

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box
Filing Date

2008 JUL -4 AM 9:18

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Board of Dental Examiners TITLE NUMBER: 5

CITE AUTHORITY: Mandated by Senate Bill 13 of 2008 Legislative Session

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

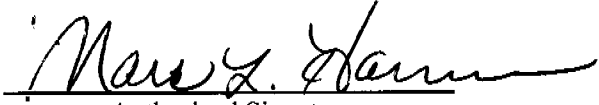
TITLE OF RULE BEING AMENDED: Rules for the West Virginia Board of Dental Examiners

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:


Authorized Signature

Use additional sheets if necessary

EMERGENCY RULE QUESTIONNAIRE

DATE: 5/03/2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Dental Examiners
1319 Robert C. Byrd Drive
PO Box 1447
Crab Orchard, WV 25827

EMERGENCY RULE TITLE: Rule for the West Virginia Board of Dental Examiners

1. Date of filing 06/04/2008

2. Statutory authority for promulgating emergency rule:
Senate Bill 13 §30-4-6(a)(9) effective June 4, 2008

3. Date of filing of proposed legislative rule: June 4, 2008

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amends a current legislative rule by adding new sections.

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
Mandated by statute to be filed as emergency rule (SB 13)

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

§30-4-6(a)(9) RE: Senate Bill 13 effective June 4, 2008

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Mandated by statute (SB 13)

SUMMARY OF EMERGENCY RULE

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

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

This rule implements provisions of Senate Bill 13, which provides for general supervision of dental hygienists in the private practice setting. Further, the rule implements additional provisions of Senate Bill 13, by providing the provisions and circumstances under which dental hygienists may practice in a public health setting.

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: 1319 Robert C. Byrd Drive
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.

The fiscal impact is unknown at this time and can not be determined until fully implemented. Any increases of administrative costs will be minimal and will be absorbed without increasing employees or substantial increases in expenses.

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Rule for the West Virginia Board of Dental Examiners

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

No increases in revenue at this time.

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.

We anticipate minimal impact for general supervision and are unable to determine how many dental hygienists may participate in public health practice.

Date: 6/02/2008

Signature of Agency Head or Authorized Representative

Marc L. Herman

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

2008 JUN -4 AM 9:18

SERIES 1
RULE FOR THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

WEST VIRGINIA STATE

§5-1-1. General.

1.1. Scope. This rule regulates the W. Va. Board of Dental Examiner'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.

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

1.3. Filing Date. --

1.4. Effective Date. --

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

1.6. Amend. -- This rule amends W. Va. Board of Dental Examiners Rule 5CSR1, W. Va. Administrative rules, W. Va. Board of Dental Examiners which became effective on April 1, 2008.

§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 etiology, histopathology, diagnosis, preventions, and treatment of the diseases of the dental pulp and their sequelae.

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 pathology" embraces both morphologic and clinical study of diseases affecting the oral regions. An oral pathologist is a person who, through special study and training, is qualified to diagnose and otherwise study tumors and lesions, both local and systemic, of the oral regions.

2.5. "Orthodontics and dentofacial orthopedics" is prevention and correction of dental and oral anomalies by changing positions of teeth and jaw relationship by the use of appliances; correction of causative habits; or corrective muscular exercises, in order to establish normal function of the masticating mechanism and to encourage a normal development of the jaws and associated tissues.

2.6. "Pediatric dentistry" is the prevention, control and treatment of the oral and dental diseases of children.

2.7. "Periodontics" is the prevention, control and treatment of diseases of the supporting tissues of the teeth.

2.8. "Prosthodontics" is the restoration of masticatory function in part or as a whole through the designing and construction of removable dental prosthetic appliances known as artificial dentures, which are supported wholly or in part by the soft tissues of the mouth and not permanently attached to the natural teeth.

§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. Board of Dental Examiners.

§5-1-4. Corporate practice of dentistry.

4.1. Qualifications. Only duly licensed dentists eligible to practice in the State of W. Va. may form a dental corporation. The dentists shall file a written application with the Board of Dental Examiners on a form prescribed by the Board. A fee shall accompany each application, no part of which is returnable. If the Board finds that the signers are duly licensed dentists or if there are more than one, that all of the signers of the applications are duly licensed dentists, the Board shall notify the Secretary of State that a Certificate of Authorization has been issued to the individual or individuals signing the application, to form a dental corporation. Provided, however, that there is compliance with the applicable provisions of W. Va. Code §31-1-1, concerning corporations generally.

§5-1-5. Specialties.

5.1. 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 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 Counsel on Dental Education of the American Dental Association.

5.2. Specialist General Limitations. A person certified by the W. Va. State Board of Dental Examiners 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.

5.3. Specialty Fields Licensed by the W. Va. Board of Dental Examiners. 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 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.

(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.

§5-1-6. Issuance of temporary and/or special permits.

6.1. 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.

6.2. 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.

6.3. Dental Intern or Dental Residency Permit. The Board of Dental Examiners 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 director or a hospital operated or licensed by the State which maintains a dental intern or residency program. 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. The holder of a permit shall function under the supervision of the dental staff of the hospital and shall limit his or her practice to patients selected by the hospital. The holder of a permit is not entitled to receive any fee or other compensation other than the salary paid by the hospital. 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.

6.4. Teaching Permits. The Board of Dental Examiners 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. 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 and as an adjunct to his or her teaching functions in the school.

§5-1-7. Suspension or revocation of a license.

7.1. 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.

7.2. 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.

7.3. 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.

7.4. 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.

7.5. 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.

7.6. 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.

7.7. 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.

§5-1-8. Expanded duties of dental hygienists and dental assistants.

8.1. General. Licensed dentists may assign to their employed dental hygienists or assistants intraoral tasks as set out in this section for dental hygienists or assistants, subject to the following conditions:

(a) The performance of intraoral tasks by dental hygienists or assistants shall be under the direct supervision of the employer-dentist;

(b) The following procedures may not be assigned to a dental hygienist or assistant or to any other person not licensed to practice dentistry:

(1) Diagnosis, treatment planning and prescription (including prescriptions for drugs and medicaments or authorizations for restorative, prosthodontic or orthodontic appliances); or

(2) Surgical procedures on hard and soft tissue within the oral cavity or any other intraoral procedure that contributes to or results in an irremediable alteration of the oral anatomy; and

(c) The licensed dentist assigning expanded duties to a dental hygienist or assistant is solely responsible for evaluating the dental hygienist or assistant to determine that he or she is competent to handle assigned duties. Further,

no licensed dentist shall assign additional duties to a dental hygienist or assistant until he or she is assured that the dental hygienist or assistant is fully competent and completely qualified to perform the assigned expanded duty or duties.

8.2. Expanded duties of dental assistants. The following duties and/or intra-oral tasks may be assigned by a licensed dentist to a dental hygienist and/or assistant in the licensed dentist's employment, provided that under no circumstances can an assistant use a power-driven instrument of any type intra-orally except as specifically set forth hereinafter:

(a) Placing, exposing, developing, and mounting dental radiographs;

(b) Placing and removing rubber dams;

(c) Charting existing restorations and missing teeth;

(d) Holding and removing materials, trays, strips, and sutures previously placed in the patient's mouth by the dentist;

(e) Removing excess cement from coronal surfaces of teeth without the use of rotating, power-driven or scaling instruments;

(f) Taking impressions for study cast and pouring models;

(g) Recording medical and dental histories for interpretation by the supervising dentist;

(h) Providing pre- and post-treatment instructions;

(i) Viewing the oral cavity and reporting the symptoms/problems to the supervising dentist;

(j) Performing pulp vitality testing (thermal or electrical) with a final evaluation by the supervising dentist;

(k) Inserting and adjusting athletic mouth guards and bleaching trays with a final evaluation

by the supervising dentist;

(l) Removing periodontal dressings with a final evaluation by the supervising dentist;

(m) Placing and removing matrices after a final evaluation by the supervising dentist;

(n) Applying topical anesthetic agents with prior approval by the supervising dentist;

(o) Applying topical anticariogenic agents after successful completion of a board-approved course and examination and with prior approval of the supervising dentist;

(p) Applying pit and fissure sealants after successful completion of a board-approved course and examination and with a final evaluation by the supervising dentist;

(q) Applying cavity liners and bases with a final evaluation by the supervising dentist;

(r) Removing soft tissue dressings with a final evaluation by the supervising dentist;

(s) Fabricating and cementing temporary crowns and bridges with a final evaluation by the supervising dentist;

(t) Placing and removing temporary restorations by a non power-driven method with a final evaluation by the supervising dentist;

(u) Taking intra- and extra-oral photographs;

(v) Chemical conditioning of the tooth to accept a restoration and/or bracket by topical application after successful completion of a board-approved course and examination;

(w) Using a power-driven hand piece with rubber cup and/or brush only for preparing a tooth for accepting a restoration and/or appliance, which shall in no way be represented to the patient as a prophylaxis, after successful completion of a board-approved course and

examination;

(x) Placing retraction cords for crown impressions after successful completion of a board-approved course and examination and with prior approval of the supervising dentist;

(y) Taking final impressions for fixed or removable prosthesis and/or appliance with a final evaluation by the supervising dentist;

(z) Checking for loose orthodontic appliances with a final evaluation by the supervising dentist;

(aa) Taking orthodontic measurements with a final evaluation by the supervising dentist;

(bb) Fitting bands and brackets prior to final cementation and/or bonding by the supervising dentist;

(cc) Bending archwires with a final evaluation by the supervising dentist at the time of placement;

(dd) Placing or removing temporary space maintainers, orthodontic separating devices, ligatures, brackets and bands with a final evaluation by the supervising dentist at the time of placement or removal, after completion of a board-approved course and examination;

(ee) Removing loose or broken bands, brackets or archwires when directed by the supervising dentist; and

(ff) Visually monitoring a nitrous oxide analgesia unit. Two years after the effective date of this rule, a dental assistant or hygienist must have successfully completed a board-approved course and examination in order to perform this duty. Thereafter, the assistant or hygienist must maintain current certification in accordance with the American Red Cross' or the American Heart Association's Cardio-Pulmonary Resuscitation (CPR) program.

