the
15 dental facility shall be inspected and approved for a Class 4
16 permit and the dentist shall have a minimum of a Class 2
17 permit. If anesthesia services are provided by a CRNA, the
18 dental facility shall be inspected and approved for a Class 4
19 permit and the supervising dentist shall have the same level
20 of permit for the level of anesthesia provided by the CRNA.

§30-4A-4. Qualifications, standards and continuing education requirements for relative analgesia/minimal sedation use.

1 (a) The board shall allow administration of relative
2 analgesia/minimal sedation if the practitioner:

3 (1) Is a licensed dentist in the state;

4 (2) Holds valid and current documentation showing
5 successful completion of a Health Care Provider BLS/CPR
6 course; and

7 (3) Has completed a training course of instruction in
8 dental school, continuing education or as a postgraduate in
9 the administration of relative analgesia/minimal sedation.

10 (b) A practitioner who administers relative analgesia/
11 minimal sedation shall have the following facilities,
12 equipment and drugs available during the procedure and
13 during recovery:

14 (1) An operating room large enough to adequately
15 accommodate the patient on an operating table or in an
16 operating chair and to allow delivery of age appropriate care
17 in an emergency situation;

18 (2) An operating table or chair which permits the patient
19 to be positioned so that the patient's airway can be
20 maintained, quickly alter the patient's position in an
21 emergency and provide a firm platform for the administration
22 of basic life support;

23 (3) A lighting system which permits evaluation of the
24 patient's skin and mucosal color and a backup lighting
25 system of sufficient intensity to permit completion of any
26 operation underway in the event of a general power failure;

27 (4) Suction equipment which permits aspiration of the
28 oral and pharyngeal cavities;

29 (5) An oxygen delivery system with adequate age
30 appropriate full face masks and appropriate connectors that
31 is capable of delivering high flow oxygen to the patient under
32 positive pressure, together with an adequate backup system;

33 (6) A nitrous oxide delivery system with a fail-safe
34 mechanism that will ensure appropriate continuous oxygen
35 delivery and a scavenger system; and

36 (7) A defibrillator device: *Provided*, That this
37 requirement is only for Class 2, 3 and 4 permittees.

38 (c) All equipment used shall be appropriate for the height
39 and weight and age of the patient.

40 (d) Before inducing relative analgesia/minimal sedation
41 by means of nitrous oxide or a single premedication agent, a
42 practitioner shall:

43 (1) Evaluate the patient;

44 (2) Give instruction to the patient or, when appropriate
45 due to age or psychological status of the patient, the patient's
46 guardian; and

47 (3) Certify that the patient is an appropriate candidate for
48 relative analgesia/minimal sedation.

49 (c) A practitioner who administers relative
50 analgesia/minimal sedation shall see that the patient's
51 condition is visually monitored. At all times, the patient shall
52 be observed by a qualified monitor until discharge criteria
53 have been met.

43

[Enr. Com. Sub. for S. B. No. 580

54 (f) A qualified monitor's record shall include
55 documentation of all medications administered with dosages,
56 time intervals and route of administration including local
57 anesthesia.

58 (g) A discharge entry shall be made in the patient's
59 record indicating the patient's condition upon discharge.

60 (h) A qualified monitor shall hold valid and current
61 documentation:

62 (1) Showing successful completion of a Health Care
63 Provider BLS/CPR course; and

64 (2) Have received training and be competent in the
65 recognition and treatment of medical emergencies,
66 monitoring vital signs, the operation of nitrous oxide delivery
67 systems and the use of the sphygmomanometer and
68 stethoscope.

69 (i) The practitioner shall assess the patient's
70 responsiveness using preoperative values as normal
71 guidelines and discharge the patient only when the following
72 criteria are met:

73 (1) The patient is alert and oriented to person, place and
74 time as appropriate to age and preoperative neurological
75 status;

76 (2) The patient can talk and respond coherently to verbal
77 questioning or to preoperative neurological status;

78 (3) The patient can sit up unaided or without assistance
79 or to preoperative neurological status;

80 (4) The patient can ambulate with minimal assistance or
81 to preoperative neurological status; and

82 (5) The patient does not have uncontrollable nausea,
83 vomiting or dizziness.

