



WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

Do Not Mark In this Box

FILED
MAY 16 AM 10:15
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

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

CITE AUTHORITY: WV Code §30-4A, et. seq., of 1931, as amended

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

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

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY:

TITLE OF RULE BEING FILED AS AN EMERGENCY:

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Dentists are increasingly administering general anesthesia and parenteral conscious sedation in their offices on an out-patient basis; that the administration of general anesthesia and parenteral conscious sedation carries with it an inherent risk and danger to the patient; that, however, the administration of general anesthesia and parenteral conscious sedation on an out-patient basis by dentists is necessary and for the good of the public; but that because of the inherent dangers in the administration of general anesthesia and parenteral conscious sedation, it is necessary to insure that the persons administering and supervising such general anesthesia or parenteral conscious sedation are competent and trained in the techniques; that it is in the best interests of the public and the dentists of West Virginia to prohibit dentists from administering or supervising the administration of general anesthesia or parenteral conscious sedation unless those dentists meet certain minimal training and competency standards in the administration and supervision of general anesthesia or parenteral conscious sedation; and that requiring a dentist to obtain a special permit

Use Additional Sheets If Necessary.

before he or she can administer or supervise general anesthesia or parenteral conscious sedation is the best method to preserve the use of general anesthesia and parenteral conscious sedation by dentists on out-patients and, at the same time, ensure that such administration and supervision is performed by competent dentists trained in the use of such techniques. Therefore, today's rules are filed on an emergency basis.

PREAMBLE TO AN EMERGENCY LEGISLATIVE RULE
CONCERNING ADMINISTRATION OF GENERAL ANESTHESIA
AND PARENTERAL CONSCIOUS SEDATION BY DENTISTS

STATE AGENCY: West Virginia Board of Dental Examiners

REGULATIONS: Series 3, Section 8, Administration of General Anesthesia
and Parenteral Conscious Sedation by Dentists

AUTHORITY: W. Va. Code §30-4a, et. seq.

ACTION: Emergency Rule

CONTACT: For further information regarding this filing, please contact
Mr. James G. Anderson, III, WV Board of Dental Examiners, P.O.
Drawer 1459, Beckley, WV 25802-1459, Telephone (304) 252-8266

SUMMARY: Dentists are increasingly administering general anesthesia and parenteral conscious sedation in their offices on an out-patient basis; that the administration of general anesthesia and parenteral conscious sedation carries with it an inherent risk and danger to the patient; that, however, the administration of general anesthesia and parenteral conscious sedation on an out-patient basis by dentists is necessary and for the good of the public; but that because of the inherent dangers in the administration of general anesthesia and parenteral conscious sedation, it is necessary to insure that the persons administering and supervising such general anesthesia or parenteral conscious sedation are competent and trained in the techniques; that it is in the best interests of the public and the dentists of West Virginia to prohibit dentists from administering or supervising the administration of general anesthesia or parenteral conscious sedation unless those dentists meet certain minimal training and competency standards in the administration and supervision of general anesthesia or parenteral conscious sedation; and that requiring a dentist to obtain a special permit before he or she can administer or supervise general anesthesia or parenteral conscious sedation is the best method to preserve the use of general anesthesia and parenteral conscious sedation by dentists on out-patients and, at the same time, ensure that such administration and supervision is performed by competent dentists trained in the use of such techniques. Therefore, today's rules are filed on an emergency basis.

FILED
1989 MAY 16 AM 10 15
OFFICE OF THE SECRETARY
STATE

FILED
1989 MAY 16 AM 10:17
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

WEST VIRGINIA ADMINISTRATIVE
REGULATIONS
WEST VIRGINIA BOARD OF
DENTAL EXAMINERS

CHAPTER 30-4

SERIES III

(1989)

Subject: Rules and Regulations for the West Virginia Board of Dental
Examiners.

Section 1. GENERAL

1.01. Authority.--These regulations are issued under authority of Chapter 30, Articles 1 and 4 of the West Virginia Code of 1931, as amended.

