

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Do Not Mark In This Box

FILED
2012 AUG 31 AM 9:19

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Board of Dental Examiners TITLE NUMBER: 5

CITE AUTHORITY: §30-4-1 et. seq

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Expanded Duties of Dental Hygienists and Dental Assistants

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 8/29/2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Dental Examiners
PO Box 1447
Crab Orchard, WV 25827
304-252-8266

LEGISLATIVE RULE TITLE: Expanded Duties of Dental Hygienists and Dental Assistants

1. Authorizing statute(s) citation §30-4-1 et. seq
2.
 - a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 26, 2012
 - b. What other notice, including advertising, did you give of the hearing?
Written notification was sent to the WV Dental Association, WV Dental Hygienist's Association and the WV Dental Assistants Association.
Proposed rules were posted to the Board's website.
 - c. Date of Public Hearing(s) *or* Public Comment Period ended:
Comment period ended August 25, 2012 @ 12:00 pm
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

1

Attached _____ No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

8-31-2012

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Richard D. Smith, DDS
Executive Secretary
WV Board of Dental Examiners
PO Box 1447
Crab Orchard, WV 25827
(304)252-8266
(304)253-9454 - fax

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

SUMMARY OF PROPOSED RULE

TITLE 5

LEGISLATIVE RULE

WEST VIRGINIA BOARD OF DENTAL EXAMINERS

SERIES 13

RULE FOR THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

This rule is being proposed as a new series for expanded duties of dental hygienists and dental assistants.

**STATEMENT OF CIRCUMSTANCES
CONCERNING A PROPOSED RULE**

TITLE 5

LEGISLATIVE RULE

WEST VIRGINIA BOARD OF DENTAL EXAMINERS

SERIES 13

RULE FOR THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

Due to the amendment of Series 1 of rules, this rule is being created as a separate series of rules to regulate expanded duties for dental hygienists and dental assistants.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Expanded Duties of Dental Hygienists and Dental Assistants

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Board of Dental Examiners

Address: PO Box 1447
Crab Orchard, WV 25827-1447

Phone Number: (304)252-8266 Email: wvbde@suddenlinkmail.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There is no additional cost nor revenue to state government related to this proposed rule.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Expanded Duties of Dental Hygienists and Dental Assistants

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

n/a

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

none

Date: 7.24.2012

Signature of Agency Head or Authorized Representative



**TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

FILED

2012 AUG 31 AM 9:19

**SERIES 13
EXPANDED DUTIES OF DENTAL HYGIENISTS AND DENTAL ASSISTANTS**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§5-13-1. General.

1.1. Scope. This legislative rule establishes expanded duties of dental hygienists and dental assistants.

1.2. Authority. -- W. Va. Code §30-4-6.

1.3. Effective Date. --

1.4. Filing Date. --

§5-13-2. Definitions.

2.1 "Board" means West Virginia Board of Dental Examiners.

2.2. "Direct supervision" means supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed.

2.4. "General supervision" means a dentist is not required to be in the office or treatment facility when procedures are being performed by the auxiliary dental personnel, but has personally diagnosed the condition to be treated, has personally authorized the procedures and will evaluate the treatment provided by the dental auxiliary personnel.

2.11. "Public health practice" means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the Board of Dental Examiners to require direct, general or no supervision of a dental hygienist by a licensed dentist.

§5-13-3. General Assignment of Duties.

3.1. Licensed dentists may assign to their employed dental hygienists or assistants intraoral tasks as set out in this section for dental hygienists or assistants, subject to the following conditions:

(a) The performance of intraoral tasks by dental hygienists or assistants shall be under the direct supervision of the employer-dentist;

(b) The following procedures may not be assigned to a dental hygienist or assistant or to any other person not licensed to practice dentistry:

(1) Diagnosis, treatment planning and prescription (including prescriptions for drugs

and medicaments or authorizations for restorative, prosthodontic or orthodontic appliances); or

(2) Surgical procedures on hard and soft tissue within the oral cavity or any other intraoral procedure that contributes to or results in an irremediable alteration of the oral anatomy; and

(c) The licensed dentist assigning expanded duties to a dental hygienist or assistant is solely responsible for evaluating the dental hygienist or assistant to determine that he or she is competent to handle assigned duties. Further, no licensed dentist shall assign additional duties to a dental hygienist or assistant until he or she is assured that the dental hygienist or assistant is fully competent and completely qualified to perform the assigned expanded duty or duties.

§5-13-4. Expanded duties of Dental Assistants.