§30-4A-5. Qualifications, standards, and continuing education requirements for a Class 2 Permit.

1 (a) The board shall issue a Class 2 Permit to an applicant
2 who:

3 (1) Is a licensed dentist in West Virginia;

4 (2) Holds valid and current documentation showing
5 successful completion of a Health Care Provider BLS/CPR;
6 and

7 (3) Has completed a board-approved course of at least six
8 hours didactic and clinical of either predoctoral dental school
9 or postgraduate instruction.

10 (b) A dentist who induces relative analgesia/minimal
11 sedation and anxiolysis/minimal sedation shall have the
12 following facilities, properly maintained equipment and
13 appropriate drugs available during the procedures and during
14 recovery:

15 (1) An operating room large enough to adequately
16 accommodate the patient on an operating table or in an
17 operating chair and to allow an operating team of at least two
18 individuals to freely move about the patient;

19 (2) An operating table or chair which permits the patient
20 to be positioned so the operating team can maintain the
21 patient's airway, quickly alter the patient's position in an
22 emergency and provide a firm platform for the administration
23 of basic life support;

24 (3) A lighting system which permits evaluation of the
25 patient's skin and mucosal color and a backup lighting
26 system of sufficient intensity to permit completion of any
27 operation underway in the event of a general power failure;

28 (4) Suction equipment which permits aspiration of the
29 oral and pharyngeal cavities;

30 (5) An oxygen delivery system with adequate age
31 appropriate full face mask and appropriate connectors that is
32 capable of delivering high flow oxygen to the patient under
33 positive pressure, together with an adequate backup system;

34 (6) A nitrous oxide delivery system with a fail-safe
35 mechanism that will ensure appropriate continuous oxygen
36 delivery and a scavenger system;

37 (7) A recovery area that has available oxygen, adequate
38 lighting, suction and electrical outlets. The recovery area can
39 be the operating room;

40 (8) Sphygmomanometer, stethoscope and pulse oximeter;

41 (9) Emergency drugs as specified by rule;

42 (10) A defibrillator device; and

43 (11) All equipment and medication dosages shall be in
44 accordance with the height and weight and age of the patient
45 being treated.

46 (c) Before inducing anxiolysis/minimal sedation, a dentist
47 shall:

48 (1) Evaluate the patient by using the ASA Patient
49 Physical Status Classification of the ASA that the patient is
50 an appropriate candidate for anxiolysis/minimal sedation; and

51 (2) Obtain written informed consent from the patient or
52 patient's guardian for the anesthesia. The obtaining of the
53 informed consent shall be documented in the patient's record.

54 (d) The dentist shall monitor and record the patient's
55 condition or shall use a qualified monitor to monitor and
56 record the patient's condition. The documented requirements
57 of a qualified monitor monitoring anxiolysis/minimal
58 sedation cases are as specified by rule. A Class 2 Permit
59 holder may have no more than one person under
60 anxiolysis/minimal sedation at the same time.

61 (e) The patient shall be monitored as follows:

62 (1) Patients shall have continuous monitoring using pulse
63 oximetry. The patient's blood pressure, heart rate and
64 respiration shall be recorded at least once before, during and
65 after the procedure and these recordings shall be documented
66 in the patient record. At all times, the patient shall be
67 observed by a qualified monitor until discharge criteria have
68 been met. If the dentist is unable to obtain this information,
69 the reasons shall be documented in the patient's record. The
70 record shall also include documentation of all medications
71 administered with dosages, time intervals and route of
72 administration including local anesthesia.

73 (2) A discharge entry shall be made by the dentist in the
74 patient's record indicating the patient's condition upon
75 discharge.

76 (f) A permit holder who uses anxiolysis/minimal sedation
77 shall see that the patient's condition is visually monitored.
78 The patient shall be monitored as to response to verbal
79 stimulation, oral mucosal color and preoperative and
80 postoperative vital signs.