1.02. Scope.--These regulations make such rules and regulations, not inconsistent with the law, as are necessary to regulate the West Virginia Board of Dental Examiner's proceedings and to carry out the purposes and enforce the provisions of Chapter 30, Articles 1 and 4 of the West Virginia Code of 1931, as amended, which are applicable to the West Virginia Board of Dental Examiners.

1.03. Effective Date.--These regulations are promulgated June 15, 1971 April 27, 1989, and become effective on thirty days thereafter.

1.04. Filing Date.--These regulations were filed in the Office of the Secretary of State on June 15, 1971 April 27, 1989.

1.05. Certification--These regulations are certified authentic by the President and Secretary of the West Virginia Board of Dental Examiners by Certification No. II.

Section 2. OFFICIAL SEAL

2.01. General.--The official seal shall affix by way of stamp or embossing and shall contain somewhere thereon the word "seal" and West Virginia Board of Dental Examiners.

Section 3. CORPORATE PRACTICE OF DENTISTRY.

3.01. Qualifications.--Only duly licensed dentists eligible to practice in the State of West Virginia may form a dental corporations. Such dentist or dentists shall file a written application with the Board of Dental Examiners on a form hereafter set out. A fee of ~~\$25.00~~ \$200.00 shall accompany each application, no part of which shall be returnable. If the Board finds that the signer is a duly licensed dentists or if there be more than one, that all of the signers of such applications are duly licensed dentists, the Board shall notify the Secretary of State that a Certificate of Authorization hereafter set out has been issued to the individual or individuals signing such application, to form a dental corporation. Provided, however, that there is compliance with the applicable provisions of Chapter 31, Article 1, Section 1 of the West Virginia Code of 1931, as amended, concerning corporations generally.

3.02. Application to Form Dental Corporation.

APPLICATION TO FORM DENTAL CORPORATION

NAMES OR NAMES
OF DULY LICENSED

W.VA DATE

DENTISTS

LICENSE NO. ISSUED

- 1.
- 2.
- 3.
- 4.
- 5.

If there are more than five applicants, please use reverse side of application.

The above-named applicants hereby certify that they are duly licensed to practice dentistry in the State of West Virginia and desire to form a dental corporation.

- 1.
- 2.
- 3.
- 4.
- 5.

If there are more than five applicants, please use reverse side of application.

Taken, subscribed and sworn to before the undersigned this _____ day of _____, 1971 _____.

My commission expires on the _____ day of _____, 19____.

Notary Public in and for _____ County, State of West Virginia.

A copy of the Agreement of Incorporation is hereby attached and made part of this application.

Please enclose fee of ~~\$25.00~~ \$200.00 which would accompany this application, no part of which shall be returnable.

3.03. Certificate of Authorization.

CERTIFICATE OF AUTHORIZATION

This certificate is issued pursuant to Chapter 30, Article 4, Sections 4B and 4C of the West Virginia Code of 1931, as amended, authorizing the following individuals to form a Dental Corporation in the State of West Virginia.

- 1.
- 2.

3.

Issued by:

President
West Virginia Board of Dental
Examiners

Secretary
West Virginia Board of Dental
Examiners

Section 4. SPECIALITIES.

4.01. Specialist General Qualifications.--A licensee who has satisfactorily proved 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. "Specialty" or "Specialization" is a restriction of practice to a certain field or phase of dentistry.

1. License to practice dentistry in the State of West Virginia.
2. Membership in the American Dental Association or the National Dental Association.
3. An exemplary record of professional ethics.
4. All training requirements for qualifications of each specialty shall be approved by the counsel on dental education of the American Dental Association.

4.02. Specialist General Limitations.--A person licensed by the West Virginia State Board of Dental Examiners as a specialist has the following limitations:

1. Said licensee shall limit his practice of dentistry only to the specialty in which he is licensed and he holds himself out to the general public as a specialist.

2. Limit his listing in the telephone directory to the area or areas in which he has an office or offices.

4.03. Specialty Fields Licensed by the West Virginia Board of Dental Examiners.

1. DENTAL PUBLIC HEALTH

Definition

"Dental public health" is defined as the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. For the purposes of this Board 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.

Qualifications

A minimum of one full-time academic year of at least eight calendar months each of graduate or post-graduate education, internship or residency.

