



**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

2002 OCT 22 AM 9:20

OFFICE OF THE SECRETARY OF STATE

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October 21, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: James G. Anderson, III  
Dental Examiners, WV Board of  
PO Drawer 1459  
Beckley, WV 25802-1459

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rule for the West Virginia Board of Dental Examiners, 5CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency       /
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

**SCANNED**

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Dental Examiners

Subject: Rule for the West Virginia Board of Dental Examiners, SCSR1

PERTINENT DATES

Filed for public comment: January 22, 2002  
Public comment period ended: February 28, 2002  
Filed following public comment period: April 5, 2002  
Filed LRMRC: April 5, 2002  
Filed as emergency:

Fiscal Impact: None

FILED  
2002 MAY 13 A 10:26  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 5 relates to specialties. The current rule requires a licensee to have a minimum of three full-time academic years each of graduate or post graduate education, internship or residency to practice endodontics. The proposed rule reduces the number of years required to two.

Section 6 relates to the issuance of temporary and/or special permits. This section has been amended to delete the various fees.

Section 8 relates to the expanded duties of dental hygienists and dental assistants.

Subsection 8.2 relates to the duties which a dentist may assign to a dental assistant. The list of duties has been greatly expanded.

Subsection 8.3 sets forth the duties which a dentist may assign to a dental hygienist. Some additional duties have been added. Some of the duties have also been designated as those which may also be performed by dental assistants.

Section 12 relating to the practice of dentistry under trade name or firm name is new. This section prohibits a person from practicing dentistry under any firm name or trade name or under any name other than his or her true name.

Section 13 relating to annual information and renewal notice; reinstatement; penalty fees; waiver of payment of fee on retirement or disability; change of address is new. This section sets forth procedures for renewing a dentist's or dental hygienist's license.

#### AUTHORITY

Statutory authority: W.Va. Code, §30-4-6, which provides, in part, as follows:

(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article including, but not limited to, the following:

(1) The examinations administered under this article;

(2) Issuing and renewing a license;

(3) Issuing temporary permits, teaching permits and dental intern or resident permits;

(4) Specialities that a dentist may practice;

(5) Issuing and renewing a certificate of qualification;

(6) Denying, suspending, revoking, reinstating or limiting the practice of a licensee or certificate of qualification;

(7) Continuing education requirements for licensees;

(8) Delegated procedures to be performed by a dental hygienist;

- (9) Delegated procedures to be performed by a dental assistant;
- (10) Use of firm or trade names;
- (11) Dental corporations; and
- (12) Professional conduct requirements...

### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

No. However, the Committee should be aware of the fact that the Board received numerous comments in opposition to allowing dental assistants and dental hygienists to monitor nitrous oxide analgesia and allowing dental hygienists to administer infiltration and block anesthesia.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. With the rewriting of the law regarding dentists and dental hygienists, the Board should have likewise totally rewritten the rule. As written, it is very difficult to read in conjunction with the statute. Additionally, the proposed rule is not in logical order.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.