8.3. Expanded duties of dental hygienists. In addition to and including those duties set forth in subsection 8.2 of this section, the following duties and/or intraoral tasks may be assigned by a licensed dentist to a dental hygienist in the licensed dentist's employment:

- (a) Supra - and subgingival scaling of teeth;
- (b) Polishing of coronal and/or exposed surfaces of teeth;
- (c) Dental health education;
- (d) Nutritional counseling;
- (e) Examining and recording periodontal findings;
- (f) Scaling excessive cement from the surfaces of teeth and restorations;
- (g) Performing clinical examinations and diagnostic tests of teeth and surrounding tissues and recording findings for interpretation by a supervising dentist (including such procedures as restorative chartings, caries activity test, cytology smears, salivary analysis and smears, endodontic cultures, vitality test, etc.);
- (h) Placing of subgingival medicaments, fibers, chips, etc.;
- (i) Finishing and polishing restorations with a slow speed hand piece;
- (j) Debridement and/or root planing of teeth;
- (k) Applying bleaching agents after successful completion of a board-approved course;
- (l) Placing periodontal dressings with a final evaluation by the supervising dentist; and
- (m) Administration of infiltration and block anesthesia after successful completion of a

board-approved course and of a regional board examination and under the direct supervision of a licensed dentist.

8.4. General Supervision of Dental Hygienists. A dental hygienist may provide, for not more than fifteen (15) consecutive business days or not more than three (3) consecutive weeks, preventive dental hygiene services to a patient when the supervising dentist is not physically present at the location at which the services are provided if all of the following requirements are met;

(a) The dental hygienist shall apply to the Board of Dental Examiners for a general supervision permit. The application will be submitted on a form to be supplied by the Board and signed by the supervising dentist.

(b) The dental hygienist shall have at least one year and a minimum of one thousand (1,000) hours of clinical experience in the practice of dental hygiene.

(c) The dental hygienist shall provide proof of successful completion of a three (3) hour course in the identification and prevention of medical emergencies as part of continuing education credits for licensure every two years.

(d) The supervising dentist shall have examined the patient, including medical history review, diagnosis and treatment planning, not more than twelve months prior to the date the dental hygienist provides the dental hygiene services to the patient. No patient may be treated two (2) consecutive times by a dental hygienist under general supervision without a licensed dentist conducting an examination.

(e) The dental hygienist shall comply with written protocols or written standing orders established by the supervising dentist, including an updated medical history, informs the patient or parent or guardian of a child and documents in the patient record that dental hygiene services were provided under general supervision.

(f) The dental hygienist shall consult with the supervising dentist or an attending physician if a significant change has occurred in the patient's medical history to determine that the patient is in a medically stable condition prior to receiving dental hygiene services.

(g) The supervising dentist shall not have more than three (3) dental hygienists treating patients under general supervision in dental offices or treatment facilities at any one time when the dentist is not physically present.

(h) The following procedures may be performed by a dental hygienist without supervision of a licensed dentist:

- (1) Dental health education;
- (2) Nutritional counseling;
- (3) Taking intra- and extra-oral photographs;
- (4) Preparing a generalized oral screening with subsequent referral to a dentist; and

(5) Applying fluoride.

(i) The following procedures may be performed by a dental hygienist when practicing under general supervision:

- (1) Placing, exposing, developing, and mounting dental radiographs;
- (2) Charting existing restorations and missing teeth;
- (3) Taking impressions for study cast and pouring models;
- (4) Recording medical and dental histories;
- (5) Applying topical anesthetic agents;

(6) Applying topical anticariogenic agents;

(7) Applying pit and fissure sealants following diagnosis within 4 months by the supervising dentist;

(8) Checking for and removal of loose orthodontic bands and loose brackets;

(9) Taking intra- and extra-oral photographs;

(10) Complete dental prophylaxis, which may include supra- and subgingival scaling of teeth and polishing of coronal and/or exposed surfaces of teeth;

(11) Dental health education;

(12) Nutritional counseling;

(13) Examining and recording periodontal findings;

(14) Scaling excessive cement from the surfaces of teeth and restorations

(15) Performing clinical examinations and diagnostic tests of teeth and surrounding tissues, including but not limited to restorative chartings, caries activity test, cytology smears, salivary analysis and smears, endodontic cultures, vitality tests, and recording findings for interpretation by a supervising dentist;

(16) Placing of subgingival medicaments, fibers, chips, etc.;

(17) Finishing and polishing restorations with a slow speed hand piece;

(18) Debridement and/or root planing of teeth; and

(19) Applying bleaching agents after successful completion of a board-approved course.

(j) The dental hygienist may practice under general supervision, consistent with conditions outlined above, in the following settings; private dental offices, hospitals, schools, correctional facilities, jails, community clinics, long term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health and Human Resources, public health facilities, homebound settings and Accredited Dental Hygiene Education programs.

(k) Facilities utilized for oral prophylaxis, sealant placement, or both, other than a private practice setting, must be approved by the West Virginia Board of Dental Examiners.

(l) The dental hygienist shall submit an annual report to the West Virginia Board of Dental Examiners of services rendered while practicing under general supervision in all settings other than a private dental office or Accredited Dental Hygiene Education program. The supervising dentist shall review and sign this report.

(m) All applications and reporting forms shall be provided by the West Virginia Board of Dental Examiners

(n) No person shall do any of the following:

(1) Practice dental hygiene in a manner that is separate or otherwise independent from a supervising dentist;

(2) Establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services; and

(3) Administer local anesthesia under general supervision.

8.5. Public Health Practice of Dental Hygienists. A dental hygienist may engage in public health practice rendering all services provided in subsection 8.4. (i) of this section allowed under General Supervision and as further

defined below:

(a) The dental hygienist shall submit application to the West Virginia Board of Dental Examiners for Public Health Practice.

(b) The dental hygienist shall have two years and three thousand (3,000) hours of clinical dental hygiene experience.

(c) The dental hygienist shall, in addition to the twenty (20) hours required for dental hygiene licensure, complete six (6) hours of continuing education during each continuing education cycle which must include three (3) hours in medical emergencies and three (3) hours in general public health content.

(d) The dental hygienist shall have a written agreement with a sponsoring dentist who shall authorize and monitor the delivery of hygiene services. The Dental Director of the West Virginia Bureau of Public Health, if a West Virginia licensed dentist, may serve as sponsoring dentist. All sponsorship agreements shall be filed with the West Virginia Board of Dental Examiners.

(e) The dental hygienist shall submit an annual report to the West Virginia Board of Dental Examiners and sponsoring dentist of services rendered.

(f) The dental hygienist in cooperation with the sponsoring dentist shall have a written plan for referral, recording conditions that should be called to the attention of a dentist.

(g) Facilities utilized for oral prophylaxis, sealant placement, or both, must be approved by the West Virginia Board of Dental Examiners.

(h) A licensed dentist may not sponsor more than four (4) dental hygienists engaged in public health practice. This restriction shall not apply to hygienists supervised by the Dental Director of the West Virginia Bureau of Public Health, if a West Virginia licensed dentist.

(i) Sealant services may be rendered one time if authorized by the sponsoring dentist. To perform repeat services, the patient must be examined by a licensed dentist. To perform a repeat assessment, screening, prophylaxis, or flouride, the hygienist must counsel the patient to seek examination by a licensed dentist.

(j) The dental hygienist may engage in public health practice, consistent with conditions outlined above, in the following settings: hospitals, schools, correctional facilities, jails, community clinics, long term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health and Human Resources, public health facilities, homebound settings and Accredited Dental Hygiene Education programs.

(k) All applications and reporting forms will be provided by the West Virginia Board of Dental Examiners.

(l) No person shall do any of the following:

(1) Practice dental hygiene in a manner that is separate or otherwise independent from a supervising dentist;

(2) Establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services; and

(3) Administer local anesthesia under a public health practice permit.

§5-1-9. Designation of testing bodies.

9.1. 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.

§5-1-10. Continuing education requirements.

10.1. Hours Required Biennially. Each licensed dentist shall complete biennially not less than thirty five (35) hours of continuing education. Each licensed dental hygienist shall complete biennially not less than twenty (20) hours of continuing education.

10.2. Approved Providers.

(a) The Continuing Education course must be offered by a Board approved provider.

(b) The Board approves any course or program sponsored by the following providers, or their constituent or component organizations for credit:

(1) An accredited dental or dental hygiene school;

(2) The American Dental Association;

(3) A National Dental Association;

(4) The American Dental Hygienists' Association;

(5) The National Dental Hygiene Association;

(6) The American Medical Association;

(7) The American Hospital Association;

(8) The American Red Cross;

(9) The American Heart Association;

(10) American Dental Association recognized specialty societies;

(11) The Academy of General Dentistry;

(12) The Veteran's Administration;

(13) The United States Uniformed Services;

(14) The U. S. Department of Health and Human Services;

(15) The W. Va. Department of Health and Human Resources;

(16) The W. Va. Dental Association;

(17) The W. Va. Dental Hygienists' Association; and

(18) Study Clubs: "Study Club" means a group of at least five (5) dentists or dental hygienists who do the following:

(i) Organize for the purpose of scientific study;

(ii) Operate under the direction of elected officers;

(iii) Maintain written by-laws;

(iv) Conduct regular meetings; and

(v) Maintain written attendance records of all meetings.

