

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

Form #2

Do Not Mark In This Box

FILED
2014 MAY 14 P 3:49

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Dentistry 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: 1

TITLE OF RULE BEING AMENDED: Rule for The West Virginia Board of Dentistry

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 June 13, 2014 AT 1:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Dentistry

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 DENTISTRY**

**SERIES 1
RULE FOR THE WEST VIRGINIA BOARD OF DENTISTRY**

The proposed amendments in this rule would lift the prohibition on trade names in the practice of dentistry allowing for some trade names with certain requirements being met.

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

Recognizing the widespread use of trade names around the country, the Board wishes to put this rule forth for comments. The proposed amendments in this rule would define what a trade name is and lift the current prohibition on the use of trade names in the practice of dentistry. Some trade names would be allowed after being registered with the Board while meeting certain requirements.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule for The West Virginia Board of Dentistry

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Dentistry

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 should have no impact on costs of state government. It may produce some revenue for the agency. The amounts below are only estimations.

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	12,500.00	6,250.00	1,875.00

Rule for The West Virginia Board of Dentistry

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.

This rule allows for an application fee equal to 1/2 the amount of application fees for corporations or professional limited liability companies, which would be \$125.

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.

n/a

Date: 5/9/2014

Signature of Agency Head or Authorized Representative
Steven M. Conner

**TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTISTRY**

**SERIES 1
RULE FOR THE WEST VIRGINIA BOARD OF DENTISTRY**

§5-1-1. General.

1.1. Scope. This rule regulates the W. Va. Board of 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 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 Dentistry by Certification No. II.

1.6. Amend. -- This rule amends W. Va. Board of Dentistry Rule 5CSR1, W. Va. Administrative rules, W. Va. Board of Dentistry which became effective on 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.

2.10. "Trade name" is a fictitious name, firm name or doing business as name under which you do business other than the current official name on your business registration.

§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 West Virginia or WV Board of 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 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 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 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. Dental Intern or Dental Residency Permit. The Board of 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. An applicant for a permit shall be certified to the Board by the dental director 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.

5.2. Teaching Permits. The Board of Dentistry may issue teaching permits to persons who are graduates of a school of dentistry approved by the Board where those persons are not licensed to practice dentistry 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 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. This section may not prohibit the practice of dentistry by a partnership under a trade name, or a licensed dentist from practicing dentistry as the employee of a licensed dentist, practicing under his own name or under a trade name, or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company or as the employee of a dental clinic operated as specified.~~

8.2. A dentist, partnership, professional corporation, or professional limited liability company that owns a dental practice may adopt a trade name for that practice so long as the trade name meets the following requirements:

(1) The trade name incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location; (ii) type of practice; or (iii) a derivative of the dentist's name.

(2) Derivatives of American Dental Association approved specialty board certifications may be used to describe the type of practice if one or more dentists in the practice are certified in the specialty or if the specialty name is accompanied by the conspicuous disclosure that services are provided by a general dentist in every advertising medium in which the trade name is used.

(3) The trade name is used in conjunction with either (i) the name of the dentist or (ii) the name of the sole proprietorship, partnership, professional corporation, or professional limited liability company that owns the practice. The owner's name shall be conspicuously displayed along with the trade name used for the practice in all advertisements in any medium.

(4) Marquee signage, web page addresses, and email addresses are not considered to be advertisements and may be limited to the trade name adopted for the practice.

8.3 Each trade name shall apply and pay a fee and be registered with the Board by a licensed dentist(s), who must be associated with the dental practice and who shall assume responsibility for compliance with this section. Each trade name must be approved by the Board prior to the use of the name. Names which in the judgment of the Board are false, misleading, or deceptive will be prohibited. The fee will be equal to half the application fee of a corporation or professional limited liability company.

8.4 Each trade name already in existence shall apply and pay a fee and be registered with the Board by a licensed dentist(s), who is associated with the dental practice and who shall assume responsibility for compliance with this section. The Board retains the power to disallow use of names, which in the judgement of the Board are false, misleading or deceptive. The fee will be equal to half the application fee of a corporation or professional limited liability company.

§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 expire on the first day of February if the licensee fails to secure a current renewal certificate by that day. Any licensee whose license is 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 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.