

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

Form #2

Do Not Mark In This Box

2013 JUN -6 AM 11:53

WVA  
STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

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

RULE TYPE: Legislative CITE AUTHORITY: §30-4-6

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Dental Advertising

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 12, 2013 AT 12:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Dental Examiners

PO Box 1447  
Crab Orchard, WV 25827

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**SUMMARY OF PROPOSED RULE**

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

**SERIES 8  
DENTAL ADVERTISING**

**This rule is being amended to update the following due passage of Senate Bill 580:**

Change of name from Dental Examiners to Dentistry.

Also, the Board proposes to update language concerning the announcement or advertising of sedation services.

**STATEMENT OF CIRCUMSTANCES**

**CONCERNING A PROPOSED RULE**

**TITLE 5**

**LEGISLATIVE RULE**

**WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

**SERIES 8**

**DENTAL ADVERTISING**

Due to the passage of Senate Bill 580, with major revisions to the Dental Practice Act, it is necessary to promulgate this rule to update the name of the Board and to update language concerning the announcement or advertising of sedation services.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Dental Advertising

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Board of Dental Examiners

Address: PO Box 1447  
Crab Orchard, WV 25827

Phone Number: 304-252-8266 Email: wybde@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.

This rule will not have any impact on costs and revenues of state government.

**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			

Rule Title: Dental Advertising

Rule Title: \_\_\_\_\_

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

There are no fee increases/decreases associated with this rule.

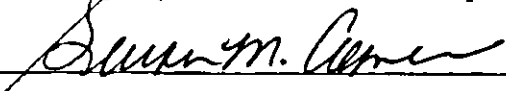
**MEMORANDUM**

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: 6/5/2013

Signature of Agency Head or Authorized Representative



2013 JUN 6 AM 11:53

TITLE 5  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF ~~DENTAL EXAMINERS~~ DENTISTRY

WEST VIRGINIA  
STATE

SERIES 8  
DENTAL ADVERTISING

**§5-8-1. General.**

- 1.1. Scope. -- This rule regulates the advertising of the practice of dentistry.
- 1.2. Authority. -- W. Va. Code §30-4-6
- 1.3. Filing Date. --
- 1.4. Effective Date. --

**§5-8-2. Definitions.**

2.1. As used in this rule, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

- (a) "Board" means the West Virginia Board of ~~Dental Examiners~~ Dentistry;
- (b) "Advertising" means any communication, whether oral or written, between a dentist or other entity acting on behalf of one or more dentists and the public. It includes, but is not limited to: business cards, signs, insignias, letterheads, web pages, internet communications, radio, television, newspaper and magazine ads, and display or group ads or listings in telephone directories.

**§5-8-3. Dentists may advertise.**

- 3.1. Any advertising engaged in by a duly registered and currently licensed dentist in West Virginia shall be in compliance with the provisions set forth herein and WVC§30-4-1 et seq.
- 3.2. A duly registered and currently licensed dentist may not use or participate in the use of any advertising containing a false, fraudulent, misleading, deceptive or unfair statement or claim.
- 3.3. Any advertisement must contain the name of or names of all of the duly registered and currently licensed dentists providing patient care and who are regularly employed in or responsible for the management, supervision and operation of each office location listed in the advertisement.
- 3.4. A duly registered and currently licensed dentist may:
  - (a) Use the titles or degrees, such as doctor, dentist, D.D.S. or D.M.D. if the dentist holds a degree or degrees from an accredited dental school. A dentist who has a medical degree may also use that degree;
  - (b) Use the title diplomate in connection with his or her specialty if he or she has been conveyed that status by the Specialty Board recognized by the American Dental Association and has a current license to practice his or her specialty issued by the Board entitling him or her to engage in a specialty practice; and
  - (c) Use the words specialist, specializing in, limited to the specialty of, or practice limited to if the dentist has a current license to practice his or her specialty issued by the board entitling him or her to engage in a specialty practice.

**§5-8-4. Announcement of Services.**

4.1. Any announcement of services by a general practitioner shall state in a prominent manner that the dental practice is one of general dentistry.

4.2. The announcement of services of the general practice of dentistry shall be clearly legible, with print equal to or larger than the announcement of services, and clearly audible, with speech volume and pace equal to the announcement of services.

4.3. Any announcement or advertisement of ~~general anesthesia or parenteral conscious sedation services, which includes but is not limited to sleep dentistry and twilight sleep,~~ may only be allowed by a licensed dentist in compliance with the provisions of WVC§30-4A-1 et seq.

4.4. Any duly registered and currently licensed dentist who directly or indirectly advertises the availability and price of goods, appliances or services shall do so in a clear and nondeceptive manner and include all material information necessary to fully inform members of the general public about the nature of the goods, appliances or services offered at the announced price. Any listed prices shall be extended for a reasonable period of time. Any advertised price for a routine service shall be a fixed price, with no range of fees, and no patient can be charged a fee in excess of that advertised price for that particular service.

4.5. Any patient who receives any free services, examination or treatment, in response to an advertisement, from any duly registered and licensed dentist in West Virginia shall have the right to refuse to pay, cancel payment or be reimbursed for payment for any other service, examination or treatment which is performed as a result of and within seventy-two hours of receiving the free service, examination or treatment, unless the other service, examination or treatment is requested by the patient at the time she or he seeks the free offer. The dentist shall inform patients in writing of their rights under this section prior to the patient receiving the free service, examination or treatment.

4.6. Any advertising engaged in by a duly registered or licensed dentist in West Virginia containing an offer of a discount or a credit toward a fee, whether expressed in terms of a particular dollar amount or a particular percentage shall contain a statement of the highest fee normally charged by the advertising dentist for the services which the discount or credit applies and a statement of exactly what services are included in the offer. If the offer of a discount or credit applies to the full range of dental services offered by the dentist, then a fee schedule stating all fees for the dental services shall be made available to any person requesting it and its availability shall be noted in the advertisement.

**§5-8-5. Articles, messages or newsletters.**

5.1. Any dental health article, message or newsletter published under a dentist's byline to the public without making truthful disclosure of the source and authorship, or designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, or designed to imply specialization or unusual expertise in a recognized specialty area unless the sponsoring dentist is currently licensed in the particular specialty area discussed in the article is a false, misleading or deceptive representation to the public.

**§5-8-6. Compliance.**

6.1. Any registered and currently licensed dentist in West Virginia failing to comply with the provisions of this article is subject to disciplinary action as provided in section twenty, article four of this chapter.