47

[Enr. Com. Sub. for S. B. No. 580

81 (g) The dentist shall assess the patient's responsiveness
82 using preoperative values as normal guidelines and discharge
83 the patient only when the following criteria are met:

84 (1) Vital signs including blood pressure, pulse rate and
85 respiratory rate are stable;

86 (2) The patient is alert and oriented to person, place and
87 time as appropriate to age and preoperative neurological
88 status;

89 (3) The patient can talk and respond coherently to verbal
90 questioning or to preoperative neurological status;

91 (4) The patient can sit up unaided or to preoperative
92 neurological status;

93 (5) The patient can ambulate with minimal assistance or
94 to preoperative neurological status; and

95 (6) The patient does not have uncontrollable nausea or
96 vomiting and has minimal dizziness.

97 (h) A dentist may not release a patient who has
98 undergone anxiolysis/minimal sedation except to the care of
99 a responsible adult third party.

§30-4A-6. Qualifications, standards, and continuing education requirements for Class 3 Anesthesia Permit.

1 (a) The board shall issue or renew a Class 3 Permit to an
2 applicant who:

3 (1) Is a licensed dentist in West Virginia;

4 (2) Holds valid and current documentation showing
5 successful completion of a Health Care Provider BLS/CPR

6 course, ACLS and/or a PALS course if treating pediatric
7 patients; and

8 (3) Satisfies one of the following criteria:

9 (A) Certificate of completion of a comprehensive training
10 program in conscious sedation that satisfies the requirements
11 described in the ADA Guidelines for Teaching Pain Control
12 and Sedation to Dentists and Dental Students and the ADA
13 Guidelines for the Use of Sedation and General Anesthesia
14 by Dentists at the time training was commenced.

15 (B) Certificate of completion of an ADA-accredited
16 postdoctoral training program which affords comprehensive
17 and appropriate training necessary to administer and manage
18 conscious sedation commensurate with these guidelines.

19 (C) In lieu of these requirements, the board may accept
20 documented evidence of equivalent training or experience in
21 conscious sedation anesthesia for Limited Enteral Permit as
22 Class 3a or comprehensive Parenteral Permit as Class 3b as
23 specified by rule.

24 (b) A dentist who induces conscious sedation shall have
25 the following facilities, properly maintained age appropriate
26 equipment and age appropriate medications available during
27 the procedures and during recovery:

28 (1) An operating room large enough to adequately
29 accommodate the patient on an operating table or in an
30 operating chair and to allow an operating team of at least two
31 individuals to freely move about the patient;

32 (2) An operating table or chair which permits the patient
33 to be positioned so the operating team can maintain the
34 patient's airway, quickly alter the patient's position in an

49

[Enr. Com. Sub. for S. B. No. 580

35 emergency, and provide a firm platform for the
36 administration of basic life support;

37 (3) A lighting system which permits evaluation of the
38 patient's skin and mucosal color and a backup lighting
39 system of sufficient intensity to permit completion of any
40 operation underway in the event of a general power failure;

41 (4) Suction equipment which permits aspiration of the
42 oral and pharyngeal cavities and a backup suction device
43 which will function in the event of a general power failure;

44 (5) An oxygen delivery system with adequate age
45 appropriate full face mask and appropriate connectors that is
46 capable of delivering high flow oxygen to the patient under
47 positive pressure, together with an adequate backup system;

48 (6) A nitrous oxide delivery system with a fail-safe
49 mechanism that will ensure appropriate continuous oxygen
50 delivery and a scavenger system;

51 (7) A recovery area that has available oxygen, adequate
52 lighting, suction and electrical outlets. The recovery area can
53 be the operating room;

54 (8) Sphygmomanometer, pulse oximeter, oral and
55 nasopharyngeal airways, intravenous fluid administration
56 equipment and/or equipment required for the standard of care
57 or as specified by rule;

58 (9) Emergency drugs as specified by rule; and

59 (10) A defibrillator device.

60 (c) Before inducing conscious sedation, a dentist shall:

61 (1) Evaluate the patient and document, using the ASA
62 Patient Physical Status Classifications, that the patient is an
63 appropriate candidate for conscious sedation;

64 (2) Give written preoperative and postoperative
65 instructions to the patient or, when appropriate due to age or
66 neurological status of the patient, the patient's guardian; and

67 (3) Obtain written informed consent from the patient or
68 patient's guardian for the anesthesia.