2. ORAL PATHOLOGY

Definition

"Oral Pathology" shall be considered to embrace both morphologic and clinical study of diseases affecting the oral regions. An oral

pathologist shall be considered as one who, though special study and training, is qualified to diagnose and otherwise study tumors and lesions, both local and systemic, of the oral regions.

Qualifications

A minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

3. ORAL SURGERY

Definition

"Oral Surgery" is that part of dental practice which deals with the diagnosis, the surgical and adjunctive treatment of diseases, injuries, and defects of the human jaws and associated structures.

Qualifications

A minimum of three full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

4. ORTHODONTICS

Definition

The prevention and correction of dental and oral anomalies: changing positions of teeth and jaw relationship by the use of appliances, by correction of causative habits or by 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.

Qualifications

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. PEDODONTICS

Definition

The prevention, control and treatment of the oral and dental diseases of children.

Qualifications

A minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

6. PERIODONTICS

Definition

The prevention, control and treatment of diseases of the supporting tissues of the teeth.

Qualifications

A minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

7. PROSTHODONTICS

Definition

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, and which are supported wholly or

in part by the soft tissues of the mouth and not permanently attached to the natural teeth.

Qualifications

A minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

8. ENDODONTICS

Definition

"Endodontics" is that area of dentistry dealing with etiology, histopathology, diagnosis, preventions, and treatment of the diseases of the dental pulp and their sequelae.

Qualifications

A minimum of two full-time academic years of at least eight calendar months each of graduate or post-graduate education, internship or residency.

Section 5. ISSUANCE OF TEMPORARY AND/OR SPECIAL PERMITS.

5.01. General.--The Board may issue a temporary permit to practice dentistry or dental hygiene. Temporary and/or special permits will only be granted pursuant to a board meeting with a quorum of members present. Furthermore, a fee of ~~\$5.00~~ \$100.00 shall be paid to the Board upon the issuance of any temporary and/or special permit.

Nothing in this regulation shall be deemed to prohibit 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 such school or at a scientific meeting of such 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.

5.02. 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. Such permits shall terminate when the holder thereof ceases to be employed by the person certifying him. A fee of \$100.00 shall be paid to the board upon issuance of such permit by the person certifying the applicant.

5.03. 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. Applicants for such permits 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. Such permits shall authorize the holder thereof 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 dentists. The holder of such a permit shall function under the supervision of the

dental staff of the hospital and shall limit his practice to patients selected by the hospital. The holder of such a permit shall not be entitled to receive any fee or other compensation other than such salary as may be paid by such hospital. Permits may be revoked by the board for cause and shall expire at the end of one year or on the date the dental internship or residency is discontinued, whichever first occurs. A fee of \$50.00 shall be paid to the board upon the issuance of such a permit by the hospital nominating him.

5.04. 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 such persons are not licensed to practice dentistry or dental hygiene in this State. Such permits 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. Such permits shall be valid for one year and may be reissued by the board in its discretion. The holder of such a permit shall be entitled to perform all operations which a person licensed to practice dentistry or dental hygiene in this State would be entitled to perform, but only within the facilities of the dental school and as an adjunct to his teaching functions in such school. A fee of \$100.00 shall be paid to the board on the issuance of a teaching permit or upon each renewal by the school nominating the applicant.

Section 6. SUSPENSION OR REVOCATION OF A LICENSE.

6.01. 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.

6.02. Notice.--Notice shall be given to the licensee concerning a revocation or suspension with the grounds therein for the reason of such revocation or suspension for a hearing ~~to be held no sooner than ten days after receipt of notice nor longer than thirty days after receipt of said notice unless a continuance is requested by said licensee which may be granted by the President or Secretary of the Board at their discretion.~~ at least thirty days prior to the hearing, and he may appear with witnesses and be heard in person, by counsel, or by both. Such notice shall contain the time and place of the hearing concerning the suspension or revocation. Such notice shall also contain a statement informing the licensee that the Board would receive any evidence whatsoever said licensee may wish to offer, that said licensee would be given the opportunity to cross-examine any witnesses appearing before the Board, and that the Board would receive any statement said licensee may desire to make to them.

6.03. 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 license.

