

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

Form #3

Do Not Mark In This Box

FILED

2013 JUL 22 AM 10:11

WEST VIRGINIA
SECRETARY 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

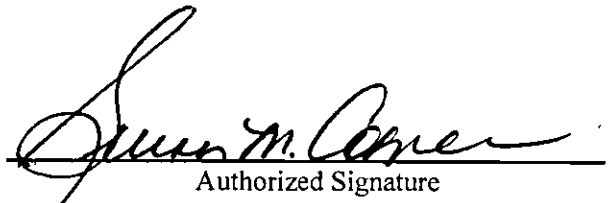
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Dental Advertising

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: Dental Advertising

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 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: 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 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

William M. Allen

FILED

TITLE 5

LEGISLATIVE RULE

2013 JUL 22 AM 10:11

WEST VIRGINIA BOARD OF ~~DENTAL EXAMINERS~~ DENTISTRY

CLERK OF THE 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.

June 27, 2013

David A Najar DDS
1514 North Walker Street
Princeton WV 24740

WV Board of Dental Examiners
1319 Robert C Byrd Drive
PO Box 1447
Crab Orchard WV 25827

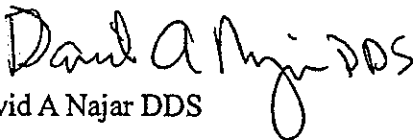
RE: Proposed Rule 5-8-4.3

To Whom it May Concern

The Proposed Rule 5-8-4.3, which would amend the current advertising rule by not allowing announcement or advertising of anesthesia or sedation services is an infringement on our right to do business. There are a subject number of patients that seek out such services and this Proposed Rule would limit said patients ability to receive treatment. I strongly oppose this restriction on advertising these services. This Proposed Rule would be a disservice to the patient community.

Also, if considering changes in the services that hygienists can provide, please consider hygienists use of lasers. The states of Nevada, Arizona, and Texas have rules that are very well thought-out on hygiene use of lasers and could be used as a model for our state.

Sincerely


David A Najar DDS

JUN 28 2013

West Virginia Dental Association
2016 ½ Kanawha Blvd., East, Charleston, WV 25311
Tel 304.344.5246 FAX: 304.344.5316 Email: wvrds@aol.com

July 11, 2013

WV Board of Dentistry
PO Box 1447
Crab Orchard, WV 25827

Via Email and FAX

Dear Board Members:

WVDA commends your Board for its efforts in promulgating rules following passage of Senate Bill 580 by the Legislature revising the Dental Practice Act. WVDA submits the following comments as permitted in your June 6 Notice of a Comment Period on a Proposed Rule.

In regard to Title 5, Series 12 "Administration of Anesthesia by Dentists" WVDA respectfully recommends your proposed 5.2. on Page 5 be amended to read as follows:

"The dentist's facilities shall contain the following during sedation procedures and during recovery when the level of sedation administered is in accordance with Class 2, Class 3 and Class 4 permits identified in Chapter 30-4A-3."

WVDA suggests this will identify the levels of sedation intended to be subject to your well-intended rule, as well as complying your rule with Senate Bill 580. It will also eliminate any ambiguities as to what levels of sedation are covered under your rule. For example, your proposed language could be interrupted to include the administration of only nitrous oxide

In regard to Title 5, Series 8 "Dental Advertising" your proposed 4.3. on Page 2 creates an uncertainty as to whether dentists can continue to advertise or announce "nitrous oxide" services, as they are currently permitted to do. WVDA supports this announcement or advertising because many members of the public seek dentists who provide nitrous oxide services. If your proposal does not intend to restrict advertising or announcing nitrous oxide services, please exempt this service from the limited provisions of the anesthesia law, Article 4A.

In regard to Title 5, Series 14 "Mobile Dental Facilities and Portable Dental Units" WVDA supports your Board for promulgating this rule because it will implement much-needed oversight of these entities to protect the public.

WVDA appreciates the opportunity to comment on your proposed rules.

Very truly yours,

Richard D. Stevens
Executive Director

JUL 11 2013

COMMENTS & BOARD RESPONSE

During the comment period, the Board received two written comments concerning this rule. Comments were received from Dr. David Najjar and the West Virginia Dental Association (attached).

Dr. Najjar opposed the changes in section 5-8-4.3 because he was under the impression this would restrict dentists ability to advertise sedation services.

The West Virginia Dental Association was uncertain if the changes in 5-8-4.3 would restrict dentists ability to advertise nitrous oxide services.

The West Virginia Board of Dentistry proposed changes to the above-mentioned section in order to update the language and dispose of outdated terms used for anesthesia services that are no longer defined under the dental practice act or in rules. The proposed language does not restrict the ability of a dentist with an anesthesia permit to announce anesthesia services. It does not restrict a dentist who administers nitrous oxide only, which does not require a permit, to announce nitrous oxide services.

The Board made no changes to this rule in response to the comments received.