

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

Form #3

Do Not Mark In This Box

FILED

2013 JUL 22 AM 9:53

CLERK OF STATE

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

AGENCY: West Virginia Board of Dentistry TITLE NUMBER: 5

CITE AUTHORITY: §30-4-6

AMENDMENT TO AN EXISTING RULE: YES NO

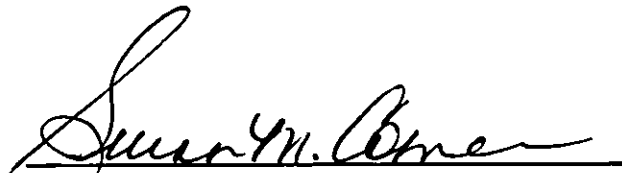
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rules for the West Virginia Board of Dental Examiners

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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: 7/19/2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: Rules for the West Virginia Board of Dental Examiners

1. Authorizing statute(s) citation §30-4-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 6, 2013

b. What other notice, including advertising, did you give of the hearing?
Rules were sent to the WV Dental Association, WV Dental Hygienist's Association, WV Dental Assistant's Association. All rules were placed on the Board's website.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 12, 2013 at 12:00 pm

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received 0

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

Monday July 22, 2013

- 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 Dentistry

PO Box 1447

Crab Orchard, WV 25827

304-252-8266

FAX: 304-253-9454

wvde@suddenlinkmail.com; duff@duffsmithdds.com

- 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 1
RULE FOR THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

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

Change of name from Dental Examiners to Dentistry;

Change name of the Rule; and

Remove language from Section 5 in regards to temporary permits and update the language concerning intern and teaching permits.

In addition to these changes, the Board is proposing the following:

Update the term Oral Pathology to Oral and Maxillofacial Pathology;

Inclusion of a dental specialty recognized by the American Dental Association known as Oral and Maxillofacial Radiology;

Additional requirements for an Orthodontic specialty certificate as specifically requested by the West Virginia Association of Orthodontists; and

To remove the grace period language concerning licensure renewal.

STATEMENT OF CIRCUMSTANCES

CONCERNING A PROPOSED RULE

TITLE 5

LEGISLATIVE RULE

WEST VIRGINIA BOARD OF DENTAL EXAMINERS

SERIES 1

RULE FOR THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

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, the name of the rule and update the language concerning intern and teaching permits.

In addition to the above changes, the Board has been requested by the West Virginia Association of Orthodontists to require successful completion of the American Board of Orthodontics written examination in addition to current requirements for an Orthodontic and Dentofacial Orthopedic specialty certificate. The Board seeks to update the term Oral Pathology and include an ADA recognized specialty of Oral and Maxillofacial Radiology as well as remove the grace period language from the licensure renewal section.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title:

Rule For the West Virginia Board of Dental Examiners

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: 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.

This rule will not have any impact on costs or 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 For the West Virginia Board of Dental Examiners

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.

There are no fees associated with the changes in this rule.

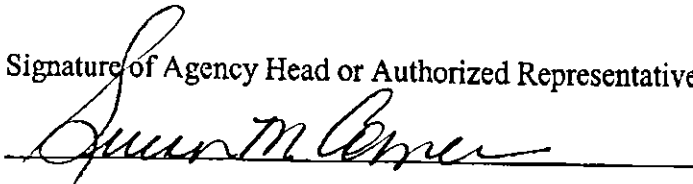
MEMORANDUM

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



FILED

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

2013 JUL 22 AM 9:53

SERIES 1
RULE FOR THE WEST VIRGINIA BOARD OF ~~DENTAL EXAMINERS~~ DENTISTRY

CLERK OF STATE

§5-1-1. General.

1.1. Scope. This rule regulates the W. Va. Board of ~~Dental Examiner's~~ Dentistry's proceedings and carries out the purposes and enforces the provisions of W. Va. Code §§30-1-1 et seq and 30-4-1 et seq which are applicable to the W. Va. Board of ~~Dental Examiners~~ Dentistry.

1.2. Authority. -- W. Va. Code §30-4- 5 & 6.

1.3. Effective Date. --

1.4. Filing Date. --

1.5. Certification. -- This rule is certified authentic by the President and Secretary of the W. Va. Board of ~~Dental Examiners~~ Dentistry by Certification No. II.

1.6. Amend. -- This rule amends W. Va. Board of ~~Dental Examiners~~ Dentistry Rule 5CSR1, W. Va. Administrative rules, W. Va. Board of ~~Dental Examiners~~ Dentistry which became effective on ~~July 1, 2009~~ June 1, 2013.