69 (d) The dentist shall ensure that the patient's condition is
70 monitored and recorded on a contemporaneous record. The
71 dentist shall use a qualified monitor to monitor and record the
72 patient's condition in addition to the chair side dental
73 assistant. A qualified monitor shall be present to monitor the
74 patient at all times.

75 (e) The patient shall be monitored as follows:

76 (1) Patients shall have continuous monitoring using pulse
77 oximetry and/or equipment required for the standard of care
78 or as specified by rule by a qualified monitor until discharge
79 criteria have been met. The documented requirements of a
80 qualified monitor monitoring limited enteral or
81 comprehensive parenteral sedations cases are as specified by
82 rule. The patient's blood pressure, heart rate and respiration
83 shall be recorded every five minutes and these recordings
84 shall be documented in the patient record. The record shall
85 also include documentation of preoperative and postoperative
86 vital signs, all medications administered with dosages, time
87 intervals and route of administration including local
88 anesthesia. If the dentist is unable to obtain this information,
89 the reasons shall be documented in the patient's record.

90 (2) During the recovery phase, the patient shall be
91 monitored by a qualified monitor.

92 (3) A discharge entry shall be made by the dentist in the
93 patient's record indicating the patient's condition upon
94 discharge and the name of the responsible party to whom the
95 patient was discharged.

96 (f) A dentist may not release a patient who has undergone
97 conscious sedation/moderate sedation except to the care of a
98 responsible adult third party.

99 (g) When discharging a pediatric patient the dentist shall
100 follow the current edition of AAPD Guidelines for
101 Monitoring and Management of Pediatric Patients During and
102 After Sedation for Diagnostic and Therapeutic Procedures.

103 (h) The dentist shall assess the patient's responsiveness
104 using preoperative values as normal guidelines and discharge
105 the patient only when the following criteria are met:

106 (1) Vital signs including blood pressure, pulse rate and
107 respiratory rate are stable;

108 (2) The patient is alert and oriented to person, place and
109 time as appropriate to age and preoperative neurological
110 status;

111 (3) The patient can talk and respond coherently to verbal
112 questioning or to preoperative neurological status;

113 (4) The patient can sit up unaided or to preoperative
114 neurological status;

115 (5) The patient can ambulate with minimal assistance or
116 to preoperative neurological status; and

117 (6) The patient does not have uncontrollable nausea or
118 vomiting and has minimal dizziness.

119 (i) A dentist who induces conscious sedation shall
120 employ the services of a qualified monitor and a chair side
121 dental assistant at all times who each shall hold a valid
122 BLS/CPR certification and maintains certification as
123 specified by rule.

§30-4A-7. Qualifications, standards, and continuing education requirements for Class 4 Anesthesia Permit.

1 (a) A Class 4 Permit permits the use of general
2 anesthesia/deep conscious sedation, conscious
3 sedation/moderate sedation and anxiolysis/minimal sedation.

4 (b) The board shall issue or renew a Class 4 Permit to an
5 applicant who:

6 (1) Is a licensed dentist in West Virginia;

7 (2) Holds a valid and current documentation showing
8 successful completion of a Healthcare Provider BLS/CPR
9 course, Advanced Cardiac Life Support (ACLS) and/or
10 Pediatric Advanced Life Support (PALS) course if treating
11 pediatric patients;

12 (3) Satisfies one of the following criteria:

13 (A) Completion of an advanced training program in
14 anesthesia and related subjects beyond the undergraduate
15 dental curriculum that satisfies the requirements described in
16 the ADA Guidelines for Teaching Pain Control and Sedation
17 to Dentists and Dental Students and the ADA Guidelines for
18 the Use of Sedation and General Anesthesia by Dentists at the
time training was commenced;

(B) Completion of an ADA- or AMA-accredited
doctoral training program which affords comprehensive

22 and appropriate training necessary to administer and manage
23 general anesthesia, commensurate with these guidelines;

24 (C) In lieu of these requirements, the board may accept
25 documented evidence of equivalent training or experience in
26 general anesthesia/deep conscious sedation.