(c) Providers not identified in subdivision (b) of this subsection may petition the Board for approval of continuing education that they offer. The Board may approve other sponsors of continuing education credits. The Board's approval expires after two consecutive years and must be renewed. The course or program must be designed to enhance the licensee's clinical knowledge and ability to treat dental patients.

(d) Courses or programs that are not approved for continuing education credit for license renewal include, but are not limited to, those on the subjects of money management, personal finance, personal business matters, cultural subjects, personal health and recreation, politics, memory training, and speed reading.

10.3. Record Keeping, Reporting, & Monitoring:

(a) It is the responsibility of each dentist and dental hygienist to maintain and compile accurate records relating to all continuing education courses he or she has successfully completed.

(b) The records and information pertaining to each year shall be maintained for a period of six (6) years.

(c) A licensee shall report all continuing education courses on the form provided by the Board. The licensee shall submit records relating to continuing education courses to the Board at the time of license renewal.

(d) The Board shall randomly audit the continuing education records maintained by each dentist and dental hygienist.

(e) Each dentist and dental hygienist shall submit to the Board by February 1, 1996, and every two years thereafter documentation of satisfactory completion of the required hours of continuing education during the previous two years.

10.4. Criteria.

(a) The Board shall not give continuing education credit for identical courses taken during the same continuing education reporting period.

(b) The Board shall give one hour of credit for each hour of attendance and an hour of attendance is defined as fifty (50) minutes.

(c) At least two (2) hours of continuing

education shall be related to any one or combination of the following subjects during each continuing education reporting period :

(1) infection control and/or occupational hazards;

(2) oral effects of tobacco use; or

(3) oral effects of substance abuse.

(d) A current certification for a Health Care Provider/Basic Life Support course recognized by the American Heart Association or American Red Cross shall be required each continuing education period, and such certification will count as continuing education credits.

10.5. Continuing Education for Anesthesia certificate and permit holders.

(a.) Class 2 anesthesia certificate holders must complete at least 6 hours of continuing education credits and class 3 and class 4 anesthesia permit holders must complete 16 hours of credits in one or more of the following areas:

(1.) oral or nitrous oxide sedation;

(2.) conscious sedation;

(3.) general anesthesia;

(4.) physical evaluation;

(5.) medical emergencies;

(6.) monitors and use of monitoring equipment;

(7.) pharmacology; or

(8.) advanced cardiac life support, pediatric advanced life support or advanced trauma life support(maximum of 8 hours credit)

(b.) No courses or re-certifications completed on the Internet will be accepted for advanced cardiac life support, pediatric advanced life support or advanced trauma life support

(c.) These continuing education credits earned

will count for part of the 35 hours required for each biennial period. This requirement is effective for the biennial period beginning February 1, 2008 through January 31, 2010.

10.6. Categories of Credit. The licensee may select areas of study within the following categories, not to exceed the maximum number of hours in each category.

(a) Educational and scientific courses - One hundred percent (100%) of the requirement may be obtained by Educational and scientific courses given by permanent or Board-approved biennial sponsors.

(b) Supervised self-instruction - Fifty percent (50%) of the requirement may be obtained in this category. Supervised self-instruction shall include a testing mechanism supplied by a permanent or Board approved biennial sponsor. The licensee shall complete a test and demonstrate a level of comprehension before the Board will award credit. Tests shall be graded by the sponsor and results returned to the licensee. Supervised self-instruction includes, but is not limited to:

(1) Graded audio/video courses;

(2) Graded correspondence courses;

and

(3) Graded computer courses.

(c) Non-supervised self-instruction - A maximum of ten percent (10%) of the requirement may be obtained in the category. Non-supervised self-instruction includes, but is not limited to:

(1) Home study - journals and publications;

(2) Correspondence programs;

(3) Educational television;

(4) Audio/video programs;

(5) Scientific exhibits; and

(6) Study clubs other than biennial sponsors.

(d) Scientific papers, publications, and scientific presentations - A maximum of ten percent of the requirement may be obtained in the category of papers, publications, and scientific presentations; A maximum of ten percent (10%) may also be obtained for original scientific papers authored by the licensee and published in a scientific professional journal, and the original presentation of papers, essays, or formal lectures to recognized groups of fellow professionals.

(e) Teaching and research appointments - A maximum of ten percent (10%) of the requirement may be obtained in this category. Licensees involved in teaching or research activities at an accredited institution, or a part time faculty or research appointment may also receive a maximum ten percent (10%) of the requirement.

(f) Original table clinics and scientific exhibits - A maximum of ten percent (10%) of the requirement may be obtained in the category of original table clinics and scientific exhibits.

(g) The Board recognizes successful completion of the following written examinations as satisfying the number of required hours of continuing education in the applicable reporting period:

(1) North East Regional Board's (NERB) Dental Hygiene Comprehensive Examination (for hygienists only);

(2) NERB's Diagnosis and Oral Radiology plus Comprehensive Treatment Planning Examinations;

(3) Academy of General Dentistry's Fellowship Examination;

(4) Examinations leading to recognized Specialty Boards' Diplomate status;

(5) National Board - All parts, successfully completed;

(6) Central Regional Dental Testing Agency's Written Examinations;

(7) Southern Regional Testing Agency's Written Examinations;

(8) Western Regional Examining Board's Written Examination; and

(9) any other written exam approved by the Board.

(h) Compliance: Compliance with this rule is required for all licensees seeking license renewal beginning February 1, 1994, and biennially thereafter.

10.7. Dental Committee and Indigent Care Participation.

(a) The Board recognizes those individuals that are serving, (as elected, or appointed members), on national, state and local dental, or dental hygiene boards, councils or committees and allows one (1) hour of continuing education credit for every four (4) hours of meeting time to those individuals. This amount cannot exceed more than Five (5) hours of the total biennial requirement for each classification of licensee.

(b) Dentists may earn up to five (5) hours and Dental Hygienists may earn up to three (3) hours of continuing education credit requirements, per biennial period, for providing dental care to indigent patients. One-half (.5) hour credit will be allowed for every hour of documented treatment.

10.8. Recent graduates licensed within one (1) year of a continuing education reporting period are not required to fulfill continuing education requirements for the first continuing education reporting period. Retired or disabled dentists or dental hygienists are not required to fulfill continuing education requirements.

10.9. Penalties for Violation.

(a) The Board shall not renew the license of any licensee who fails to meet the requirements of this section.

(b) A licensee who has been found to have not fulfilled the continuing education requirements of the Board shall be required to pay a penalty as set by the Board's fee schedule 5CSR3 and has six (6) months in which to satisfy the requirements.

(c) A false statement on a renewal form constitutes unprofessional conduct and may result in disciplinary action against the licensee as set forth in W. Va. Code §30-4-20.

§5-1-11. Practice of dentistry under trade name or firm name.

11.1. 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.

§5-1-12. Annual information and renewal notice; reinstatement; penalty fees; waiver of payment of fee on retirement or disability; change of address.

12.1. 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 on the first day of May if the licensee fails to secure a current renewal certificate by that day. Any licensee whose license is suspended 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 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.

12.2. 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.

12.3. 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.

James W. Vargo, DDS
President
92 Brookshire Lane
Beckley, WV 25801

David G. Edwards, DDS
Secretary
1512 Commerce Street
Wellsburg, WV 26070

Mrs. Dolores L. Gribble
11 Davis Place
Clarksburg, WV 26301

H. Richard Marshall, Jr., DDS
120 Maplewood Avenue
Ronceverte, WV 24970

Richard D. Smith, DDS
1501 Seventh Avenue
Charleston, WV 25312

Mrs. Debra D. Dent, CDA
56 Silver Maple Lane
Union, WV 24983



WEST VIRGINIA BOARD OF DENTAL EXAMINERS
1319 Robert C. Byrd Drive
PO Box 1447
Crab Orchard, WV 25827-1447
(304) 252-8266
Toll Free (877) 914-8266
FAX (304) 253-9454
www.wvdentalboard.org
wvde@suddenlinkmail.com

George D. Conard, Jr., DDS
6353 East Pea Ridge Road
Huntington, WV 25705

Diane M. Paletta, DDS
1405 Quincy Lane
Charleston, WV 25314

Michelle G. Klenk, RDH, EdD
Rt. 3, Box 806
Fayetteville, WV 25840

Staff

Marc L. Hartman
Executive Secretary

Susan M. Combs
Administrative Secretary

Carolyn A. Brewer
Office Assistant

June 4, 2008

The Honorable Betty Ireland
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

RE: CSR §5-1 Emergency Rules

Dear Secretary Ireland:

Enclosed, please find CSR §5-1, Rule for the West Virginia Board of Dental Examiners. This rule is filed as an Emergency Rule subject to the applicable provisions of Senate Bill 13, a copy of which is attached for your convenience.

We refer you specifically to §30-4-6(a)(9), which states this rule be filed as an emergency rule no later than the first day of July, 2008. You will note the West Virginia Board of Dental Examiners is filing this rule to coincide with the effective date of Senate Bill 13, which was passed March 6, 2008, and is in effect 90 days from passage.

It is the Board's belief that confusion would be avoided by filing the rule to coincide with the effective date of the bill. Please do not hesitate to contact us should you have questions or need additional information.