4.1. The following duties and/or intra-oral tasks may be assigned by a licensed dentist to a dental hygienist and/or assistant in the licensed dentist's employment, provided that under no circumstances can an assistant use a power-driven instrument of any type intra-orally except as specifically set forth hereinafter:

- (a) Placing, exposing, developing, and mounting dental radiographs;
- (b) Placing and removing rubber dams;
- (c) Charting existing restorations and missing teeth;
- (d) Holding and removing materials, trays, strips, and sutures previously placed in the patient's mouth by the dentist;
- (e) Removing excess cement from coronal surfaces of teeth without the use of rotating, power-driven or scaling instruments;
- (f) Taking impressions for study cast and pouring models;
- (g) Recording medical and dental histories for interpretation by the supervising dentist;
- (h) Providing pre- and post-treatment instructions;
- (i) Viewing the oral cavity and reporting the symptoms/problems to the supervising dentist;
- (j) Performing pulp vitality testing (thermal or electrical) with a final evaluation by the supervising dentist;
- (k) Inserting and adjusting athletic mouth guards and bleaching trays with a final evaluation by the supervising dentist;
- (l) Removing periodontal dressings with a final evaluation by the supervising dentist;
- (m) Placing and removing matrices after a final evaluation by the supervising dentist;

- (n) Applying topical anesthetic agents with prior approval by the supervising dentist;
- (o) Applying topical anticariogenic agents after successful completion of a board-approved course and examination and with prior approval of the supervising dentist;
- (p) Applying pit and fissure sealants after successful completion of a board-approved course and examination and with a final evaluation by the supervising dentist;
- (q) Applying cavity liners and bases with a final evaluation by the supervising dentist;
- (r) Removing soft tissue dressings with a final evaluation by the supervising dentist;
- (s) Fabricating and cementing temporary crowns and bridges with a final evaluation by the supervising dentist;
- (t) Placing and removing temporary restorations by a non power-driven method with a final evaluation by the supervising dentist;
- (u) Taking intra- and extra-oral photographs;
- (v) Chemical conditioning of the tooth to accept a restoration and/or bracket by topical application after successful completion of a board-approved course and examination;
- (w) Using a power-driven hand piece with rubber cup and/or brush only for preparing a tooth for accepting a restoration and/or appliance, which shall in no way be represented to the patient as a prophylaxis, after successful completion of a board-approved course and examination;
- (x) Placing retraction cords for crown impressions after successful completion of a board-approved course and examination and with prior approval of the supervising dentist;
- (y) Taking final impressions for fixed or removable prosthesis and/or appliance with a final evaluation by the supervising dentist;
- (z) Checking for loose orthodontic appliances with a final evaluation by the supervising dentist;
- (aa) Taking orthodontic measurements with a final evaluation by the supervising dentist;
- (bb) Fitting bands and brackets prior to final cementation and/or bonding by the supervising dentist;
- (cc) Bending archwires with a final evaluation by the supervising dentist at the time of placement;
- (dd) Placing or removing temporary space maintainers, orthodontic separating devices, ligatures, brackets and bands with a final evaluation by the supervising dentist at the time of

placement or removal, after completion of a board-approved course and examination;

(ee) Removing loose or broken bands, brackets or archwires when directed by the supervising dentist; and

(ff) Visually monitoring a nitrous oxide analgesia unit. A dental assistant or hygienist must successfully complete a board-approved course, and examination, and maintain current certification in accordance with the American Red Cross' or the American Heart Association's Cardio-Pulmonary Resuscitation (CPR) program to perform this duty.

(gg) A dental assistant who has completed two (2) years and at least three thousand (3,000) hours of clinical experience in a dental office, as attested to by the supervising dentist, and who has successfully completed either the restorative expanded duties course or orthodontic expanded duties course required by the West Virginia Board of Dental Examiners, may perform supragingival and coronal polishing on children under age 21 years of age using a slow speed hand piece with a rubber cup after successfully completing a course approved by the Board.

§5-13-5. Expanded duties of Dental Hygienists.

5.1. Expanded duties of dental hygienists. In addition to and including those duties set forth in subsection 4.1 of this section, the following duties and/or intraoral tasks may be assigned by a licensed dentist to a dental hygienist in the licensed dentist's employment:

- (a) Supra - and subgingival scaling of teeth;
- (b) Polishing of coronal and/or exposed surfaces of teeth;
- (c) Dental health education;
- (d) Nutritional counseling;
- (e) Examining and recording periodontal findings;
- (f) Scaling excessive cement from the surfaces of teeth and restorations;

(g) Performing clinical examinations and diagnostic tests of teeth and surrounding tissues and recording findings for interpretation by a supervising dentist (including such procedures as restorative chartings, caries activity test, cytology smears, salivary analysis and smears, endodontic cultures, vitality test, etc.);

- (h) Placing of subgingival medicaments, fibers, chips, etc.;
- (i) Finishing and polishing restorations with a slow speed hand piece;
- (j) Debridement and/or root planing of teeth;
- (k) Applying bleaching agents after successful completion of a board-approved course;

(l) Placing periodontal dressings with a final evaluation by the supervising dentist; and

(m) Administration of infiltration and block anesthesia after successful completion of a board-approved course and of a regional board examination and under the direct supervision of a licensed dentist.

