

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

Do Not Mark In This Box

2013 JUN 19 55

Form #3

**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: §31B-13-1304

AMENDMENT TO AN EXISTING RULE: YES  NO

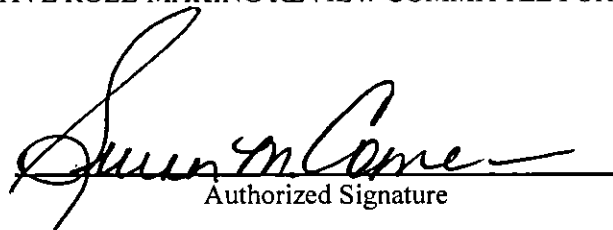
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Formation and Approval of Professional Limited Liability Companies

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: Formation and Approval of Professional Limited Liability  
Companies

1. Authorizing statute(s) citation §31B-13-1304

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

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- 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

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Executive Secretary

WV Board of Dentistry

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PO Box 1447

Crab Orchard, WV 25827

304-252-8266

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FAX: 304-253-9454

wybde@suddenlinkmail.com; duff@duffsmithdds.com

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- 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)

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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

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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 2  
FORMATION AND APPROVAL OF PROFESSIONAL  
LIMITED LIABILITY COMPANIES**

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

Change of name from Dental Examiners to Dentistry; and

Update language in section 3 concerning the procedures for formation and approval.

Also, the Board proposes language concerning the approval and authorization of name changes.

**STATEMENT OF CIRCUMSTANCES**

**CONCERNING A PROPOSED RULE**

**TITLE 5**

**LEGISLATIVE RULE**

**WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

**SERIES 2**

**FORMATION AND APPROVAL OF PROFESSIONAL**

**LIMITED LIABILITY COMPANIES**

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, update the language concerning procedures for formation and approval, and add language concerning the approval and authorization of name changes.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Formation and Approval of Professional Limited Liability Companies

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: wbde@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 the general revenue of the state, any fees allowed by this rule will only effect the special revenue account of the Board of Dental Examiners.

**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	0.00	100.00	100.00

Rule Title: Formation and Approval of Professional Limited Liability Companies

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

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

This rule would allow for a fee to process a request for a name change of a limited liability company, which will be proposed in the Board's fee rules at \$25.00 each request. The estimated amount of revenue for a fiscal year would be \$100.

### 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.

The fiscal impact will only affect those individuals seeking a name change for a professional limited liability company.

Date: 6/5/2013

Signature of Agency Head or Authorized Representative

*Susan M. Comer*

FILED  
2013 JUL 22 AM 9:55

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

**SERIES 2  
FORMATION AND APPROVAL OF PROFESSIONAL  
LIMITED LIABILITY COMPANIES**

**§5-2-1. General.**

1.1. Scope. -- This legislative rule addresses procedures for the formation and approval of professional limited liability companies for dentists.

1.2. Authority. -- W. Va. Code §31B-13-1304.

1.3. Filing Date. --

1.4. Effective Date. --

**§5-2-2. Definitions.**

2.1. Board. - The West Virginia Board of ~~Dental Examiners~~ Dentistry, established in W. Va. Code §30-4-4.

2.2. Professional limited liability company. - A limited liability company organized under Chapter 31B of the W. Va. Code for the purpose of rendering a professional service.

2.3. Professional services. - The services rendered under W. Va. Code §30-4-1 et seq., by dentists.

**§5-2-3. Procedures for Formation and Approval of Professional Limited Liability Companies for Dentists; Fees.**

3.1. Dentists licensed to practice dentistry in an active status in this State who desire to render dental professional services as a limited liability company shall comply with the provisions of W. Va. Code §31B-13-1 et seq. No professional limited liability company shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.

3.2. The name of a professional limited liability company shall contain the words "professional limited liability company" or the abbreviation "P. L. L. C." or "Professional L. L. C."

3.3. ~~Dentists licensed to practice dentistry in an active status in this State who desire to render professional services as a limited liability company shall also comply with the provisions of W. Va. Code §§30-4-4b and 30-4-4c.~~ The name of a limited liability company in the area of dentistry shall contain nothing but the name, which must include surnames of one, some or every member of the firm or partnership, except in a case where a city, town or municipality may be used when necessary to make a name unique with the Secretary of State's Office.

3.4. Every professional limited liability company shall file with the Board at the time of formation, and on an annual basis on or before the first day of July, the names of its one or more members, and written documentation that the professional limited liability company carries at least one million dollars of professional liability insurance, together with an initial filing fee and an annual renewal fee as set forth in the Board's fee schedule 5CSR3.

3.4.a. The requirement of carry one million dollars of professional liability insurance is satisfied if the professional limited liability company provides one million dollars of funds specifically designated and segregated for the satisfaction of judgements against the company members or any of its professional or nonprofessional managers or employees arising out of the performance of professional services to patients of the company, by:

(1) the deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or

(2) A blank letter of credit or an insurance company bond.

3.5. Every professional limited liability company shall file with the Board a copy of the annual report required to be filed with the secretary of state under W. Va. Code §31B-2-211. The copy of the annual report, and a copy of any corrected annual report filed with the secretary of state, shall be filed with the Board on or before the first day of July on an annual basis.

3.6. Every professional limited liability company in compliance with all the provisions of this rule shall be approved by and remain approved by the Board.

3.7. If any person ceases to be a member of any professional limited liability company, that person shall notify the Board in writing within twenty days from the date that he or she ceased to be a member of the professional limited liability company. The fact that a person ceases to be a member of a professional limited liability company shall not affect the approval of the professional limited liability company by the Board, if the Board determines that the professional limited liability company remains in compliance with all the provision of this rule.

**§5-2-4. Approval and Authorization of Change of Name.**

4.1. Any professional limited liability company seeking a name change shall submit a written request to the Board, along with the appropriate amending documents for approval, and appropriate fee as set forth by the Board's fee schedule 5CSR3. Once approved an authorization for the name change will be sent to the Secretary of State.

**§5-2-45. Notification of Non-compliance, Cessation of Rendering Professional Services.**

45.1. If the Board determines that a professional limited liability company is not in compliance with all the provisions of this rule and should cease rendering professional services in the State, the Board shall notify the professional limited liability company in writing, and upon receipt of the written notice, the professional limited liability company shall cease rendering professional services in the State.

**§5-2-56. Dentist - Patient Relationship.**

56.1. The provisions of this rule shall not be construed to alter or affect the dentist - patient relationship.