Very truly yours,

A handwritten signature in black ink that reads "Marc L. Harman".

MARC L. HARMAN
Executive Secretary

MLH/smc
Enclosures

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 13(Senator Bailey, *original sponsor*)

[Passed March 6, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §30-4-3, §30-4-5, §30-4-6, §30-4-13, §30-4-14, §30-4-15 and §30-4-21 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Dental Practice Act; clarifying definitions, powers of the board, rulemaking and temporary permits; authorizing Board of Dental Examiners to promulgate rules allowing dental hygienists to practice in public health settings under different degrees of supervision; providing method of service that a copy of a complaint against a dentist or dental hygienist to a dentist or dental hygienist be established by board rule; establishing a special volunteer dental license; and providing civil immunity.

Be it enacted by the Legislature of West Virginia:

That §30-4-3, §30-4-5, §30-4-6, §30-4-13, §30-4-14, §30-4-15 and §30-4-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.**§30-4-3. Definitions.**

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

- (1) "Approved dental hygiene program" means a program that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association.
- (2) "Approved dental school, college or dental department of a university" means a dental school, college or dental department of a university that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association.
- (3) "Authorize" means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist's diagnosis and treatment plan.
- (4) "Board" means the West Virginia Board of Dental Examiners;
- (5) "Certificate of qualification" means a certificate authorizing a dentist to practice a specialty.
- (6) "Delegated procedures" means those procedures specified by law or by rule of the board and performed by dental auxiliary personnel under the supervision of a licensed dentist.
- (7) "Dental assistant" means a person qualified by education, training and experience who aids or assists a dentist in the delivery of patient care in accordance with delegated procedures or who may perform nonclinical duties in the

dental office: *Provided*, That no occupational title other than dental assistant shall be used to describe this auxiliary.

(8) "Dental auxiliary personnel" or "auxiliary" means dental hygienists and dental assistants who assist the dentist in the provision of oral health care services to patients.

(9) "Dental hygienist" means a person licensed by the board who provides preventative oral health care services to patients in the dental office and in a public health setting: *Provided*, That no occupational title other than dental hygienist may be used to describe this auxiliary.

(10) "Dental laboratory" means a dental laboratory as defined in section one, article four-b of this chapter.

(11) "Dental office" means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry.

(12) "Dental prosthesis" means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics.

(13) "Dentist" means an individual licensed by the board to practice dentistry.

(14) "Dentistry" means the evaluation, diagnosis, prevention and treatment of diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures provided by a dentist.

(15) "Direct supervision" means supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed.

(16) "General supervision" means a dentist is not required to be in the office or treatment facility when procedures are being performed by the auxiliary dental personnel, but has personally diagnosed the condition to be treated, has personally authorized the procedures and will evaluate the treatment provided by the dental auxiliary personnel.

(17) "Good moral character" means a lack of history of dishonesty.

(18) "License" means a license to practice dentistry or dental hygiene.

(19) "Licensee" means a person holding a license.

(20) "Public health practice" means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the Board of Dental Examiners to require direct, general or no supervision of a dental hygienist by a licensed dentist.

(21) "Public health setting" means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the West Virginia Department of Health and Human Resources, public health facilities, homebound settings, accredited dental hygiene education programs and any other place designated by the board by rule.

(22) "Specialty" means the practice of a certain branch of dentistry.

§30-4-5. Powers of the board.

The board has all the powers set forth in article one of this chapter and in addition may:

(1) Sue and be sued in its official name as an agency of this state;

(2) Hire, fix the compensation of and discharge the employees necessary to enforce the provisions of this article;

(3) Examine and determine the qualifications of any applicant for a license;

(4) Examine and determine the qualifications of any applicant for a certificate of qualification;

(5) Issue, renew, deny, suspend, revoke, limit or reinstate licenses and discipline licensees;

(6) Issue, renew, deny, suspend, revoke, limit or reinstate certificates of qualification and discipline holders of a certificate of qualification;

(7) Investigate alleged violations of the provisions of this article and article four-b of this chapter reasonable regulations promulgated hereunder and orders and final decisions of the board;

(8) Conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license;

(9) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(10) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-4-6. Rule-making authority.

(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) Designating the services and procedures requiring or allowing direct supervision, general supervision and public health practice to be completed and filed as an emergency rule no later than the first day of July, two thousand eight ;
 - (10) Delegated procedures to be performed by a dental assistant;
 - (11) Use of firm or trade names;
 - (12) Dental corporations; and
 - (13) Professional conduct requirements.
- (b) All rules in effect on the effective date of this article shall remain in effect until they are withdrawn, revoked or amended.

§30-4-13. Temporary permits; dental intern or resident permit; teaching permit; dentist.

- (a) The board may issue a temporary permit to practice dentistry to an applicant who:
- (1) Has graduated from an approved dental college, school or dental department of a university with a degree in dentistry;
 - (2) Has been offered employment under the direct supervision of a licensed dentist;
 - (3) Has paid the application fee specified by rule; and
 - (4) Meets the other qualifications specified by rule by the board in accordance with the provisions of this article.
- (b) A temporary permit to practice dentistry may not be renewed and expires on the earlier of:
- (1) The date the dentist ceases to be under the direct supervision of a licensed dentist; or
 - (2) Sixty days after issuance.
- (c) The board shall issue a dental intern or dental resident permit to an applicant who meets the qualifications set forth in subdivisions (1), (3) and (4), subsection (a) of this section and who has been accepted as a dental intern or dental resident by a licensed hospital or dental school in this state which maintains an established dental department under the supervision of a licensed dentist.
- (d) The dental intern or dental resident permit may be renewed and expires on the earlier of:
- (1) The date the permit holder ceases to be a dental intern or dental resident; or
 - (2) One year after the date of issue.
- (e) The board shall issue a teaching permit to an applicant who meets the qualifications set forth in subdivisions (1), (3) and (4), subsection (a) of this section and who has been certified by the dean of a dental school located in this state to be a member of the teaching staff of the dental school.
- (f) A teaching permit is valid for one year from the date of issue and may be renewed.
- (g) While in effect, a temporary permit to practice dentistry, a permit to practice as a dental intern or dental resident and a teaching permit are subject to the restrictions and requirements imposed by this article. In addition, the holder of a permit to practice as a dental intern or dental resident may not receive any fee for service other than a salary paid by the hospital or dental school and the holder of a teaching permit may only practice dentistry within the facilities of the dental school.

§30-4-14. Temporary permits; teaching permit; dental hygienist.

- (a) The board may issue a temporary permit to practice dental hygiene to an applicant who:
- (1) Has graduated from an approved dental hygiene program of a college, school or dental department of a university with a degree in dental hygiene;
 - (2) Has been offered employment as a dental hygienist;
 - (3) Has paid the application fee specified by rule; and
 - (4) Meets the other qualifications specified by rule by the board, in accordance with the provisions of this article.
- (b) A temporary permit to practice dental hygiene shall not be renewed and expires on the earlier of:
- (i) The date the dental hygienist ceases to be employed; or
 - (ii) Sixty days after issuance.
- (c) The board may issue a teaching permit to an applicant who meets the qualifications set forth in subdivisions (1), (3) and (4), subsection (a) of this section and who has been certified by the dean of a dental school located in this

state to be a member of the teaching staff of the dental school.

(d) A teaching permit is valid for one year from the date of issue and may be renewed.

(e) While in effect, a temporary permit to practice dental hygiene and a teaching permit are subject to the restrictions and requirements imposed by this article. In addition, the holder of a teaching permit may only practice dental hygiene within the facilities of the dental school.

§30-4-15. Scope of practice; dentist.

The practice of dentistry includes the following:

- (1) Coordinating dental services to meet the oral health needs of the patient;
- (2) Examining, evaluating and diagnosing diseases, disorders and conditions of the oral cavity, maxillofacial area and adjacent and associated structures;
- (3) Treating diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;
- (4) Providing services to prevent diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;
- (5) Fabricating, repairing or altering a dental prosthesis;
- (6) Administering anesthesia in accordance with the provisions of article four-a of this chapter;
- (7) Prescribing drugs necessary for the practice of dentistry;
- (8) Executing and signing a death certificate when it is required in the practice of dentistry;
- (9) Employing and supervising dental auxiliary personnel;
- (10) Authorizing delegated procedures to be performed by dental auxiliary personnel; and
- (11) Performing any other work included in the curriculum of an approved dental school, college or dental department of a university.

§30-4-21. Complaints; investigations.

- (a) Upon receipt of a written complaint filed against any dentist or dental hygienist, the board shall provide a copy of the complaint to the dentist or dental hygienist as specified by legislative rule promulgated by the board.
- (b) The board may investigate the complaint. If the board finds upon investigation that probable cause exists that the dentist or dental hygienist has violated any provision of this article or the rules, the board shall serve the dentist or dental hygienist with a written statement of charges and a notice specifying the date, time and place of hearing. The hearing shall be held in accordance with section twenty-two of this article.

Judy Cooper

From: Nancy Tyler [ntyler1@mail.wvnet.edu]
Sent: Friday, June 13, 2008 11:52 AM
To: Judy Cooper
Subject: dental board rule

Chairman Perdue and Delegate Hatfield asked me to send you an e-mail to clarify their position on the emergency rule recently submitted by the Board of Dental Examiners. It is their understanding that the Board has submitted an emergency rule that expands the scope of practice of the dental hygienists to allow practice in the community without direct supervision of the hygienist with certain training requirements. It is also her understanding that the Board intends to submit a different rule for the rulemaking process that includes the expansion of the dental assistant's scope of practice. This addition to the rule was never discussed by the legislature. The expansion of the dental hygienists scope of practice has been discussed for the last five legislative sessions and is strongly supported by the Legislature. Chairman Perdue and Delegate Hatfield wanted to make their position known so that there would be no effort to add the dental assistant expansion to the emergency rule that is currently being evaluated. Thank you for your consideration.