6.04. Service of Notice.--A notice, no particular mode of serving which is prescribed, may be served by delivering a copy thereof in writing to the party in person; or if he (or she) be not found, by delivering such copy at his (or her) usual place of abode, and giving information of its purport, to his wife (or her husband), or to any other person found there who is a member of his (or her) family and above the age of sixteen years; or if neither his wife (or her husband) nor any such other person be found there, and he (or she) be not found, be leaving such copy posted at the front door of such place of abode. Any sheriff

or constable, thereto required, shall serve a notice within his county and make return of the manner and time of service; for a failure to do so he shall forfeit twenty dollars. Such return, or a similar return by any other person who verified it by affidavit, shall be evidence of the manner and time of service.

6.05. Service by Publication.--Any such notice to a person not residing in this State may be served by the publication thereof once a week for three successive weeks in a newspaper published in this State.

6.06. Hearing.--The Board shall have the power to compel the attendance of witnesses and the power to 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 thereof retained in the Board's file. The Board shall make a written report of its findings, which shall constitute part of the record and a copy thereof shall be filed with the Secretary of State.

6.07. Review by Circuit Court and Supreme Court of Board's Decision on Suspension and Revocation of License.--A person having his license suspended or revoked may, within thirty days after the decision of the Board, present his petition in writing to the circuit court of the county in which said person resides, or to the judge of such court in vacation, praying for the review and reversal of such decision. Before presenting his petition to the court or judge, the petitioner shall mail copies thereof to the president and secretary, respectively, of the Board. Upon receipt of such copy, the secretary shall forthwith transmit to the clerk of such court the record of the proceeding before the Board. The court or judge shall fix a time for the review of said proceedings at his earliest convenience. Notice in writing of the time and place of such

hearing shall be given to the president and secretary of the Board at least ten days before the date set therefor. 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 such order, no order shall be made or entered by the court to stay or supersede any suspension, revocation or cancellation of any such certificate, license, registration or authority. The judgement of the Circuit Court may be reviewed upon appeal in the Supreme Court of Appeals.

Section 7. EXPANDED DUTIES OF DENTAL HYGIENISTS AND DENTAL ASSISTANTS.

7.01. General.--Licensed dentists may assign to their employed dental hygienists or assistants intraoral tasks as set out herein for dental hygienists and/or assistants, subject to the following conditions:

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

(2) None of the following procedures may be assigned to a dental hygienist or assistant or to any other person not licensed to practice dentistry:

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

(b) 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.

(3) The licensed dentist assigning expanded duties to a dental hygienist and/or assistant shall be solely responsible to check the dental hygienist and/or assistant to determine that he or she is competent to handle those duties assigned. Further, no licensed dentist shall assign additional duties to a dental hygienist and/or assistant until he is assured that said dental hygienist and/or assistant is fully competent and completely qualified to perform said assigned expanded duty and/or duties.

7.02. Duties and/or intraoral tasks that may be assigned by a licensed dentist to a dental hygienist and/or assistant in the licensed dentist's employment.

(1) Placing, exposing, developing, and mounting dental radiographs.

(2) Placing and removing rubber dams.

(3) Chart existing restorations and missing teeth.

(4) Hold and remove materials, trays, strips, sutures, and bands previously placed in the patient's mouth by the dentist.

(5) Remove excess cement without the use of rotating or power-driven instruments.

(6) Taking impressions for study cast and pouring models.

7.03. Duties and/or intraoral tasks that may be assigned by a licensed dentist to a dental hygienist in the licensed dentist's employment.

(1) Supra and Subgingival scaling of teeth.

(2) Polishing of coronal surfaces of teeth.

(3) Dental Health Education.

(4) Nutritional Counseling.

(5) Application of caries preventive agents and other topical medicaments to the surfaces of teeth and surrounding tissues (including topical anesthesia).

(6) Placing, exposing, developing, and mounting dental radiographs.

(7) Finishing and polishing amalgams, resin, composite, and silicate restorations.

(8) Examining and recording periodontal findings.

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

(10) Performing clinical examinations and diagnostic test of teeth and surrounding and recording findings for interpretation by a dentist (includes such procedures as restorative chartings, caries activity test, cytology smears, endodontic cultures, vitality test, etc.)

