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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4538

(By Delegates Stagers, Morgan and Stephens)



Passed March 7, 2014

In effect ninety days from passage.

HB 4538

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H. B. 4538

(BY DELEGATES STAGGERS, MORGAN AND STEPHENS)

[Passed March 7, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §30-4-6 and §30-4-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-4A-1 of said code, all relating to the Board of Dentistry; providing authority to promulgate legislative rules concerning agreements with organizations to create alcohol or chemical dependency treatments programs and to form dentist recovery networks; authorizing the board to defer disciplinary action with regard to an impaired licensee who voluntarily enters an approved treatment program; and providing for annual renewal of anesthesia permits.

Be it enacted by the Legislature of West Virginia:

That §30-4-6 and §30-4-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §30-4A-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-6. Rule-making authority.

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

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

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

(3) Educational and experience requirements;

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

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

(6) Establish a fee schedule;

(7) Regulate dental specialities;

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

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

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

(11) Designate additional public health settings;

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

- 24 (13) Regulate dental corporations;
- 25 (14) Regulate mobile dental facilities;
- 26 (15) Regulate portable dental units;
- 27 (16) Regulate professional limited liability companies;
- 28 (17) Establish professional conduct requirements;
- 29 (18) Establish the procedures for denying, suspending,
30 revoking, reinstating or limiting the practice of licensees,
31 certifications and permittees;
- 32 (19) Standards and requirements for agreements with
33 organizations to form professional recovery networks;
- 34 (20) Establish an alcohol and chemical dependency
35 treatment program, including standards and requirements;
- 36 (21) Establish requirements for inactive or revoked licenses,
37 certifications and permits;
- 38 (22) Regulate dental anesthesia, including:
 - 39 (A) Fees;
 - 40 (B) Evaluations;
 - 41 (C) Equipment;
 - 42 (D) Emergency drugs;
 - 43 (E) Definitions;
 - 44 (F) Qualified monitor requirements; and
 - 45 (G) Education;
- 46 (23) Any other rules necessary to implement this article.

47 (b) All of the board's rules in effect and not in conflict with
48 these provisions shall remain in effect until they are amended or
49 rescinded.

**§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 to
4 determine whether grounds exist for disciplinary action under
5 this article or the legislative rules promulgated pursuant to this
6 article.

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

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

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

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

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

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

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

38 (2) Being convicted of a felony or a misdemeanor crime of
39 moral turpitude;

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

42 (4) Intentional violation of a lawful order or legislative rule
43 of the board;

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

48 (6) Aiding or abetting unlicensed practice;

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

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

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

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

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

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

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

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

73 (C) Abusing alcohol or drugs;

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

76 (E) Being grossly immoral;

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

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

81 (H) Employing directly or indirectly, or directing or
82 permitting any suspended or unlicensed person so employed, to
83 perform operations of any kind or to treat lesions of the human
84 teeth or jaws or correct malimposed formations thereof;

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

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

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

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

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

98 (N) Advertising to guarantee any dental service;

99 (O) Advertising in any manner that is false or misleading in
100 any material respect;

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

110 (i) An individual dentist or dental hygienist from presenting
111 articles pertaining to procedures or technique to state or national
112 journals or accepted dental publications; or

113 (ii) Educational institutions approved by the board from
114 offering courses or instruction or course materials to individual

115 dentists and dental hygienists from within or without the state;
116 or

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

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

123 (14) Using or disclosing protected health information in an
124 unauthorized or unlawful manner;

125 (15) Engaging in any conduct that subverts or attempts to
126 subvert any licensing examination or the administration of any
127 licensing examination;

128 (16) Failing to furnish to the board or its representatives any
129 information legally requested by the board or failing to cooperate
130 with or engaging in any conduct which obstructs an investigation
131 being conducted by the board;

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

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

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

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

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

150 (1) Reprimand;

151 (2) Probation;

152 (3) Restrictions;

153 (4) Suspension;

154 (5) Revocation;

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

157 (7) Mandatory attendance at continuing education seminars
158 or other training;

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

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

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

164 (j) The board may defer disciplinary action with regard to an
165 impaired licensee who voluntarily signs an agreement, in a form
166 satisfactory to the board, agreeing not to practice dental care and
167 to enter an approved treatment and monitoring program in
168 accordance with the board's legislative rule: *Provided*, That this
169 subsection does not apply to a licensee who has been convicted
170 of, pleads guilty to, or enters a plea of nolo contendere to an
171 offense relating to a controlled substance in any jurisdiction.

172 (k) A person authorized to practice under this article who
173 reports or otherwise provides evidence of the negligence,

174 impairment or incompetence of another member of this
175 profession to the board or to any peer review organization is not
176 liable to any person for making the report if the report is made
177 without actual malice and in the reasonable belief that the report
178 is warranted by the facts known to him or her at the time.

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 anesthesia
2 without first having obtained an anesthesia permit for the level
3 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 evaluation.

7 (c) Permits shall be renewed annually by June 30.

8 (d) Permit holders shall report the names and qualifications
9 of each qualified monitor providing services to that permit
10 holder. A qualified monitor may not perform the functions and
11 responsibilities specified in this article for any level of
12 anesthesia, other than relative analgesia/minimal sedation,
13 without certification by the board. Qualified monitors shall apply
14 for certification and pay the appropriate application fees and
15 renewal fees. Qualified monitors are required to renew annually
16 by the June 30. To be certified as a qualified monitor, the
17 applicant must meet the following minimum qualifications:

18 (1) Possess a current health care provider BLS/CPR
19 certification;

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

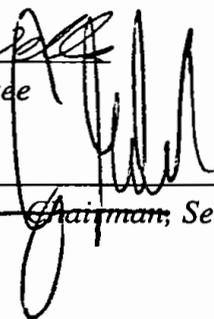
24 (3) For monitoring a nitrous oxide unit, successful
25 completion of a board-approved course in nitrous oxide
26 monitoring.

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

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



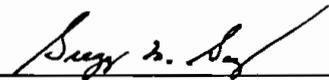
Chairman, House Committee



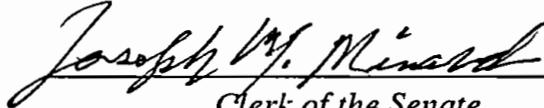
Member ~~Chairman~~, Senate Committee

Originating in the House.

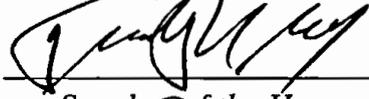
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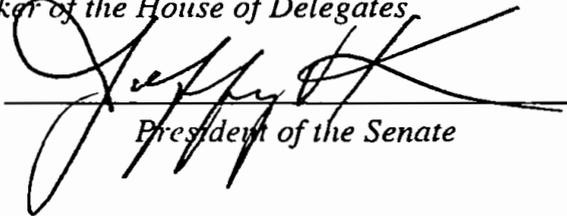
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates.



President of the Senate

The within is approved this the 28th
day of March, 2014.



Governor

PRESENTED TO THE GOVERNOR

10:45 am

Time 10:45 am