§5-13-6. General Supervision of Dental Hygienists.

6.1(a) A dental hygienist may provide, for not more than fifteen (15) consecutive business days or not more than three (3) consecutive weeks, preventive dental hygiene services to patients when the supervising dentist is not physically present at the location at which the services are provided if all of the following requirements are met;

(1) The dental hygienist shall apply to the Board of Dental Examiners for a general supervision permit. The application will be submitted on a form to be supplied by the Board. The application fee shall be equal to the fees charged for expanded duties certificates.

(2) The dental hygienist shall have two (2) years and three thousand (3,000) hours of clinical dental hygiene experience.

(3) The dental hygienist shall provide proof of successful completion of a three (3) hour course in the identification and prevention of medical emergencies as part of continuing education credits for licensure every two years.

(4) The supervising dentist shall have examined the patient, including medical history review, diagnosis and treatment planning, not more than twelve months prior to the date the dental hygienist provides the dental hygiene services to the patient. No patient may be treated two (2) consecutive times by a dental hygienist under general supervision without a licensed dentist conducting an examination.

(5) The dental hygienist shall comply with written protocols or written standing orders established by the supervising dentist, including an updated medical history, informs the patient or parent or guardian of a child and documents in the patient record that dental hygiene services were provided under general supervision.

(6) The dental hygienist shall consult with the supervising dentist or an attending physician if a significant change has occurred in the patient's medical history to determine that the patient is in a medically stable condition prior to receiving dental hygiene services.

(7) The supervising dentist shall not have more than three (3) dental hygienists treating patients under general supervision in dental offices or treatment facilities at any one time when the dentist is not physically present.

6.1(b) The dental hygienist may practice under general supervision, consistent with conditions outlined above, in the following settings; private dental offices, hospitals, schools, correctional facilities, jails, community clinics, long term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health and Human Resources, public health facilities, homebound settings and Accredited Dental Hygiene Education programs.

(1) Facilities utilized for oral prophylaxis, sealant placement, or both, shall have adequate lighting, suction and isolation of teeth.

(2) The dental hygienist shall submit an annual report to the West Virginia Board of Dental Examiners of services rendered while practicing under general supervision in all settings other than a private dental office or Accredited Dental Hygiene Education program. The supervising dentist shall review and sign this report.

(3) All applications and reporting forms shall be provided by the West Virginia Board of Dental Examiners.

6.1. (c) The following procedures may be performed by a dental hygienist when practicing under general supervision;

(1) Placing, exposing, developing, and mounting dental radiographs;

(2) Charting existing restorations and missing teeth;

(3) Taking impressions for study cast and pouring models;

(4) Recording medical and dental histories;

(5) Applying topical anesthetic agents;

(6) Applying topical anticariogenic agents;

(7) Applying pit and fissure sealants following diagnosis within four (4) months by the supervising dentist;

(8) Checking for and removal of loose orthodontic bands and loose brackets;

(9) Taking intra- and extra-oral photographs;

(10) Complete dental prophylaxis, which may include supra- and subgingival scaling of teeth and polishing of coronal and/or exposed surfaces of teeth;

(11) Dental health education;

(12) Nutritional counseling;

(13) Examining and recording periodontal findings;

(14) Scaling excessive cement from the surfaces of teeth and restorations;

(15) Performing clinical examinations and diagnostic tests of teeth and surrounding tissues, including but not limited to restorative chartings, caries activity test, cytology smears, salivary analysis and smears, endodontic cultures, vitality tests, and recording findings for interpretation by a supervising dentist;

- (16) Placing of subgingival medicaments, fibers, chips, etc.;
- (17) Finishing and polishing restorations with a slow speed hand piece;
- (18) Debridement and/or root planing of teeth; and
- (19) Applying bleaching agents after successful completion of a board-approved course.

6.2. The following procedures may be performed by a dental hygienist with no supervision of a licensed dentist:

- (1) Dental health education;
- (2) Nutritional counseling;
- (3) Preparing a generalized oral screening with subsequent referral to a dentist; and
- (4) Applying fluoride.

6.3 No person shall do any of the following:

- (1) Practice dental hygiene in a manner that is separate or otherwise independent from a supervising dentist:
- (2) Establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services; and
- (3) Administer local anesthesia under general supervision.

§5-13-7. Public Health Practice of Dental Hygienists.