(11) Removing soft tissue dressings.

(12) Removing ligature wires.

(13) Preparing medical and dental histories for interpretation by a dentist.

(14) Placing and removing rubber dams.

~~(15) Taking impressions for study cast and pouring models.~~

(15) Taking intra and extra-oral photographs.

(16) Removing oral sutures.

Section 8. ADMINISTRATION OF GENERAL ANESTHESIA AND
PARENTERAL CONSCIOUS SEDATION BY DENTISTS.

8.01. Legislative findings and declaration of purpose.--The
Legislature hereby finds and declares that dentists are increasingly
administering general anesthesia and parenteral conscious sedation in their
offices on an out-patient basis; that the administration of general
anesthesia and parenteral conscious sedation carries with it an inherent
risk and danger to the patient; that, however, the administration of
general anesthesia and parenteral conscious sedation on an out-patient
basis by dentists is necessary and for the good of the public; but that
because of the inherent dangers in the administration of general anesthesia
and parenteral conscious sedation, it is necessary to insure that the
persons administering and supervising such general anesthesia or
parenteral conscious sedation are competent and trained in the techniques;
that it is in the best interests of the public and the dentists of West
Virginia to prohibit dentists from administering or supervising the
administration of general anesthesia or parenteral conscious sedation unless
those dentists meet certain minimal training and competency standards in
the administration and supervision of general anesthesia or parenteral
conscious sedation; and that requiring a dentist to obtain a special permit
before he or she can administer or supervise general anesthesia or
parenteral conscious sedation is the best method to preserve the use of
general anesthesia and parenteral conscious sedation by dentists on
out-patients and, at the same time, insure that such administration and
supervision is performed by competent dentists trained in the use of such
techniques.

8.02. Definitions.

(a) The scope of practice of a licensed "dentist" is defined in section two, article four of this chapter.

(b) "General anesthesia" means a controlled state of unconsciousness produced by any drug or pharmacologic agent accompanied by a partial or complete loss of protective reflexes, including the inability to independently maintain an airway and respond purposefully to physical stimulation of verbal commands.

(c) "Nitrous oxide -- oxygen analgesia" refers to the administration by inhalation of a combination of nitrous oxide and oxygen gas which produces an altered level of consciousness without the loss of the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands.

(d) "Parenteral conscious sedation" means a depressed state of consciousness produced by the injection of pharmacologic substances that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands.

(e) "State of consciousness" refers to a patient being fully capable of rational response to verbal commands, with all protective reflexes intact, and including the ability to clear and maintain an airway in a patent state.

8.03. Permit of authorization required for both general or parenteral conscious sedation.

No dentist may administer or supervise the administration of general anesthesia and parenteral conscious sedation for dental patients unless such dentist possesses a permit of authorization from the West Virginia board of dental examiners: Provided, That no such permit shall

be required for the administration of general anesthesia or parenteral conscious sedation by a dentist in a hospital licensed by the state of West Virginia.

8.04. Eligibility requirements for general anesthesia permits.

To receive a permit for the use of general anesthesia and parenteral conscious sedation, a dentist shall:

(a) Be a dentist licensed by the West Virginia board of dental examiners, hereinafter sometimes referred to as the "board," or as "board of dental examiners" and registered to practice dentistry in the state of West Virginia.

(b) Apply to the West Virginia board of dental examiners on an application form prescribed by the board;

(c) Include with the application an application fee in the amount of three hundred dollars;

(d) Have a properly equipped facility for the administration of general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto as outlined in the office anesthesia evaluation manual as adopted and amended by the board of dental examiners;

(e) In the case of any dentist who treats children who applies for any permit under this section, such dentist must document his or her competency to administer general anesthesia and parenteral conscious sedation to children by demonstrating to the satisfaction of the board his or her familiarity with the "Guidelines for the elective use of conscious sedation, deep sedation and general anesthesia in pediatric patients" of American Academy of Pediatrics and the American Academy of Pediatric Dentistry; and

(f) Produce evidence showing at least one of the following:

(1) He or she has completed a minimum of one year of advanced training in an approved anesthesia residency;

(2) He or she is a diplomate of the American board of oral and maxillofacial surgery;