If you have any questions, please call me because Delegate Hatfield will be out of town for the next two weeks and Chairman Perdue is working long hours at this time and is difficult to reach. Thank you.

Nancy Tyler
Counsel for the House Health Committee
(304)340-3345

2008 JUN 13 PM 12:05
E-MAIL

The Honorable Betty Ireland
Secretary of State
1900 Kanawha Blvd., East
Charleston, WV 25305

June 16th, 2008

2008 JUN 16 AM 10:30

Dear Secretary Ireland,

As President of WVDA which represents over 75% of the dentists in West Virginia and as many affiliate hygiene members as WVDHA, I respectfully request that you disapprove the "emergency rule" filed by the board of Dental Examiners and return it to the board for revision.

I was in attendance at the May 15th, 2008 meeting; following is a list of reasons why I would like your disapproval:

1. WVDA agreed on draft #2 NOT #3 (#3 was given to Richard Stevens less than three days prior to the meeting---WVDA had no knowledge as to who amended it).
2. Dr. Chuck Smith, our representative, was only given 5 minutes to explain the differences in the two drafts. The Board was not adequately informed of the differences between drafts #2 and #3. I feel the board hastily passed the #3 draft because of pressure from various members of the House of Delegates.
3. WVDA's Draft #2 provides a safer dental atmosphere for the people of West Virginia than does the Board's draft #3---there are more restrictions in the "private office" (8.4) where patients are monitored more closely as compared to the public sector (8.5).
4. WVDA feels that 8.2 should be included in the "emergency rule".
 - a) Dental Assistants currently do 80% of coronal polishing for placing a filling or braces.
 - b) Presently 34 states permit coronal polishing
 - c) No adverse incidents have been reported (same instruments used as a battery operated tooth brush).
 - d) Coronal polishing is NOT a cleaning---only about a 2-5 minute procedure on 45 minute to an hour appointment. This is NOT intended to replace the need for a hygienist.
 - e) This will improve access to dental health care to children where dental hygienists are in short supply.

Thank you for consideration to send the EMERGENCY RULE back to the Board for revision.

Sincerely,



W. Craig Wilcox, D.D.S., F.A.G.D.

WEST VIRGINIA DENTAL ASSOCIATION

2016 1/2 Kanawha Boulevard, East • Charleston, WV 25311

TEL: (304) 344-5246

FAX: (304) 344-5316

SPECIAL URGENT REQUEST OF WVDA EXECUTIVE COUNCIL

WVDA officers and Executive Council delegates are requested to FAX the Secretary of State a personal letter requesting she disapprove the Board of Dental Examiners "emergency rule" and return it to the Board for revisions.

The emergency rule filed with the Secretary by the Board is flawed. It not only contains conflicts with the dental law, it has contradictions within the rule itself. It has more restrictions for general supervision of hygienists in the dental office than it does for hygienists practicing in the public health setting where no dentists practice. Hygienists are permitted to provide services other than preventive services without a dentist examining the patient. It circumvents the scope of practice of dentists by allowing hygienists to perform procedures requiring a diagnosis and treatment plan by a dentist. It permits hygienists to provide services without benefit of a dentist interpreting an X-ray, which a hygienist is not licensed to do, to determine if a patient has visually undetectable decay, fractured or cracked teeth. Without coordination of dental services to meet the needs of the patient, which the law permits only by dentists, hygienists acting independently can place a patient at risk for adverse outcomes, according to the ADA who analyzed the emergency rule.

The Board may have reacted hastily in approving the emergency rule under some duress when they were informed that if they didn't pass it as presented "the wrath of the Legislature would come down on the Board." Some members say they did not have sufficient time to review the rule before the meeting when it was approved.

Another reason to write the Secretary is that her office has been told, presumably by the lobbyist for hygienists, that dentists want assistants to perform coronal polishing because they are "cheap labor." The Secretary needs to hear from dentists that coronal polishing is only part of a prophylaxis procedure and will not replace dental hygienists in dental practices or reduce their pay. She also needs to hear that dentists in rural areas do not have an adequate supply of hygienists to employ, thus, assistants trained to provide this service will free the dentist to provide restorative and other services to more people.

Please begin your letter with this statement: "You are respectfully requested to disapprove the emergency rule filed with your Office by the Board of Dental Examiners on June 4, and return it to the Board for revisions so that it is in the best interest of the public."

The remaining content of your letter can be taken from the above, or you can elect to FAX her the one sentence requesting she disapprove the emergency rule. Address your letter as follows:

The Honorable Betty Ireland
Secretary of State
1900 Kanawha Blvd., East
Charleston, WV 25305

FAX: 304-558-0900

Dear Secretary Ireland:

The Honorable Betty Ireland
Secretary of State
1900 Kanawha Blvd., East
Charleston, WV 25305

2008 JUN 16 PM 3:08
June 16th, 2008

SECRETARY OF STATE

Dear Secretary Ireland,

As President of WVDA which represents over 75% of the dentists in West Virginia and as many affiliate hygiene members as WVDHA, I respectfully request that you disapprove the "emergency rule" filed by the board of Dental Examiners and return it to the board for revision.

I was in attendance at the May 15th, 2008 meeting; following is a list of reasons why I would like your disapproval:

1. WVDA agreed on draft #2 NOT #3 (#3 was given to Richard Stevens less than three days prior to the meeting---WVDA had no knowledge as to who amended it).
2. Dr. Chuck Smith, our representative, was only given 5 minutes to explain the differences in the two drafts. The Board was not adequately informed of the differences between drafts #2 and #3. I feel the board hastily passed the #3 draft because of pressure from various members of the House of Delegates.
3. WVDA's Draft #2 provides a safer dental atmosphere for the people of West Virginia than does the Board's draft #3---there are more restrictions in the "private office" (8.4) where patients are monitored more closely as compared to the public sector (8.5).
4. WVDA feels that 8.2 should be included in the "emergency rule".
 - a) Dental Assistants currently do 80% of coronal polishing for placing a filling or braces.
 - b) Presently 34 states permit coronal polishing
 - c) No adverse incidents have been reported (same instruments used as a battery operated tooth brush).
 - d) Coronal polishing is NOT a cleaning---only about a 2-5 minute procedure on 45 minute to an hour appointment. This is NOT intended to replace the need for a hygienist.
 - e) This will improve access to dental health care to children where dental hygienists are in short supply.

Thank you for consideration to send the EMERGENCY RULE back to the Board for revision.

Sincerely,



W. Craig Wilcox, D.D.S., F.A.G.D.

WEST VIRGINIA DENTAL ASSOCIATION

2016 1/2 Kanawha Boulevard, East • Charleston, WV 25311

TEL: (304) 344-5246

June 16, 2008

FAX: (304) 344-5316

The Honorable Betty Ireland
Secretary of State, State of West Virginia
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Secretary Ireland:

This is a follow up to our conversation regarding trained dental assistants polishing teeth of children under age 21.

With a membership of over 800 dentists and recognizing the need to improve the delivery of dental care to more citizens, WVDA recommended to the Board to expand services that hygienists and assistants could provide patients. These services were approved by the Board in 2003. Following favorable experiences with this expansion, WVDA undertook further study in 2006 and recommended to the Board additional duties for dental hygienists and assistants to improve access to dental care.

Among WVDA's recommendations to the Board is supragingival and coronal polishing by trained dental assistants. Below is the text of that recommendation which the Board approved during its May 16 meeting, but did not include it as "(gg)" in Section 8.2 in their emergency rule filed with your office on June 4.

"A dental assistant who has completed two (2) years and at least 3,000 hours of clinical experience in a dental offices, as attested to by the supervising dentist, and who has successfully completed either the restorative expanded duties course or orthodontic expanding duties course required by the Board of Dental Examiners, may perform supragingival and coronal polishing on children under 21 years of age using a slow speed hand piece with a rubber cup after successfully completing a course approved by the Board."

WVDA's reasons for allowing assistants this procedure include:

1. It will improve access to dental care, especially for Medicaid and CHIP children in areas where there are no or a limited number of hygienists. For example, there are only 147 hygienists in 27 rural counties where there are 245 dentists. Because of low fees paid by Medicaid and CHIP, many dentists may elect not to accept Medicaid or CHIP children because they are unable to employ a hygienist. Thus, they have to perform this procedure themselves. Allowing trained assistants to perform this procedure will free these dentists to provide more restorative services to more children.
2. An ADA survey of WV dentists found 54 percent reporting an inadequate supply of dental hygienists in their area. The survey found 66 percent of the 610 responding do not employ a hygienist full-time, and 48 percent do not employ a part-time hygienist.

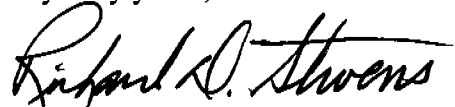
3. Over 700 assistants have completed Board-approved restorative and orthodontic expanded duties courses, which is a prerequisite to taking the coronal polishing course. Therefore, these assistants can already use a slow-speed hand piece with a rubber cup or brush to prepare a tooth for accepting a restoration and/or appliance. These assistants can advance their clinical skills by completing a course on supragingival and coronal polishing, and increase access to care to many children in the private dental office.
4. Thirty-four (34) states permit trained assistants to provide this procedure.
5. The procedure can only be performed under the direct supervision of a dentist in the dental office, thus, assuring patient safety and well-being.
6. The decision to permit an assistant to provide this procedure rests solely with the supervising dentist who is professional and legally responsible for the assistant.