27 (c) A dentist who induces general anesthesia/deep
28 conscious sedation shall have the following facilities,
29 properly maintained age appropriate equipment and age
30 appropriate drugs available during the procedure and during
31 recovery:

32 (1) An operating room large enough to adequately
33 accommodate the patient on an operating table or in an
34 operating chair and to allow an operating team of at least
35 three individuals to freely move about the patient;

36 (2) An operating table or chair which permits the patient
37 to be positioned so the operating team can maintain the
38 patient's airway, quickly alter the patient's position in an
39 emergency and provide a firm platform for the administration
40 of basic life support;

41 (3) A lighting system which permits evaluation of the
42 patient's skin and mucosal color and a backup lighting
43 system of sufficient intensity to permit completion of any
44 operation underway in the event of a general power failure;

45 (4) Suction equipment which permits aspiration of the
46 oral and pharyngeal cavities and a backup suction device
47 which will function in the event of a general power failure;

48 (5) An oxygen delivery system with adequate age
49 appropriate full face mask and appropriate connectors that is
50 capable of delivering high flow oxygen to the patient under
51 positive pressure, together with an adequate backup system;

52 (6) A nitrous oxide delivery system with a fail-safe
53 mechanism that will insure appropriate continuous oxygen
54 delivery and a scavenger system;

55 (7) A recovery area that has available oxygen, adequate
56 lighting, suction and electrical outlets. The recovery area can
57 be the operating room;

58 (8) Equipment as specified by rule;

59 (9) Emergency drugs as specified by rule

60 (10) A defibrillator device.

61 (d) Before inducing general anesthesia/deep conscious
62 sedation the dentist shall:

63 (1) Evaluate the patient and document, using the ASA
64 Patient Physical Status Classifications, that the patient is an
65 appropriate candidate for general anesthesia or deep
66 conscious sedation;

67 (2) Shall give written preoperative and postoperative
68 instructions to the patient or, when appropriate due to age or
69 neurological status of the patient, the patient's guardian; and

70 (3) Shall obtain written informed consent from the patient
71 or patient's guardian for the anesthesia.

72 (c) A dentist who induces general anesthesia/deep
73 conscious sedation shall ensure that the patient's condition is
74 monitored and recorded on a contemporaneous record. The
75 dentist shall use a qualified monitor to monitor and record the
76 patient's condition on a contemporaneous record and a chair
77 side dental assistant. The documented requirements of a
78 qualified monitor monitoring general anesthesia/deep
79 conscious sedation cases are as specified by rule. No permit

55

[Enr. Com. Sub. for S. B. No. 580

80 holder may have more than one patient under general
81 anesthesia at the same time.

82 (f) The patient shall be monitored as follows:

83 (1) Patients shall have continuous monitoring using pulse
84 oximetry and/or equipment required for the standard of care
85 or as specified by rule by a qualified monitor until discharge
86 criteria have been met. The patient's blood pressure, heart
87 rate and oxygen saturation shall be assessed every five
88 minutes and shall be contemporaneously documented in the
89 patient record. The record shall also include documentation
90 of preoperative and postoperative vital signs, all medications
91 administered with dosages, time intervals and route of
92 administration including local anesthesia. The person
93 administering the anesthesia may not leave the patient while
94 the patient is under general anesthesia;

95 - (2) During the recovery phase, the patient shall be
96 monitored, including the use of pulse oximetry, by a qualified
97 monitor; and

98 (3) A dentist may not release a patient who has
99 undergone general anesthesia/deep conscious sedation except
100 to the care of a responsible adult third party.

101 (4) When discharging a pediatric patient the dentist shall
102 follow the current edition of AAPD Guidelines for the
103 Monitoring and Management of Pediatric Patients During and
104 After Sedation for Diagnostic and Therapeutic Procedures.

105 (g) The dentist shall assess the patient's responsiveness
106 using preoperative values as normal guidelines and discharge
107 the patient only when the following criteria are met:

108 (1) Vital signs including blood pressure, pulse rate and
109 respiratory rate are stable;

110 (2) The patient is alert and oriented to person, place and
111 time as appropriate to age and preoperative neurological
112 status;

113 (3) The patient can talk and respond coherently to verbal
114 questioning or to preoperative neurological status;

115 (4) The patient can sit up unaided or to preoperative
116 neurological status;

117 (5) The patient can ambulate with minimal assistance or
118 to preoperative neurological status; and

119 (6) The patient does not have uncontrollable nausea or
120 vomiting and has minimal dizziness.