(3) He or she is eligible for an examination by the American board of oral and maxillofacial surgery (ABOMS);

(4) He or she is a fellow of the American association of oral and maxillofacial surgery (AAOMS);

(5) He or she has successfully completed an American dental association accredited oral and maxillofacial surgery program as evidenced by a letter from the program director stating that said applicant is qualified to perform such anesthesia techniques;

(6) He or she is a fellow of the American dental society of anesthesiology; or

(7) He or she employs or works in conjunction with a licensed and trained doctor of medicine or osteopathic physician who is a member of the anesthesiology staff of a hospital licensed by the state of West Virginia, provided such anesthesiologist personally supervises or administers said general anesthesia and remains on the premises of the dental facility until any patient given a general anesthetic or parenteral conscious sedation regains consciousness.

Section 8.05. Eligibility requirements for permit to administer parenteral conscious sedation only.

To receive a permit for use of parenteral conscious sedation only, the dentist shall:

(a) Be a dentist licensed by the West Virginia board of dental examiners and registered to practice dentistry in the state of West Virginia;

(b) Apply to the West Virginia board of dental examiners on an application form prescribed by the board for the use of parenteral conscious sedation only;

(c) Include with the application a fee in the amount of three hundred dollars;

(d) Maintain a properly equipped facility for the administration of parenteral conscious sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto as outlined in the office anesthesia evaluation manual specified in section four of this article;

(e) In the case of any dentist who treats children who applies for any permit under this section, such dentist must document his or her competency to administer parenteral conscious sedation to children by demonstrating to the satisfaction of the board his or her familiarity with the "Guidelines for the elective use of conscious sedation, deep sedation and general anesthesia in pediatric patients" of the American Academy of Pediatrics and the American Academy of Pediatric Dentistry; and

(f) Produce evidence showing at least one of the following:

(1) He or she meets at least one of the criteria described in subdivisions (1) through (7) of subsection (e) of section four of this article;

(2) He or she has satisfactorily completed at least one year of post-doctoral dental training in a dental residency or specialty program approved by the American dental association or the American medical

association which must include didactic studies and practical experience in the administration of general anesthesia and parenteral conscious sedation. A letter from the chief of the approved residency program verifying that said dentist has satisfactorily completed said training and is competent to administer parenteral conscious sedation may be deemed acceptable evidence thereof; or

(3) He or she has satisfactorily completed a continuing education course or program regarding the administration of parenteral conscious sedation which meets or exceeds the American dental association council on dental education's current "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry."

8.06. Nitrous oxide -- Oxygen analgesia exclusion.

The administration of nitrous oxide -- oxygen inhalation analgesia shall not require a special permit for use by a licensed dentist. However, a licensed dentist rendering such treatment to their patients shall have a properly equipped facility for the administration of nitrous oxide-oxygen inhalation analgesia. The dentist and their office personnel shall have instruction in the administration of cardiac life support. The nitrous oxide--oxygen inhalation equipment shall have fail-safe features and a minimum twenty-five percent oxygen flow.

8.07. Authority of the West Virginia board of dental examiners to review, inspect and reinspect dentists for issuance of permits.

By making application to the board of dental examiners for a general anesthesia or parenteral conscious sedation permit, said dentist consents and authorizes the board of dental examiners to review his or her credentials, inspect or reinspect his or her facilities, and investigate any alleged anesthesia mortalities, misadventures, or other adverse occurrences

which the board feels is justified in the best interest of the public and the board. The board of dental examiners shall have the authority and right to conduct an in-office review or on-site inspection of any dentist applying for or holding a permit to administer general anesthesia or parenteral conscious sedation at any time the board deems necessary.

8.08. Appointment of subcommittee by the West Virginia board of dental examiners; credentials review; and on-site inspections.