§5-1-2. Definitions.

2.1. "Dental public health" is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. For the purposes of this rule the term "community" is used in a restricted sense and relates to the people of a particular region having common organization or interests and living in the same place under the same laws. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with the dental health education of the public, with research, and the application of the findings of research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

2.2 "Endodontics" is that area of dentistry dealing with the morphology physiology and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

2.3. "Oral and maxillofacial surgery" is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial regions.

2.4. "Oral and maxillofacial pathology" is the specialty of dentistry and discipline of pathology that deals

with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations.

2.5. "Orthodontics and dentofacial orthopedics" is the dental specialty that includes the diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and skeletal abnormalities of the developing or mature orofacial structures.

2.6. "Pediatric dentistry" is an age defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, also including persons with special health care needs.

2.7. "Periodontics" is that specialty of dentistry which encompasses the prevention, diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function and esthetics of these structures and tissues.

2.8. "Prosthodontics" is that dental specialty pertaining to the diagnosis, treatment planning, rehabilitation and maintenance of the oral function, comfort, appearance and health of patients with clinical conditions associated with missing or deficient teeth and/or oral and maxillofacial tissues using biocompatible substitutes.

2.9 "Oral and maxillofacial radiology" is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region.

§5-1-3. Official seal.

3.1. General. The Board's official seal shall affix by way of stamp or embossing and shall contain somewhere on the seal the word "seal" and ~~W. Va.~~ West Virginia or WV Board of Dental Examiners Dentistry.

§5-1-4. Specialties.

4.1. Specialist General Qualifications. A licensee may apply to the Board for a certificate of qualification in a specialty of dentistry if the licensee can satisfactorily prove to the State Board of ~~Dental Examiners Dentistry~~ that he or she possesses the following general qualifications, in excess of those required for the completion of a general course of study as given in a dental school or college recognized by the State Board:

- (a) Membership in the American Dental Association or the National Dental Association;
- (b) An exemplary record of professional ethics; and
- (c) Requisite training. All training requirements for qualifications of each specialty shall be approved by the Commission on Dental Accreditation.

4.2. Specialist General Limitations. A person certified by the W. Va. State Board of ~~Dental Examiners~~ Dentistry as a specialist has the following limitations:

(a) The licensee shall limit his or her practice of dentistry only to the specialty in which he or she is licensed and in which he or she holds himself out to the general public as a specialist; and

(b) The licensee shall limit his or her listing in the telephone directory to the specialties in which he or she has an office or offices.

4.3. Specialty Fields Licensed by the W. Va. Board of ~~Dental Examiners~~ Dentistry. The Board may issue certificates of qualification in the following specialties:

(a) Dental public health. -- In order to qualify for certification in this specialty, the licensee shall have a minimum of one full-time academic year of at least eight calendar months each of graduate or post-graduate education, internship or residency.

(b) Endodontics. -- In order to qualify for certification in this specialty, the licensee shall have a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

(c) Oral and maxillofacial surgery. -- In order to qualify for certification in this specialty, the licensee shall have a minimum of three full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

(d) Oral and maxillofacial pathology. -- In order to qualify for certification in this specialty, the licensee shall have a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

(e) Orthodontics and dentofacial orthopedics. -- In order to qualify for certification in this specialty, the licensee shall have a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency. In addition, any applicant for an orthodontic and dentofacial orthopedic specialty certificate commencing on July 1, 2014, shall submit verification of successful completion of the American Board of Orthodontics written examination.

(f) Pediatric dentistry. -- In order to qualify for certification in this specialty, the licensee shall have a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

(g) Periodontics. -- In order to qualify for certification in this specialty, the licensee shall have a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

(h) Prosthodontics. -- In order to qualify for certification in this specialty, the licensee shall have a minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

(i) Oral and maxillofacial radiology -- In order to qualify for certification in this specialty, the licensee shall have a minimum of two full-time years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

§5-1-5. Issuance of temporary and/or special permits dental intern, dental resident, or teaching permits.