In response to the allegation that dentists want assistants to perform this procedure because they are "cheap labor," I respectfully contend that the more expensive labor of the dentist performing this procedure is preventing many children from receiving this preventive service because it is not economically feasible for the dentist to provide it. It is a skill-based procedure that is labor-intensive and consumes time of the dentist.

I also respectfully submit there is no evidence of hygienists being economically impacted or replaced by assistants who perform this procedure. As with dentists, assistants performing this procedure frees hygienists to perform more preventive services to more children and adults.

WVDA requested this procedure be included in the Board of Dental Examiners emergency rule because it complies with the provisions of §30-4-6.(9) wherein the Board is to designate services and procedures requiring or allowing direct supervision. Since this procedure would be added as "(gg)" in Section 8.2. of the Board's rule, this procedure can only be performed by a trained assistant under the direct supervision of a dentist.

Very truly yours,



Richard D. Stevens
Executive Director

David A. Najar, D.D.S.
FAMILY DENTISTRY

June 18, 2008

David A Najar DDS
1514 North Walker Street
Princeton, WV 24740
304-487-3711

The Honorable Betty Ireland
Secretary of State
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Secretary Ireland:

You are respectfully requested to disapprove the emergency rule filed with your Office by the Board of Dental Examiners on June 4, and return it to the board for revisions so that it is in the best interest of the public.

The committees of the WVDA which worked on these proposed rules and members of the WVDA have crafted an excellent, well thought out proposal concerning general supervision of Dental Hygienists in the office and in the public health settings. Also, they have an excellent proposal for the expansion of the Dental Assistants' duties under direct supervision. These would greatly facilitate increased opportunities for patient care. The Board of Dental Examiners proposed rules were not well thought out and failed the Dental community and the public in their lack of scope and detail.

We truly hope you will regard their emergency rule and encourage the Board to revise their proposed rule to more closely adopt the draft presented by the WVDA Task Force on access to dental care.

Thank you for your time and consideration in this matter.

Sincerely,



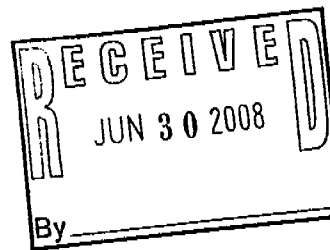
David A Najar DDS

2008 JUN 18 AM 9:29



Cynthia Maret RDH
902 7th Ave.
St. Albans, WV 25177
304-722-4461
304-741-2943

June 25, 2008



Dear Ms. Ireland, WV Secretary of State:

As a dental hygienist employed with the Kanawha Dental Health Council, a non profit dental clinic serving indigent children since 1954, I wanted to express how pleased I am with the change by SB13 to the Dental Practice Act and the emergency rule allowing general supervision for registered dental hygienists. This change will help us to serve children by enabling us to treat more children by freeing our few dentists to concentrate on doing restorative treatment while our dental hygiene staff is allowed to do preventive procedures at our satellite clinics.

However, I am concerned about the rule change adding section 8.2gg, allowing dental assistants to do coronal polishing on patients up to age 21. There is much to be discussed about this addition. I was at the West Virginia Board of Dental Examiners meeting on May 16, 2008 when this was presented and I can attest to the fact that there has been no public comment period and I seriously doubt as to whether there has been any legislative discussion about changes to dental assistant duties. Some of the concerns I would have presented if given the opportunity to do so are as follows.

Would this procedure be billed to insurance as a dental prophylaxis?

If so there are problems associated with that. First to be charged as such it would also require scaling of supra and sub gingival calculus a procedure that is legally only permitted to dentists and dental hygienists. Even young children may have calculus and need more than just polishing. Secondly the current recommendation for polishing is that it only be done selectively. In other words only those teeth that need it for stain and heavy plaque removal. This is a decision that requires a thorough knowledge of oral pathology which dental assistants are not required to have.

How can the WV Board of Dental Examiners regulate this rule change?

The last time duties for dental assistants were expanded in 2003 approximately 700 dental assistants paid a one time fee to the board to be certified for specified duties. At the May 16, 2008 board meeting the secretary stated that there is no current record of where these dental assistants are now located or for whom they are employed.

Although dental assistants are a valued member of the dental team in West Virginia they are not licensed professionals as are dental hygienists. They are not formally educated and they are not a properly certified dental auxiliary. I feel expansion of dental assistant duties needs to be thoroughly discussed and the addition of 8.2gg has not been, nor does it have a place in this emergency rule concerning general supervision of dental hygienists.

Thank you for your consideration of my concerns about this issue.

Respectfully yours,


Cynthia Maret RDH

OFFICE OF THE
SECRETARY OF STATE
2008 JUN 30 PM 2:41
FILE



ANDERSON
ORTHODONTICS
Anissa Monseau Anderson, DDS, MS

June 17, 2008

The Honorable Betty Ireland
Secretary of State
1900 Kanawha Blvd., East
Charleston, WV 25305

2008 JUN 18 AM 9:12
SECRETARY OF STATE
JD

Dear Secretary Ireland,

You are respectfully requested to **disapprove** the **emergency rule** filed with your Office by the **Board of Dental Examiners** on June 4, and return it to the Board for revisions so that it is in the best interest of the public.

Please contact me for future discussion or clarification of my view.

Respectfully submitted,

Anissa Monseau Anderson, DDS, MS

Anissa Monseau Anderson, DDS, MS
Executive Council Member- Marshall-Wetzel-Tyler Society
West Virginia Dental Association

WHILE YOU WERE OUT

FOR <u>Secy</u>		DATE <u>6-19</u>	TIME <u>4:03</u>	A.M. P.M.
M <u>Dr. Jim Vano</u>				
OF <u>President of the State Board of Examiners</u>		PHONED		
PHONE <input type="checkbox"/> FAX <input checked="" type="checkbox"/> MOBILE <u>255-0020</u>		RETURNED YOUR CALL		
AREA CODE NUMBER EXTENSION		PLEASE CALL		
MESSAGE <u>I leave delay any action until the Board has a chance to meet July 11 & 12.</u>		WILL CALL AGAIN		
<u>They will have any modifications to</u>		CAME TO SEE YOU		
SIGNED <u>Jim Vano</u>		WANTS TO SEE YOU		
<u>on Monday before you</u>		TOPS FORM 4008		
<u>Decision on 7/11/12</u>				

WEST VIRGINIA DENTAL ASSOCIATION

2016 1/2 Kanawha Boulevard, East • Charleston, WV 25311

TEL: (304) 344-5246

FAX: (304) 344-5316

June 30, 2008

The Honorable Betty Ireland
Secretary of State, State of West Virginia
Capitol Complex, Building #1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Secretary Ireland:

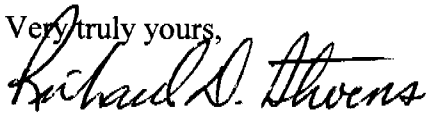
Please find enclosed this Association's comments and objections to the Emergency Rule CSR §5-1 filed with your Office on June 4, 2008, by the WV Board of Dental Examiners. Please note this Association has submitted nine (9) comments and objections to the Rule.

Representing over 800 dentists, this Association had introduced and supported Senate Bill 13 with the intention of improving access to dental care to all citizens while maintaining quality and safety of care in the interest of the public. As you are aware, Senate Bill 13 mandates the Board promulgate an Emergency Rule.

Please be advised this Association supports the Rule in principle. However, this Association cannot support this version of the Rule because it either conflicts or circumvents the various provisions of Chapter 30, Article 4, Dental Practice Act, cited in our comments and objections.

This Association believes you will find our comments and objections sufficiently valid and substantive to disapprove the Rule and return it to the Board of Dental Examiners for revisions so that it may comply with Chapter 30, Article 4, Dental Practice Act.

Very truly yours,



Richard D. Stevens
Executive Director

WEST VIRGINIA DENTAL ASSOCIATION COMMENTS AND OBJECTIONS REGARDING WV BOARD OF DENTAL EXAMINER'S EMERGENCY RULE

Comment/Objection #1:

Under §30-4-6. (9) of the Act, the Board of Dental Examiners is required to designate the services and procedures requiring or allowing direct supervision, general supervision and public health practice to be completed and filed as an emergency rule no later than July 1, 2008.

The term "direct supervision" is defined in §30-4-3(15). It means the dentist is physically present in the dental office or treatment facility when services are being provided by dental auxiliary personnel. "Dental auxiliary personnel" is defined in §30-4-3(8) to include dental hygienists and dental assistants who assist the dentist in providing services to patients. Therefore, the emergency rule must identify services and procedures requiring direct supervision by a dentist over dental auxiliary personnel – dental hygienists and dental assistants.

However, the Board's emergency rule fails to identify any service or procedure requiring direct supervision by dentists over dental hygienists or dental assistants.

WVDA recommended only one procedure be allowed by dental assistants under the direct supervision by dentists, which would have made the emergency rule compliant with §30-4-6.(9). This procedure is coronal polishing of teeth of children under age 21 by an assistant who has at least two (2) years and 3,000 hours of clinical experience in a dental office and has successfully completed two (2) courses approved by the Board. However, the Board did not include it in the emergency rule.

Comment/Objection #2:

General Supervision Section 8.4.(h) permits hygienists to perform procedures without any supervision of a dentist. This is in conflict with the definition of "general supervision" as contained in §30-4-13.(16) of the Dental Practice Act as it does not require a dentist to diagnose the condition to be treated, authorize the procedures, or evaluate the patient after treatment by the hygienist.