121 (7) A discharge entry shall be made in the patient's
122 record by the dentist indicating the patient's condition upon
123 discharge and the name of the responsible party to whom the
124 patient was discharged.

125 (h) A dentist who induces general anesthesia shall
126 employ the services of a qualified monitor and a chair side
127 dental assistant at all times, who each shall hold a valid
128 BLS/CPR certification and maintains certification as
129 specified by rule.

**§30-4A-8. Board to review, inspect and reinspect dentists for
issuance of permits.**

1 (a) By making application to the board for an anesthesia
2 permit, a dentist consents and authorizes the board to review
3 his or her credentials, inspect or reinspect his or her facilities
4 and investigate any alleged anesthesia mortalities,
5 misadventure or other adverse occurrences. The board shall
6 conduct an in-office review or on-site inspection of any

7 dentist applying for or holding a permit to administer
8 anesthesia.

9 Prior to issuing a permit, the board shall conduct an on-
10 site inspection of facility, equipment and auxiliary personnel
11 of the applicant to determine if, in fact, all the requirements
12 for the permit have been met. This inspection or evaluation,
13 if required, shall be carried out by at least two members of
14 the subcommittee. This evaluation is to be carried out in a
15 manner following the principles, but not necessarily the
16 procedures, set forth by the current edition of the AAOMS
17 Office Anesthesia Evaluation Manual. On-site inspections
18 are required and shall be performed for all Class 3a, 3b and
19 4 permittees. The board may reinspect annually, at its
20 discretion, but shall perform an on-site inspection for all
21 permit holders at least once every five years except Class 2
22 permit holders. The board reserves the right to conduct an
23 on-site inspection whenever it deems necessary for all permit
24 holders. All on-site inspections shall be held during regular
25 business hours.

26 (b) Cancellation or failure to appear or be present for a
27 scheduled evaluation by a permit holder, for an unexplained
28 or unexcusable reason, shall be assessed a penalty fee two
29 times the permit holders normal annual renewal fee. The
30 penalty fee shall be separate from the annual renewal fees.

§30-4A-9. Office evaluations.

1 (a) The in-office evaluation shall include:

2 (1) Observation of one or more cases of anesthesia to
3 determine the appropriateness of technique and adequacy of
4 patient evaluation and care;

5 (2) Inspection of facilities, which shall include, but not be
6 limited to, the inspection of equipment, drugs and patient

7 records and qualified monitor's certifications and
8 documentation; and

9 (3) The evaluation shall be performed by a team
10 appointed by the board and shall include a member of the
11 subcommittee who holds a current anesthesia permit in the
12 same class or in a higher class than that held by the permit
13 holder being evaluated.

14 (4) Class 2 permit holders may be audited periodically as
15 determined by the committee; and

16 (5) Class 3 and 4 permit holders shall be evaluated once
17 every five years.

18 (b) A dentist utilizing a licensed dentist who holds a
19 current anesthesia permit issued by the board shall have his
20 or her office inspected to the level of a Class 4 permit as
21 specified by section twelve of this article. The office is only
22 approved at that level when the anesthesia permit holder is
23 present and shall have the number of qualified monitors
24 present as required by this article.

25 (c) In addition to the requirements of this article, a
26 treating dentist who applies for a certificate to allow a CRNA
27 to administer anesthesia and sedation to a patient shall
28 maintain a permit as follows:

29 (1) A treating dentist who allows a CRNA to administer
30 limited enteral sedation to a patient shall maintain a Class 3a
31 permit for themselves and the administration site shall be
32 inspected to a Class 4 permit level;

33 (2) A treating dentist who allows a CRNA to administer
34 comprehensive parenteral sedation to a patient shall maintain
35 a Class 3b permit for themselves and the administration site
36 shall be inspected to a Class 4 permit level; and

37 (3) A treating dentist who allows a CRNA to administer
38 general anesthesia/deep conscious sedation to a patient shall
39 maintain a Class 4 permit for themselves and the
40 administration site shall be inspected to a Class 4 permit
41 level.