~~5.1. General. The Board may issue a temporary permit to practice dentistry or dental hygiene. Temporary and/or special permits may only be granted pursuant to a board meeting with a quorum of members present. Nothing in this rule prohibits the practice of dentistry or dental hygiene by persons licensed in another state who, at the request of an approved dental school or any regularly organized dental society, may give a clinic at the school or at a scientific meeting of the dental society for the purpose of advancing the professional knowledge of members of the dental profession or members of the student body of a dental school.~~

~~5.2. Temporary Permit. The Board of Dental Examiners may issue a temporary permit to practice dentistry or dental hygiene to graduates of schools of dentistry or dental hygiene approved by the Board who are certified to the board of directors of dental clinics established by law, by the chief executive of any hospital or sanitarium licensed or operated by the State or by the chief dental officer of the health department of the State. The permits terminate sixty days after the date that the first examination required for a license to practice dentistry is administered or when the holder of the permit ceases to be employed by the person certifying him or her.~~

5.3 1. Dental Intern or Dental Residency Permit. The Board of Dental Examiners Dentistry may issue a dental intern or dental residency permit to graduates of dental schools approved by the Board who are not licensed to practice dentistry in this State ~~and who have not failed an examination for a license to practice dentistry in this State.~~ An applicant for a permit shall be certified to the Board by the dental director or of a hospital-operated or licensed by the State which maintains a dental intern or residency program or the dean of a dental school located within the State. The permit shall authorize the holder of the permit to serve as a dental intern or a dental resident for a period of not more than one year in any hospital licensed or operated by the State which maintains an established dental department under the supervision of a licensed dentist or the school of dentistry located in the State. The permit may be reissued by the Board at its discretion. The holder of a permit shall function under the supervision of the dental staff of the hospital or dental school and shall limit his or her practice to patients selected by the hospital or school of dentistry. The holder of a permit is not entitled to receive any fee or other compensation other than the salary paid by the hospital or school of dentistry. Permits may be revoked by the Board for cause and expire at the end of one year or on the date the dental internship or residency is discontinued, whichever first occurs.

5.4 2. Teaching Permits. The Board of Dental Examiners Dentistry may issue teaching permits to persons who are graduates of a school of dentistry ~~or dental hygiene~~ approved by the Board where those persons are not licensed to practice dentistry ~~or dental hygiene~~ in this State. The permit shall be issued only upon the certification of the dean of a dental school located in this State that the applicant is a bona fide member of the staff of that school. The permits are valid for one year and may be reissued by the Board in its discretion with a written recommendation of the dental school dean. The holder of a permit may perform all operations which a person licensed to practice dentistry ~~or dental hygiene~~ in this State may perform, but only within the facilities of the dental school, academic medical center, or teaching hospital adjacent to a dental school or academic medical center located within the state and as an adjunct to his or her teaching functions in the school.

§5-1-6. Suspension or revocation of a license.

6.1. Board Meeting. Prior to the suspension or revocation of a license, a majority of the Board shall

meet with a quorum voting for revocation or suspension of the license.

6.2. Notice. The Board shall notify the licensee concerning a revocation or suspension at least thirty (30) days prior to the hearing. The notice shall contain grounds for the revocation or suspension and notify the licensee that he or she may appear with witnesses and be heard in person, by counsel, or by both. The notice shall also contain the time and place of the hearing concerning the suspension or revocation. The notice shall also contain a statement informing the licensee that the Board will receive any evidence the licensee may wish to offer, that the licensee will be given the opportunity to cross-examine any witnesses appearing before the Board, and that the Board will receive any statement the licensee may desire to make to them.

6.3. Publicity. The Board shall give no advance publicity prior to the hearing, during the hearing or prior to its decision concerning a licensee's suspension or revocation of a license.

6.4. Service of Notice. The Board may serve notice by delivering a copy of the notice in writing to the party in person; or if he or she cannot be found, by delivering the copy at his or her usual place of abode, and giving information of its purport, to the spouse, or to any other person found there who is a member of the licensee's family and above the age of sixteen years; or if neither the spouse nor any other person is found there, and the licensee is not found, leaving the copy posted at the front door of the place of abode. Any sheriff or constable shall serve a notice within his or her county and make return of the manner and time of service; for a failure to do so he or she shall forfeit twenty dollars. The return, or a similar return by any other person who verified it by affidavit, is evidence of the manner and time of service.

6.5. Service by Publication. Any notice to a person not residing in this State may be served by the publication of the notice once a week for three successive weeks in a newspaper published in this State.

6.6. Hearing. The Board may compel the attendance of witnesses and administer oaths. A stenographic report of a proceeding to suspend or revoke a license shall be made at the expense of the Board and a transcript of the hearing retained in the Board's file. The Board shall make a written report of its findings, which constitute part of the record and a copy of the findings shall be filed with the Secretary of State.