Section 8.4.(h) is also in conflict with two (2) provisions of the emergency rule under 8.4.(n)(1) and 8.5.(l)(1), both of which state a person cannot practice dental hygiene in a manner that is separate or otherwise independent from a supervising dentist. WVDA respectfully submits that permitting hygienists to perform procedures without any supervision of a dentist is practicing separate and independent from a supervising dentist.

Comment/Objection #3:

General Supervision Section 8.4.(h)(3) permits hygienists to take intra- and extra-oral photographs without a prior exam or supervision or follow-up by a dentist. Photographic images are defined in the Current Dental Terminology (CDT) manual as diagnostic services - not preventive services. Therefore, this provision conflicts with §30-4-3.(9) of the Act wherein a dental hygienist is defined as a “person licensed by the Board who provides preventative oral health care services in the dental office and in a public health setting.

Section 8.4.(h)(3) also conflicts with the preamble statement in Section 8.4, which states hygienists may provide preventive hygiene services. Only dentists can interpret such photographs to diagnose diseases. If a photograph is not interpreted by a dentist as part of a diagnose, then what is the purpose of the hygienist taking the photograph?

Comment/Objection #4:

General Supervision Section 8.4(h)(4) permits hygienists to prepare a “generalized oral screening” with subsequent referral to a dentist. “Generalized oral screening” is not defined in the rule, nor is it recognized or defined in the CDT manual as a service or procedure. Such a service can be interpreted by a patient or parent as an exam, which hygienists are not licensed to perform.

Comment/Objection #5:

The preamble to General Supervision in Section 8.4., states a dental hygienist may provide preventive dental hygiene services when the supervising dentist is not present. However, General Supervision Sections 8.4.(h) and 8.4.(i) and Public Health Practice Section 8.5. allow hygienists to provide services other than preventive, such as diagnostic, periodontal and cosmetic as identified in the CDT manual. Therefore, this provision conflicts with §30-4-3.(9) of the Act wherein a dental hygienist is defined as a “person licensed by the Board who provides preventative oral health care services in the dental office and in a public health setting.”

Comment/Objection #6:

General Supervision Section 8.4.(i)(1) and the preamble to Public Health Practice Section 8.5 permit hygienists to place, expose, develop and mount dental radiographs (X-rays). X-rays are identified in the CDT manual as diagnostic procedures, not preventive. X-rays are to be interpreted by dentists to diagnose existing disease, not prevent future disease. X-rays are to be taken only for clinical reasons as determined by the patient’s dentist, according the CDT manual. Therefore, this provision conflicts with the Dental Practice Act under §30-4-3.(9), definition of a dental hygienist who are licensed to provide preventative oral health services, and §30-4-15., the scope of practice of dentistry wherein, in part, only a dentist can diagnose diseases.

Comment/Objection #7:

General Supervision Section 8.4.(i)(8) and Public Health Practice Section 8.5. permit hygienists to provide debridement and/or root planing of teeth. These services are defined in the CDT manual as “periodontal services” not preventive services, therefore, in conflict with §30-4-3.(9) of the Act wherein a dental hygienist is defined as a “person licensed by the Board who provides preventative oral health services.” A dentist is to have evaluated the patient, reviewed diagnostic information, and then determined a treatment plan that included scaling and root planing. These are procedures that should not be performed by hygienists outside the dental office and without the examination and evaluation by a dentist as would be allowed in Section 8.5.

Comment/Objection #8:

General Supervision Section 8.4.(n)(1) does not permit a person to “practice dental hygiene in a manner that is separate or otherwise independent from a supervising dentist.” This conflicts with General Supervision Section 8.4.(h) which permits a dental hygienist to perform services without supervision of a dentist, thus independent of a supervising dentist.

Comment/Objection #9:

Public Health Practice Section 8.5 permits hygienists to provide all of the 19 services contained in General Supervision Section 8.4.(i). This conflicts with §30-4-3.(9) wherein a dental hygienist is defined as a “person licensed by the Board who provides preventative oral health care services” because some of the services and procedures among those 19 contained in Section 8.4.(i) or other than preventive.

Judy Cooper

From: Cindi Shockey [mom4soccer@atlanticbb.net]
Sent: Wednesday, July 02, 2008 12:53 PM
To: WV Secretary of State
Subject: Re: Proposed Dental Law Changes
Attachments: Dr Hornbrook.doc

Ms. Ireland:

Attached is a response that I sent to Dr. Hornbrook at WVU several weeks ago. I am very dismayed what is happening in dentistry in my home state. I started a day-time dental assisting program in Bridgeport, WV, about a year ago to help assure the protection of our citizens in the field of dentistry. I am a clinical dental hygiene instructor at WVU, also, and I am vexed by this movement by the Dental Society and the Dental Board.

To be short about it, THIS IS CRAZY!!!!!! I, as a dental hygienist, must have, at least, an Associates degree to work in and on a person's mouth and I MUST hold a license to do so. I have to attend CEU's and I have many other requirements to do my work.

Please, read my attachment and I encourage you to stop in your tracks and DO NOT sign another proposal regarding this issue.

Sincerely submitted,

Alcinda K Trickett Shockey, RDH BSDH MA CHS-IV

2008 JUL -2 PM 2:02
E.M.
E.M.
E.M.

Dr Hornbrook:

Upon reading your e-mail and its attachment, I had to take some time and be sure I cover all of my points about the proposed changes with the emergency rule for dental assistants. I had received a copy of the entire proposed change in the mail and I must report that I was so vexed with the changes that I have become ashamed that I still hold a license to practice in my home state.

First, to examine the need for a dental hygienist to apply for the ability to perform her duties under general supervision of a licensed dentist with all the stipulations placed upon the hygienist and not on the dentist, is crazy, at best. I have held licensure in Ohio, Indiana, and Michigan. I have applied for licensure in Virginia, also, and I will be able to practice under general supervision in that state for that state recognizes that I am a professional and am a registered professional passing national, regional, and state examinations to regulate my actions and worthiness. This is the same type of regulation that each practicing dentist must follow after years of study and education. Again, the dental hygienist follows this same regimen. Yes, some are two years of education and some are four years of education, but THIS state does not distinguish between the two. Maybe, it should.

Second, only, if only, the board deems it worthy, I would be able to apply for public health privileges. Again, I really do resent not being respected as a licensed professional with many years of education plus experience behind me. This does not sit well with me, at all.

Thirdly, I am very well educated and I know a scam when one is being placed before me. The number of dental hygienist do not match dentist because of several reasons. There is one thing for sure, dental hygienists are leaving the profession because dentist do not seem to recognize hygienist as: 1.) Professionals; 2.) Essential parts of the dental team; and, 3.) Well educated and regulated. I have been in the trenches and I know how dentist treat hygienist. A hygienist can make or break a practice, but the dentist seem to see us as adversaries. I have a strong personality and have been able to with stand the day to day grind of a big dental practice (about 300 patients per week), a small dental practice, and even, a medium sized practice. The dentists were all very different, but they all had one theme. They really did not like to pay me for my work. I was worked to death and told that if I wasn't scraping teeth-I wasn't doing my job. Cancellations were my fault, the recall was my responsibility, etc.

Yes, dental hygienists are leaving the profession, but their profession is being, lack for another word, castrated by the very board that regulates them. Now, this same board, that is bound by its duty to protect the general public from faulty dental care and they want to give the privilege to work inside the population's mouth to polish enamel crowns to on the job trained dental assistants that do not have any education and by those that the same board does not EVEN regulate.

I love how these proposed rules are very distinct to state that a hygienist can not have an independent practice for the safety of the public, but they approve of "My Girl, Friday" to do my job without any education or concern for public welfare!!!!!!

Speaking about regulation, why do I need to bother with licensure? I can do general supervision practice, if the dentist says that I can. (You might want to read that part, too.) THAT IS CRAZY!!!!!! It seems to me that this board is using statistics to meet their desire to destroy my profession. I see this as being as bad as preceptorship and can not agree with these proposals. One does NOT cut corners in education and licensure and expect to have a good outcome. If that is the case, boy, do I have a plan for you to buy!!!

When the board makes such outrageous proposals and the dental society supports this action, I can see only two options. Either, dental hygiene becomes a profession of the past being no longer used or needed –or- dental hygiene becomes their own, separate profession just as nurses did about 50 to 60 years ago. Being quite honest, I opt for the second choice for I have invested much time and energy in my dental hygiene profession. I don't believe that I am alone in my thoughts.

Sincerely submitted,

Alcinda (Cindi) Trickett Shockey, RDH BSDH MA (and proud of it)

(Sorry for the length of my dissertation, but I am extremely vexed by this issue.)

**WEST VIRGINIA MEDICAL IMAGING & RADIATION
THERAPY TECHNOLOGY BOARD OF EXAMINERS**

1715 FLAT TOP ROAD

P.O. BOX 638

COOL RIDGE, WV 25825-0638

Telephone: (304) 787-4398 Toll Free: (877) 609-9869 Fax: (304) 787-3030

E-mail: wvrtboe@suddenlinkmail.com Web Page: www.wvrtboard.org

June 9, 2008

West Virginia Board of Dental Examiners
1319 Robert C. Byrd Drive
PO Box 1447
Crab Orchard, West Virginia 25827

Re: Comment - 5CSR1

Dear Sirs:

In reviewing the above mentioned Emergency Rule, I have noticed that § 5.1.8.4 would allow a dental hygienist to take dental x-rays under the general supervision of a dentist. However, under the definition of general supervision, a dental hygienist could take x-rays without a dentist present for fifteen (15) consecutive days or no more than three (3) consecutive weeks. This section, as written, may be in violation of another state law, specifically § 30-23-12 (2). The law governing Medical Imaging and Radiation Therapy technology exempts dental assistants and dental hygienist from the Medical Imaging law when the assistant or hygienist "who under the **supervision** of a licensed dentist operates only radiographic dental equipment for the sole purpose of dental radiography of the oral cavity".