The West Virginia board of dental examiners shall appoint a five member subcommittee to carry out the review and on-site inspection of any dentist applying for or renewing a permit under this article. The subcommittee shall also make a recommendation for issuing or revoking a permit under this article. This subcommittee shall be known as the "West Virginia Board of Dental Examiners Subcommittee on General Anesthesia and Parenteral Conscious Sedation," hereinafter referred to as the "subcommittee." The subcommittee shall consist of one member of the board of dental examiners who shall act as chairman of the subcommittee, one diplomate of the American board of oral and maxillofacial surgery; one fellow of the American dental society of anesthesiology or fellow of the American association of oral and maxillofacial surgery; one general dental practitioner engaged in providing out-patient general anesthesia or parenteral conscious sedation services; and one dental practitioner specializing in pediatric dentistry. Four members of the subcommittee must be practitioners possessing a current general anesthesia or parenteral conscious sedation permit. During the first year of the existence of the subcommittee, the four members of the subcommittee shall possess qualifications as described herein for a temporary provisional permit. No subcommittee member shall serve longer than a four-year term. Initial

members of the subcommittee may be appointed to longer or shorter terms at the discretion of the board of dental examiners so that the terms may be staggered and the subcommittee may maintain experienced and qualified members at all times.

8.09. On-site inspection by West Virginia board of dental examiners.

Prior to issuing a permit, the board of dental examiners has the right to conduct an on-site inspection of facility, equipment, and auxiliary personnel of the applicant to determine if, in fact, all the requirements for such permit have been met. This inspection or evaluation, if required, shall be carried out by at least two members of the subcommittee directly appointed by the board of dental examiners as prescribed in section eight of this article. This evaluation is to be carried out in a manner following the principles, but not necessarily the procedures, set forth by the current edition of the office anesthesia evaluation manual of the West Virginia board of dental examiners. On-site inspections are required and shall be performed for all initial applicants. Thereafter, the board may reinspect annually, at its discretion, but must perform an on-site inspection for all permit holders at least once every five years. The board reserves the right to conduct an on-site inspection whenever it deems necessary. However, all on-site inspections shall be held during regular business hours and with at least forty-eight hours' notification.

8.10. Immunity from liability.

(a) Notwithstanding any other provision of law, no person providing information to the board of dental examiners or to the subcommittee may be held, by reason of having provided such

information, to be civilly liable under any law unless such information was false and the person providing such information knew or had reason to believe that such information was false.

(b) No member or employee of the board of dental examiners or the subcommittee may be held by reason of the performance by him or her of any duty, function or activity authorized or required of the board or the subcommittee to be civilly liable. The foregoing provisions of this subsection shall not apply with respect to any action taken by any individual if such individual, in taking such action, was motivated by malice toward any person affected by such action.

8.11. Effect on practicing dentists who are currently administering or supervising general anesthesia or parenteral conscious sedation; issuance of temporary provisional permits.

Within ninety days following the effective date of this article, all dentists currently administering or supervising general anesthesia or parenteral conscious sedation and desiring to continue such practice shall make application to the board of dental examiners for the issuance of an immediate temporary provisional permit. This temporary provisional permit shall be valid for up to a maximum of one year. This temporary provisional permit will only be valid until the board is able to conduct a thorough review of the applicant's credentials and an on-site evaluation of the dentist's facilities, equipment, techniques, and personnel as described herein, but in no event will the permit be valid for more than one year. Failure to apply within ninety days shall cause the board to consider the currently practicing dentist as a new applicant.

8.12. Revocation of temporary provisional permits.

Failure of the dentist to meet the minimal credentials or failure to pass the on-site inspection or evaluation prescribed in this article may result in the immediate revocation of the temporary provisional permit. A dentist who has had a temporary provisional permit revoked shall be required to wait thirty days from the date of revocation prior to reapplying for another permit as described in section fifteen of this article.

8.13. New applicants.

On the effective date of this article and from that date forward, any dentist not previously administering or supervising general anesthesia or parenteral conscious sedation techniques but wishing to do so, shall make application to the board as prescribed herein. The board and the subcommittee shall then review the applicant's credentials and further will require an on-site evaluation of the dentist's facilities, equipment, techniques, and personnel prior to issuing a regular annual permit. After the initial on-site inspection, the board, at its discretion, will conduct further on-site evaluations as described in section nine of this article.

8.14. Issuance of regular annual permits.

Upon the recommendations of the subcommittee to the board of dental examiners, the board shall issue regular permits to applicable dentists. A general anesthesia or parenteral conscious sedation permit must be renewed annually as described in section sixteen of this article.