§30-4A-10. Reporting of Death, Serious Complications or Injury.

1 If a death, any serious complication or any injury occurs
2 which may have resulted from the administration of general
3 anesthesia/deep conscious sedation, conscious
4 sedation/moderate sedation, anxiolysis/minimal sedation, or
5 relative analgesia/minimal sedation, the licensee performing
6 the dental procedure shall submit a written detailed report to
7 the board within seventy-two hours of the incident along with
8 copies of the patient's original complete dental records. If
9 the anesthetic agent was administered by a person other than
10 the person performing the dental procedure, that person shall
11 also submit a detailed written report. The detailed report(s)
12 shall include:

13 (1) Name, age and address of patient;

14 (2) Name of the licensee and other persons present during
15 the incident along with their names and addresses;

16 (3) Address where the incident took place;

17 (4) Type of anesthesia and dosages of drugs administered
18 to the patient including local anesthesia;

19 (5) A narrative description of the incident including
20 approximate times and evolution of symptoms; and

21 (6) The anesthesia record and the signed informed
22 consent form for the anesthesia.

§30-4A-11. Immunity from liability.

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

7 (b) No member or employee of the board or the
8 subcommittee may be held by reason of the performance by
9 him or her of any duty, function or activity authorized or
10 required of the board or the subcommittee to be civilly liable.
11 The foregoing provisions of this subsection do not apply with
12 respect to any action taken by any individual if the individual,
13 in taking the action, was motivated by malice toward any
14 person affected by the action.

§30-4A-12. Facility Inspections.

1 (a) The board shall perform an onsite evaluation of Class
2 3 and 4 applicants dental facilities, equipment, techniques and
3 personnel prior to issuing a permit. The board may conduct
4 further on-site evaluations.

5 (b) The board may inspect Class 2 applicants facilities.

§30-4A-13. Issuance of regular annual permits.

1 Upon the recommendation of the subcommittee, the board
2 shall issue permits to applicable dentists. An anesthesia
3 permit shall be renewed annually: *Provided*, That the
4 permittee meets the requirements of this article and has not
5 been subject to disciplinary action prohibiting issuance of the
6 permit.

§30-4A-14. 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 shall wait thirty days from the date of the
4 denial prior to reapplying and shall submit to another on-site
5 evaluation prior to receiving a permit. The board and the
6 subcommittee shall promptly reinspect the applicant dentist's
7 facilities, techniques, equipment and personnel within ninety
8 days after the applicant has made reapplication.

§30-4A-15. Application and annual renewal of regular permits; fees.

1 The board shall require an initial application fee and an
2 annual renewal fee for Class 2, Class 3 and 4 Permits.
3 Permits expire annually. The board shall renew permits for
4 the use of anesthesia after the permittee satisfies the
5 application for renewal.

§30-4A-16. Violations of article; penalties for practicing anesthesia 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 anesthesia;
4 multiple or repeated violations or gross infractions, such as
5 practicing anesthesia without a valid permit may result in
6 suspension of the dentist's license to practice dentistry for up
7 to one year as well as other disciplinary measures as deemed
8 appropriate by the board.

§30-4A-17. Appointment of Subcommittee; credentials review; and on-site inspections.

1 (a) The board shall appoint a subcommittee to carry out
2 the review and on-site inspection of any dentist applying for
3 or renewing a permit under this article.

4 (b) The subcommittee shall make a recommendation for
5 issuing or revoking a permit under this article.

6 (c) This subcommittee shall be known as the West
7 Virginia Board of Dentistry Subcommittee on Anesthesia.
8 The subcommittee shall, at a minimum, consist of one
9 member of the board who shall act as chairman of the
10 subcommittee and two members holding a Class 4 permit and
11 two members holding a Class 3 permit.

12 (d) The subcommittee shall adopt policies and procedures
13 related to the regulation of general anesthesia/deep conscious
14 sedation, conscious sedation/moderate sedation,
15 anxiolysis/minimal sedation, and relative analgesia/minimal
16 sedation with the same being approved by the board. The
17 subcommittee members shall be paid and reimbursed
18 expenses pursuant to article one of this chapter.