Although our law defines supervision as meaning "responsibility for and control of quality, safety and technical aspects in the application of medical imaging technology on human beings for diagnostic or therapeutic purposes", it has been understood for over thirty (30) years that the dentist must be on-site before a dental assistant or dental hygienist can operate the x-ray equipment.

Please review the pertinent sections of the law to ensure the public's health and safety are maintained. If there are any questions pertaining to this comment letter, please do not hesitate to contact me at 304-546-4642.

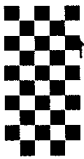
Sincerely,

Grady M. Bowyer, R.T.
Executive Director

GMB:

cc: Nicole Cofer, Assistant Attorney General

2008 JUL -9 AM 8:42



July 8, 2008

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

2008 JUL -9 AM 8:12
FBI

To Whom It May Concern:

I am writing to respond to the recent change in proposed emergency rules for dental hygienists practicing in general supervision settings. I applaud the efforts of the board in assuring the health and well-being of the citizens of West Virginia by placing defining language in the rules which govern the practice of licensed dental hygienists. The proposed changes regarding dental hygienists appear fair and reasonable.

At the same time, I find it extremely disturbing that proposed language has been added to allow dental assistants to perform a procedure that has always been relegated to dental hygienists. In the proposed change for (gg) under 5CSR1, dental assistants, who are not registered or licensed by the Board of Dental Examiners, would be allowed to polish teeth on persons age 21 or younger. It appears that this language allows dental offices to bill for "cleaning" provided by an unregulated dental auxiliary, rather than utilizing the services of the educated, licensed dental hygienist.

In addition, the proposed change to include the language under (gg) does not fit in the intent of the emergency ruling. The information sent to all dentists and dental hygienists states that the emergency rule is required because of Senate Bill 13, which allows general supervision of dental hygienists. The explanatory paragraph on the first page only address language changes as a result of implementing rules for general supervision of dental hygienists. Changing the duties of the dental assistant through this emergency rule does not meet the mandate of the legislature through Senate Bill 13.

I urge you to remove the reference to and subsequent wording of (gg) under the proposed emergency rule 5CSR1, to further your efforts to assure the health and well-being of the citizens of West Virginia.

Sincerely,

Kristin L. Mallory, RDH, Ed.D.
976 Ridgemont Road
Charleston, WV 25314
(304) 343-3979
KLeeMallory@hotmail.com

cc West Virginia Secretary of State's Office

Law Office of

Philip A. Reale, PLLC


405 Capitol Street, Suite 1100
Charleston, WV 25301-1762

Phone: (304) 342-1891
Fax: (304) 342-1893

E-Mail: pareale@wvreale.com
Website: www.wvreale.com

July 9, 2008

The Honorable Betty Ireland
Secretary of State, State of West Virginia
Building 1, Room 157-K
State Capitol Complex
Charleston, WV 25305

Re: Emergency Rule, WV Board of Dental Examiners, Title 5, Series 1 

Dear Secretary Ireland:

I am writing to you on behalf of the West Virginia Dental Association to offer comments in regards to the above referenced emergency rule. I appreciate the opportunity to provide you with these comments and thank you in advance for the time and effort you will expend reviewing the same. Additionally, I thank you for the courtesy that you have already extended my client and me in relationship to this matter.

The subject emergency rule is for the purpose of implementing the provisions of Senate Bill 13, enacted during the 2008 Regular Session of the West Virginia Legislature and amending Chapter 30, Article 4, Section 1, et seq. of the Code of West Virginia.

While other areas of said Article 4 of Chapter 30 were modified by Senate Bill 13, Section 6 thereof is the primary operative provision with which your office is now concerned. Immediately below, I conveniently provide you with the language of Article 4 and I highlight in bold the language that represents the action of the West Virginia Legislature during the 2008 Regular Session in amending the existing provisions of the article.

§30-4-6. Rule-making Authority.

- (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) Specialties 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;

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- (7) Continuing education requirements for licensees;
 - (8) Delegated procedures to be performed by a dental hygienist;
 - (9) **Designating the services and procedures requiring or allowing direct supervision, general supervision and public health practice to be completed and filed as an emergency rule no later than the first day of July, two thousand eight** (emphasis added)
 - (10) Delegated procedures to be performed by a dental assistant;
 - (11) Use of firm or trade names;
 - (12) Dental corporations; and
 - (13) Professional conduct requirements.
- (b) All rules in effect on the effective date of this article shall remain in effect until they are withdrawn, revoked or amended.

The language of the amendment is clear and unambiguous. It is mandatory under the language of the statute, as amended, that the West Virginia Board of Dental Examiners promulgates an emergency rule on or before July 1, 2008, which must include language that designates services and procedures performed under the West Virginia Dental Practice Act "requiring or allowing direct supervision, general supervision and public health practice."

There are three (3) distinct areas to be covered by the required emergency rule. The three distinct areas are services and procedures performed under the West Virginia Dental Practice Act involving (1) direct supervision, (2) general supervision and (3) a public health practice as that term is defined in statute. The emergency rule that is before you for consideration makes no mention of services or procedures involving "direct supervision," despite the mandatory language that such be included in the emergency rule.

The term "Direct Supervision" is defined in §30-4-3(15) to mean "supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed. The term "Dental Auxiliary Personnel" is defined in §30-4-3(8) to be "dental hygienists and dental assistants who assist the dentist in the provision of oral health care services to patients." Thus, the rule to be promulgated must designate services and procedures that require direct supervision by a dentist over dental auxiliary personnel, i.e. dental hygienists and dental assistants.

"General Supervision" is defined in §30-4-3(16) to mean that "a dentist is not required to be in the office or treatment facility when procedures are being performed by the auxiliary dental personnel, but has personally diagnosed the condition to be treated, has personally authorized the procedure and will evaluate the treatment provided by the dental auxiliary personnel." Therefore, the rule to be promulgated must also set forth those services and procedures that may be performed by auxiliary personnel, i.e. dental hygienists and dental assistants, which require general supervision.

The term "Public Health Practice" as used in the section of code being interpreted (§30-4-6(a)(9) as highlighted above) is defined in §30-4-3(20). Therein it states that "Public health practice means treatment or procedures in a public health setting which shall be designated by a

rule promulgated by the Board of Dental Examiners to require direct, general or no supervision of a dental hygienist by a licensed dentist.”

Again, the emergency rule before you for consideration is void of any mention of services or procedures that require “direct supervision” by a licensed dentist. Ironically, a non-emergent rule promulgated by the West Virginia Board of Dental Examiners which does contain specific reference to services and procedures that may be performed by dental hygienists and dental assistants under the “direct supervision” of a licensed dentist has been filed with your office for purposes of inviting public comment and movement through the Legislative Rulemaking Review process. That non-emergent rule is identified as Title 5, Legislative Rule, West Virginia Board of Dental Examiners, Series 1, Rule for the West Virginia Board of Dental Examiners. The section of the rule that deals with services and procedures to be performed under the direct supervision of a dentist is found at §5-1-8 and with amending language at §5-1-8(gg). As a matter of process, it makes no practical sense whatsoever to have a mandatory element that is required to be included in an emergency rule omitted, only to have it included in a non-emergent legislative rule that is filed simultaneously with the emergency rule. It opens the door to speculation that someone is playing loose and fast with the governing law. Fortunately, your office has the opportunity to require the emergency rule be constructed in compliance with the governing law by ruling that the same, as presently provided, does not comply with the mandatory terms of Chapter 30, Article 4, Section 6.

Further, there are other provisions of the emergency rule that may cause conflict with pre-existing law and rule. Before your office certifies an emergency rule, an effort should certainly be made to reconcile any conflicts in existing law – beyond the obvious and glaring one identified above. One such conflict occurs as a consequence of §5-1-8.5(d) of the emergency rule which provides that: “*The dental hygienist shall have a written agreement with a sponsoring dentist who shall authorize and monitor the delivery of hygiene services.*” This does not call for specifically delegated procedures in accordance with the dentist’s diagnosis and treatment plan.

The word “authorize” is defined in Chapter 30, Article 4, Section 3 (3) to mean “that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist’s diagnosis and treatment plan.” Accordingly, it would seem advisable that the promulgators of the rule ought to refine this particular provision so that there is no conflict between what is provided for in the underlying statute and what is permitted under the rule.

For the reasons set forth herein and to avoid the circumstance of sanctioning an emergency rule that is known clearly to be incomplete by the express dictates of the underlying statute, my client respectfully requests that you deny the emergency status of the above referenced emergency rule with instructions to the West Virginia Board of Dental Examiners that the same should properly include all services and procedures “requiring or allowing direct supervision, direct supervision and public health practice” as expressly provided for in Chapter 30, Article 4, Section 6 (a) (9).

Letter to Secretary of State RE: Emergency Rule, WV Board of Dental Examiners, Title 5, Series 1
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Respectfully submitted this 9th day of July, 2008.

West Virginia Dental Association

By:

A handwritten signature in cursive script, appearing to read "Philip A. Reale".

Philip A. Reale

Attorney At Law

WV State Bar I.D. No. 3029

cc: Richard Stevens