8.15. Waiting period for reapplication or reinspection of facilities.

A dentist whose application has been denied for failure to satisfy the requirements in the application procedure or the on-site evaluation must wait thirty days from the date of such denial prior to reapplying and

must submit to another on-site evaluation prior to receiving a regular annual permit. It is the responsibility of the board and the subcommittee to promptly reinspect the applicant dentist's facilities, techniques, equipment, and personnel within ninety days after said applicant has made reapplication.

8.16. Annual renewal of regular permits; fees.

The board of dental examiners shall require an application for annual renewal of a previously issued general anesthesia or parenteral conscious sedation permit and will require a renewal fee of one hundred dollars. The board shall renew permits for the use of general anesthesia or parenteral conscious sedation after receiving the renewal fee, unless the permit holder has been informed in writing within sixty days prior to such renewal date that a reevaluation of his or her credentials is required. In determining whether such reevaluation is necessary, the board may consider such factors as it deems appropriate, including, but not limited to, patient, dentist or physician complaints and reports of adverse occurrences or misadventures. Reevaluation may also include a yearly on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of such permit. However, an on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of such a permit will be required for all permit holders within a five-year period from the permit holder's last on-site inspection.

8.17. Violations of article; penalties for practicing general anesthesia or parenteral conscious sedation without a permit.

Violations of any of the provisions of this article, whether intentional or unintentional, may result in the revocation or suspension of

the dentist's permit to administer general anesthesia or parenteral conscious sedation; multiple or repeated violations or gross infractions, such as practicing general anesthesia or parenteral conscious sedation without a valid permit may result in suspension of the dentist's license to practice dentistry for up to one year as well as other disciplinary measures as deemed appropriate by the board of dental examiners.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICHARD O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
...help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE June 27, 1989
ADMINISTRATIVE LAW DIVISION

June 27, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: West Virginia Board of Dental Examiners

RULE: Amendments, Series 3; Rules and Regulations for the West Virginia Board of Dental Examiners

DATE FILED AS AN EMERGENCY RULE: May 16, 1989

DECISION NO. 5-89

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICHARD O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION (ERD 5-89)

AGENCY: West Virginia Board of Dental Examiners
RULE: Amendments Series 3, Rules and Regulations for the
West Virginia Board of Dental Examiners
FILED AS AN EMERGENCY RULE: May 16, 1989

- par. 1 The West Virginia Board of Dental Examiners (Board) has filed the above emergency amendments to Series 3.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Fire Commission (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State on May 16, 1989 and with the LRMRC on June 27, 1989.

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §30-4-4a reads in part:

§30-4-41. Powers and duties of board.

The board shall have the authority to promulgate such rules and regulations as are necessary to carry out the provisions of this article, in accordance with chapter twenty-nine-a of this code.

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

Dentists are increasingly administering general anesthesia and parenteral conscious sedation in their offices on an out-patient basis; that the administration of general anesthesia and parenteral conscious sedation carries with it an inherent risk and danger to the patient; that, however, the administration of general anesthesia and parenteral conscious sedation on an out-patient basis by dentists is necessary and for the good of the public; but that because of the inherent dangers in the administration of general anesthesia and parenteral conscious sedation, it is necessary to insure that the persons administering and supervising such general anesthesia or parenteral conscious sedation are competent and trained in the techniques; that it is in the best interests of the public and the dentists of West Virginia to prohibit dentists from administering or supervising the administration of general anesthesia or parenteral conscious sedation unless those dentists meet certain minimal training and competency standards in the administration and supervision of general anesthesia or parenteral conscious sedation; and that requiring a dentist to obtain a special

permit before he or she can administer or supervise general anesthesia or parenteral conscious sedation is the best method to preserve the use of general anesthesia and parenteral conscious sedation by dentists on out-patients and, at the same time, ensure that such administration and supervision is performed by competent dentists trained in the use of such techniques. Therefore, today's rules are filed on an emergency basis.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.

par. 14 This decision shall be cited as Emergency Rule Decision 5-89 or ERD 5-89 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Board, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____ THIS DATE June 27, 1989
ADMINISTRATIVE LAW DIVISION