6.7. Review by Circuit Court and Supreme Court of Board's Decision on Suspension and Revocation of License. A person having his or her license suspended or revoked may, within thirty days after the decision of the Board, present a petition in writing to the circuit court of the county in which the person resides, or to the judge of the court in vacation, praying for the review and reversal of the decision. Before presenting his or her petition to the court or judge, the petitioner shall mail copies of the petition to the president and secretary, respectively, of the Board. Upon receipt of the copy, the secretary shall immediately transmit to the clerk of the court the record of the proceedings before the Board. The court or judge shall fix a time for the review of the proceedings at his or her earliest convenience. Notice in writing of the time and place of the hearing shall be given to the president and secretary of the Board at least ten days before the date set for the hearing. The court or judge shall, without a jury, hear and determine the case upon the record of the proceedings before the Board. The court or judge may enter an order affirming, revising, or reversing the decision of the Board if it appears that the decision was clearly wrong. Prior to the entry of the order, no order shall be made or entered by the court to stay or supersede any suspension, revocation or cancellation of any certificate, license, registration or authority. The judgement of the Circuit Court may be reviewed upon appeal in the Supreme Court of Appeals.

§5-1-7. Designation of testing bodies.

7.1. The Board designates for dental and dental hygiene license testing the following Boards:

(1) The Joint Commission on National Dental Examinations for the written examination; and

(2) The North East Regional Board of Dental Examiners for the clinical examination or any other state and/or regional clinical examination.

§5-1-8. Practice of dentistry under trade name or firm name.

8.1. A person shall not practice, or offer or undertake to practice, dentistry under any firm name or trade name, or under any name other than his or her own true name: Provided, that nothing in this section prohibits the practice of dentistry by a partnership, corporation and/or professional limited liability company under a firm name containing nothing but the surname of every member who is a duly licensed dentist.

§5-1-9. Annual information and renewal notice; reinstatement; penalty fees; waiver of payment of fee on retirement or disability; change of address.

9.1. Annual information and renewal notice; reinstatement and penalty fees.

(a) On or before the first day of February of each year, every dentist licensed to practice dentistry in this state, and every dental hygienist licensed to practice dental hygiene in this state, shall transmit to the secretary of the board upon a form prescribed by the board, his or her signature, post-office address, office address, serial number of his or her license certificate, whether he or she has been engaged during the preceding year in the active and continuous practice of dentistry or dental hygiene, as the case may be, whether within or without this state, and any other information required by the board, together with an information and renewal fee.

(b) Upon receipt of the required information and the payment of the proper renewal fee, the board shall issue a renewal certificate authorizing him or her to continue the practice of dentistry or the practice of dental hygiene in this state for a period of one year from the first day of February.

(c) Upon failure of any licensee to submit the required information and pay the annual renewal fee as required by the statutory date, the board shall attempt to notify the licensee in writing by mailing to his or her last registered address a notice of the requirements of this section apprising him or her of the fact that his or her license to practice will be suspended on the statutory date: Provided, that the Board's failure to mail or receive the notice shall not affect the suspension of his or her license.

(d) A license to practice dentistry or dental hygiene granted under the authority of WV Code §30-4-1 et. seq. shall ~~be suspended for failure to renew~~ expire on the first day of ~~May~~ February if the licensee fails to secure a current renewal certificate by that day. Any licensee whose license is ~~suspended~~ expired by reason of the failure, neglect or refusal to secure the proper renewal certificate may have his or her license reinstated by the board at any time within six months from the date of the ~~suspension~~ expiration of the license upon the payment of the proper renewal fee and a penalty fee as set by the board's fee schedule 5CSR3. If the licensee does not apply for renewal of his or her license as required by this section within six months, that person shall, at the discretion of the board, file an application for and take the examinations provided in W. Va. Code §30-4-1 et. seq. if he or she desires to practice dentistry or dental hygiene in this state.

9.2. Waiver of payment of fee on retirement or disability status.

(a) The board may waive the annual payment of the renewal fee required by this section, and issue a retired renewal certificate to any West Virginia licensee who is presently retired from active practice, or to any West Virginia licensee who has retired for reasons of physical disability, so long as the retirement continues: Provided, that the licensee shall provide the board with the information required by this section. Upon leaving a retired status the Board may require re-examination.

9.3. Change of Address.

(a) Every licensed dentist or dental hygienist within thirty days of changing their place of residence or their place of practice or establishing additional offices shall furnish the secretary of the board with his or her new addresses.