

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

Form #8

Do Not Mark In This Box
Filing Date

2008 JUL 15 AM 8:53

Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

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

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 4, 2008

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES x NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT:

SERIES NUMBER OF RULE: 1

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

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

The amendments to the emergency rule are in response to comments and suggestions received during the comment period.

Use additional sheets if necessary


Authorized Signature

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

2009 JUL 15 AM 8:53

SERIES 1
RULE FOR THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

§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 patients 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. The application fee shall be equal to the fees charged for expanded duties certificates.

(b) The dental hygienist shall have two (2) years and three thousand (3,000) hours of clinical dental hygiene experience.

(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 with no supervision of a licensed dentist:

(1) Dental health education;

(2) Nutritional counseling;

(3) Preparing a generalized oral screening with subsequent referral to a dentist; and

(4) Applying flouride.

(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 four (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, shall have adequate lighting, suction and isolation of teeth.

(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. The application fee shall be equal to the fees charged for expanded duties certificates.

(b) The dental hygienist shall have two (2)

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 and supervising dentist shall submit an annual report to the West Virginia Board of Dental Examiners of services rendered.

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

(f) A licensed dentist may not supervise more than four (4) dental hygienists engaged in public health practice.

(g) Facilities utilized for oral prophylaxis, sealant placement, or both, shall have adequate lighting, suction and isolation of teeth.

(h) 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.

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

(j) The following procedures may be performed by a dental hygienist with no supervision of a licensed dentist:

(1) Dental health education;

(2) Nutritional counseling;

(3) Preparing a generalized oral screening with subsequent referral to a dentist;

(4) Applying flouride;

(5) Charting existing restorations and missing teeth;

(6) Recording medical and dental histories;

(7) Examining and recording periodontal findings; and

(8) Complete dental prophylaxis, which may include supra- and subgingival scaling of teeth and polishing of coronal and/or exposed surfaces of teeth. The dental hygienist shall have a written order from a licensed dentist prescribing such treatment.

(k) 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 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.

WEST VIRGINIA DENTAL ASSOCIATION

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

TEL: (304) 344-5246

FAX: (304) 344-5316

July 23, 2008

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Dear Secretary Ireland:

Enclosed is a copy of this Association's July 23, 2008, letter to the West Virginia Board of Dental Examiners regarding the emergency rule the Board has filed with your Office.

You will note this Association intends to pursue a legal resolution to the question whether the Board's emergency rule complies with Chapter 30, Article 4, of the Code. This Association's Executive Council of 29 dentists discussed this action thoroughly before passing a resolution unanimously with one abstaining to pursue a legal resolution.

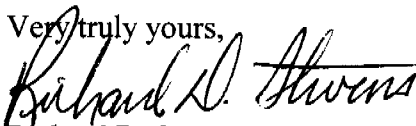
I believe it is imperative I respectfully call your attention to the fact that this Association's recommendations for improving access to oral health care were widely published throughout the State because some individuals may contend with your Office that "coronal polishing by dental assistants under direct supervision of a dentist" was never discussed and was proposed by this Association "at the last minute." You will note in the enclosed letter, that this is not the case.

You are also advised that 67 dentists wrote letters to the Board during the recent comment period expressing support of coronal polishing by assistants be included in the emergency rule. The Board did not disclose this at its July 11 and 12 meeting when making amendments to the emergency rule. Here are comments by some of those dentists: *"I have practiced more than 25 years in a county which has no dental hygienists, so I support this."*.... *"Clearly, one of the barriers (to access) is the lack of hygienists in many offices."* ... *"With the shortage of hygienists in rural dental offices, allowing assistants to polish would benefit not only the dentists but also the children of West Virginia."* ... *"My hygienist comes from 48 miles away. What a blessing and relief this would be for dental offices in rural areas."*

This Association looks forward to a favorable judicial decision regarding the question of the Board complying with Chapter 30, Article 4.

I am pleased to discuss this issue with you or members of your staff if you have any questions.

Very truly yours,



Richard D. Stevens
Executive Director

xc: WVDA Officers and Executive Council Delegates

WEST VIRGINIA DENTAL ASSOCIATION

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

TEL: (304) 344-5246

FAX: (304) 344-5316

July 23, 2008

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

Dear Doctor Edwards:


You are respectfully advised the WVDA Executive Council passed a resolution at its July 17, 2008, meeting to pursue a legal resolution to the question of whether your Board has complied with the provisions of Chapter 30, Article 4, known as the West Virginia Dental Practice Act, in your rules which are currently on file with the West Virginia Secretary of State. This resolution was passed unanimously by 28 officers and delegates with only one abstaining.

Your Board is respectfully reminded WVDA began a study over two years ago of ways to expand and improve the delivery of oral health care. WVDA's recommendations for improving access were given your Board in November 2007. The recommendations were also given members of the Legislature's Subcommittee on Oral Health, chaired by Senator Ron Stollings and Delegate Barbara Hatfield. The recommendations were also published in the November/December 2007 WVDA News which was distributed to dental offices statewide. Among the recommendations requiring legislative or administrative approval are general supervision of dental hygienists, public health practice by hygienists, services which hygienists can provide without supervision of a dentist, and coronal polishing by assistants under direct supervision of a dentist. WVDA had Senate Bill 13 introduced during the 2008 Legislature so approval of these recommendations could be attained, for the most part, via rule promulgated by your Board.

Therefore, WVDA is left to question why your Board contended on May 16, 2008, that coronal polishing by assistants was presented at the last minute. WVDA questions why your Board addressed all of the above recommendations in your emergency rule except coronal polishing by assistants, the only recommendation requiring direct supervision. Your Board is reminded Senate Bill 13 called for direct supervision to be included in your emergency rule. WVDA believes your Board was given flawed legal advice in not including this procedure in your emergency rule.

WVDA is pursuing a legal resolution to the compliance of your Board's rule in the interest of improving access to oral health care in our State.

Very truly yours,



Richard D. Stevens
Executive Director

xc: The Honorable Betty Ireland, Secretary of State
WVDA Officers and Executive Council Delegates