ARTICLE 4B. DENTAL LABORATORY SERVICES.

§30-4B-1. Unlawful acts.

1 (a) It is unlawful for any person, other than a dentist or
2 other dental practitioner, to sell, offer for sale or furnish any
3 dental prosthesis or other dental laboratory service to any
4 person who is not a dentist or other dental practitioner.

5 (b) It is unlawful for any person to perform dental
6 laboratory services without a work authorization: *Provided*,
7 That this subsection does not apply to a dentist or other dental
8 practitioner, or to their employees working under their direct
9 supervision, performing dental laboratory services as a part
10 of their own dental practice and for their own dental patients.

11 (c) It is unlawful for any dental laboratory to perform any
12 dental laboratory service without the issuance of a work
13 authorization by a dentist or other dental practitioner.

14 (d) It is unlawful for any dental laboratory or dentist who
15 fabricates a full upper or full lower set of prosthetic dentures
16 not to affix upon the dentures, in a nonremovable manner, the
17 name of the patient, the initials of the dentist's state of
18 practice and license identification.

19 (e) It is unlawful for any dental laboratory either directly
20 or indirectly:

21 (1) To advertise that it is engaged in the business of
22 performing dental laboratory services;

23 (2) To advertise it performs dental laboratory services for
24 members of the public;

25 (3) To advertise a price for the performance of dental
26 laboratory services; or

27 (4) To advertise techniques used or materials employed
28 by it in the performance of dental laboratory services:
29 *Provided*, That this subsection does not prevent dental
30 laboratories from advertising in dental journals or in other
31 professional dental publications or from communicating
32 directly to a dentist and other dental practitioner or from
33 listing the dental laboratory in business and telephone
34 directories if the business and telephone directory
35 announcements are limited to name, address and telephone
36 number and do not occupy more than the number of lines
37 necessary to disclose the information, or from displaying the
38 trade name and address of the dental laboratory on the door
39 of its place of business or on name plates or door plates
40 exhibited on the interior or exterior of the place of business.

§30-4B-2. Work authorization required; contents; retention.

1 (a) No dental laboratory technician may perform any
2 dental laboratory service without the issuance of a work
3 authorization by a dentist or other dental practitioner.

4 (b) Each work authorization shall contain:

5 (1) The name and address of the dental laboratory to
6 which it is directed;

7 (2) The case identification;

8 (3) A specification of the materials to be used;

9 (4) A description of the work to be done and, if
10 necessary, diagrams thereof;

11 (5) The date of issue; and

12 (6) The signature and address of the dentist or other
13 dental practitioner issuing the work authorization.

14 (c) A separate work authorization shall be issued for each
15 patient of the dentist or other dental practitioner for whom a
16 dental laboratory service is to be performed.

17 (d) Every work authorization shall be made in duplicate
18 with the original being delivered to the dental laboratory to
19 which it is directed and the copy being retained in the office
20 of the issuing dentist or other dental practitioner. A work
21 authorization shall be saved for a period of two years from its
22 date of issue.

§30-4B-3. Denture identification.

1 A dental laboratory or a dentist who engages in dental
2 laboratory services and who fabricates any full upper or full

3 lower set of prosthetic dentures shall affix upon the dentures,
4 in a nonremovable manner, the name of the patient for whom
5 the dentures are made and the initials of the dentist's state of
6 practice and license identification number.

§30-4B-4. Review of dental laboratory services.

1 The board may review the dental laboratory services of
2 a dental laboratory on a random and general basis without
3 any requirement of a formal complaint or suspicion of
4 impropriety.

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

Rocky Ferguson
.....
member ~~Chairman~~ Senate Committee

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

Raymond S. ...
.....
Clerk of the House of Delegates

Jeffrey ...
.....
President of the Senate

Rich ...
.....
Speaker of the House of Delegates

2013 MAY -3 PM 2:27
OFFICE OF THE CLERK OF THE SENATE
STATE HOUSE

The within *is approved* this the *3rd*
Day of *May*, 2013.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:55 pm