7.1. A dental hygienist may engage in public health practice rendering all services provided in subsection 6.1.(c) of this section allowed under General Supervision and as further defined below:

(a) The dental hygienist shall submit application to the West Virginia Board of Dental Examiners for Public Health Practice. The application fee shall be equal to the fees charged for expanded duties certificates.

(b) The dental hygienist shall have two (2) years and three thousand (3,000) hours of clinical dental hygiene experience.

(c) The dental hygienist shall, in addition to the twenty (20) hours required for dental hygiene licensure, complete six (6) hours of continuing education during each continuing education cycle which must include three (3) hours in medical emergencies and three (3) hours in general public health content.

(d) The dental hygienist and supervising dentist shall submit an annual report to the West Virginia Board of Dental Examiners of services rendered.

(e) The dental hygienist, in cooperation with the supervising dentist, shall have a written plan for referral, recording conditions that should be called to the attention of the dentist.

(f) A licensed dentist may not supervise more than four (4) dental hygienists engaged in public health practice.

(g) Facilities utilized for oral prophylaxis, sealant placement, or both, shall have adequate lighting, suction and isolation of teeth.

(h) The dental hygienist may engage in public health practice, consistent with conditions outlined above, in the following settings; hospitals, schools, correctional facilities, jails, community clinics, long term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health and Human Resources, public health facilities, homebound settings and Accredited Dental Hygiene Education programs.

(i) All applications and reporting forms shall be provided by the West Virginia Board of Dental Examiners.

(j) The following procedures may be performed by a dental hygienist with no supervision of a licensed dentist:

- (1) Dental health education;
- (2) Nutritional counseling;
- (3) Preparing a generalized oral screening with subsequent referral to a dentist;
- (4) Applying fluoride;
- (5) Charting existing restorations and missing teeth;
- (6) Recording medical and dental histories;
- (7) Examining and recording periodontal findings ; and

(8) Complete dental prophylaxis, which may include supra- and subgingival scaling of teeth and polishing of coronal and/or exposed surfaces of teeth. The dental hygienist and a licensed dentist shall attempt to reach a collaborative agreement regarding such treatment. If such an agreement cannot be reached then the dental hygienist shall have a written order from a licensed dentist prescribing such treatment.

(k) No person shall do any of the following:

(1) Practice dental hygiene in a manner that is separate or otherwise independent from a supervising dentist:

(2) Establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services; and

(3) Administer local anesthesia under public health practice permit.

West Virginia Dental Assistants Association



"The Third Hand of the Dentist"

Debra McCallister, C.D.A., E.F.D.A.
168 Crooked Creek Rd
Scott Depot, WV 25560
(304)757-7182
dcbwvtoothfairy@aol.com

Kim Vickers, C.D.A.
2511 Winter St
St. Albans, WV 25177
(304)722-2211
KimCDA@aol.com

Beverly Stevens, C.O.M.S.A.
65 Castle Pine Lane
South Charleston, WV 25309
(304)306-4117
beverly.drsw@suddenlink.net

Dr Diane Paletta, President and Board Members
West Virginia Board of Dental Examiners
1319 Robert C Byrd Drive
P O Box 1447
Crab Orchard, WV 25827-1447
Fax 304-253-9454

Dear Doctor Paletta and Board Members,

Thank you for informing the West Virginia Dental Assistants Association of your proposed changes in rules and the opportunity to comment on the changes.

The Association supports your emergency rule regarding accessing the Controlled Substance Monitoring Program Database, as required under Senate Bill 437 introduced at the request of Governor Earl Ray Tomblin and passed by the 2012 Legislature. We view this to improve methods of ceasing the diversion and illegal use of prescription drugs.

This Association understands your Board is not changing expanded duties allowed by dental assistants after completing Board approved courses, which include restorative expanded duties, coronal polishing, orthodontic expanded duties and monitoring nitrous oxide. The proposed changes are merely a reorganization of current rules, which this Association supports.

Thank you for your service to the dental profession and dental assistants.

Very truly yours

Kim Vickers, CDA
President
West Virginia Dental Assistants Association

COMMENTS & BOARD RESPONSE

During the comment period, the Board received one written comment concerning this rule. This comment came from the WV Dental Assistants Association in support of this rule as it is merely a reorganization of current rules.

During the Board's meeting on August 28, 2012, the Executive Director of the WV Dental Association requested the Board make an amendment to this rule in section §5-13-7 (7.1). This section references section 8.4.(c), which should be section 6.1.(c).

The Board responded as follows:

Upon motion by Mrs. Beverly L. Stevens, and properly seconded by Mrs. Camille A. Arceneaux, and unanimously passed the Board approved the rules as written with the requested amendment in section 7.1.