

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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OCT 5 10 17 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #7

NOTICE OF AN EMERGENCY RULE

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

CITE AUTHORITY: WV Code 30-1, 4 & 4-A, et seq.

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO     

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

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:     

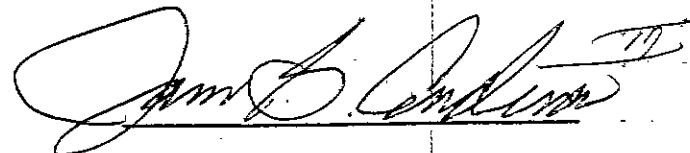
TITLE OF RULE BEING FILED AS AN EMERGENCY:     

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:

9.40

Use Additional Sheets If Necessary.



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations of the West Virginia Board of Dental Examiners

Type of Rule: X Legislative          Interpretive          Procedural

Agency West Virginia Board of Dental Examiners Address P.O. Drawer 1459, Beckley, West Virginia 25802-1459

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates: Estimates unknown due to the cost of computer and additional personnel. However, increase in fees was built in to cover same and it should be noted this is a Special Account and not a draw on the general revenue accounts of the state of West Virginia.

3. Objectives of these rules:

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA BOARD OF DENTAL EXAMINERS

EMERGENCY RULE TITLE:

1. Date of filing: October 5, 1993

2. Statutory authority for promulgating the emergency rule: WV Code 30-1, 4 & 4-A, et seq.

3. Date of filing of proposed legislative rule: 10-5-93

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
Both. New language for Section 11, Continuing Education Requirements.  
Amended language concerning others to bring regulations up to date  
per Legislative Rule-Making Committee Counsel's request.

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.

Legislature passed Continuing Education requirements in its 1992 Session.  
Due to the nature and work involved, the Board did not have regulations completed  
until Fall of 1992 making it impossible to adopt with the Legislature in the  
1993 Session. Emergency Rule not filed at that time due to the 15 month  
limitation. Rule filed with Legislative Rule-Making Committee and Secretary  
of State's office with hearing held hereon and approved for 1994 Session. Window  
for requirements begin 2-1-94 through 6-31-96, for first reporting period. In  
order to print and inform licencees it is necessary to file as Emergency Rule.

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.

WV Code Chapter 30-4-17-C (b)

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

To meet Legislative mandate of requiring Continuing Education for  
licensed dentists and dental hygienists in order to protect the public  
and citizens of this State - for example, one requirement is 3 hours of  
Continuing Education every 2 years in infection control.

FILED

OCT 5 10 17 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE  
REGULATIONS  
WEST VIRGINIA BOARD OF  
DENTAL EXAMINERS

CHAPTER 30-4

SERIES I

(1993)

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

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Section 1. GENERAL

1.01. Authority.--This rule is issued under the authority of West Virginia Code § 30-4-4a.

1.02. Scope.--This rule regulates the West Virginia Board of Dental Examiner's proceedings and carries out the purposes and enforces the provisions of West Virginia Code § 30-1-1 et seq and 30-4-1 et seq which are applicable to the West Virginia Board of Dental Examiners.

1.03: Effective Date.

1.04. Filing Date.

1.05. Certification--This rule is certified authentic by the President and Secretary of the West Virginia Board of Dental Examiners by Certification No. II.

1.06. Repeal and Replace.

This rule repeals and replaces West Virginia Board of Dental Examiners Rule 5CSR1 , West Virginia Administrative Regulations, West Virginia Board of Dental Examiners which became effective on April 8, 1991.

Section 2. DEFINITIONS:

2.01. "Board" means the West Virginia Board of Dental Examiners.

2.02. "Specialty or Specialization" is a restriction of practice to a certain field or phase of dentistry.

2.03. "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.

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

2.05. "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.

2.06. "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.

2.07. "ORTHODONTICS" 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.

2.08. "PEDODONTICS" is the prevention, control and treatment of the oral and dental diseases of children.

2.09. "PERIODONTICS" is the prevention, control and treatment of diseases of the supporting tissues of the teeth.

2.10. "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.

### Section 3. OFFICIAL SEAL

3.01. General.--The Board's 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 4. CORPORATE PRACTICE OF DENTISTRY

4.01. Qualifications--Only duly licensed dentists eligible to practice in the State of West Virginia 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 of \$200.00 shall accompany each application, no part of which is returnable. If the Board finds that the signers are 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 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 West Virginia Code § 31-1-1, concerning corporations generally.

Section 5. SPECIALITIES:

5.01. 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.

(5.02) Specialist General Limitations.--A person certified by the West Virginia 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.

(5.03). Specialty Fields Licensed by the West Virginia Board of Dental Examiners. The Board will 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 three 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 of post-graduate education, internship or residency.

(e). ORTHODONTICS

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). PEDODONTICS

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.

Section 6. ISSUANCE OF TEMPORARY AND/OR SPECIAL PERMITS.

6.01. 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, the following fees shall be paid to the Board upon the issuance of the following temporary and/or special permits:

Temporary permit--\$100.00

Dental Intern/Residency

permit--\$50.00

Teaching permit--\$100.00

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.

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

6.03. 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 the 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. The 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 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 shall not be 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. A fee of \$50.00 shall be paid to the board upon the issuance of a permit by the hospital nominating him or her.

6.04. 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 those persons are not licensed to practice dentistry or dental hygiene in this State. The 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. The permits are valid for one year and may be reissued by the board in its discretion. The holder of 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 or her teaching functions in the 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 7. SUSPENSION OR REVOCATION OF A LICENSE.

7.01. 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 of the licensee.

7.02. Notice.--The Board shall notify the licensee concerning a revocation or suspension. The notice shall contain grounds for the revocation or suspension (at least thirty days prior to the hearing), 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.

7.03. 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 a license.

7.04. Service of Notice.--A notice may be served by delivering a copy thereof 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.

7.05. Service by Publication.--Any 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.

7.06. Hearing.--The Board has 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 of the hearing 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 of the findings shall be filed with the Secretary of State.

7.07. 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 thereof to the president and secretary, respectively, of the Board. Upon receipt of the copy, the secretary shall immediately transmit to the clerk of such the 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.

Section 8. EXPANDED DUTIES OF DENTAL HYGIENISTS AND DENTAL ASSISTANTS.

8.01. General.--Licensed dentists may assign to their employed dental hygienists or assistants intraoral tasks as set out in this section for dental hygienists and/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). None of the following procedures may 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 and/or assistant is solely responsible for checking the dental hygienist and/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 and/or assistant until he or she is assured that the dental hygienist and/or assistant is fully competent and completely qualified to perform the assigned expanded duty and/or duties.

8.02. The following duties and/or intraoral tasks may be assigned by a licensed dentist to a dental hygienist and/or assistant in the licensed dentist's employment:

(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, sutures, and bands previously placed in the patient's mouth by the dentist;
- (e). Removing excess cement without the use of rotating or power-driven instruments; and
- (f). Taking impressions for study cast and pouring models.

8.03. The following duties and/or intraoral tasks 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 surfaces of teeth;
- (c). Dental Health Education;
- (d). Nutritional Counseling;
- (e). Application of caries preventive agents and other topical medicaments to the surfaces of teeth and surrounding tissues (including topical anesthesia);
- (f). Placing, exposing, developing, and mounting dental radiographs.
- (g). Finishing and polishing amalgams, resin, composite, and silicate restorations;
- (h). Examining and recording periodontal findings;
- (i). Scaling excessive cement from the surfaces of teeth and restorations;

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

(k). Removing soft tissue dressings;

(l). Removing ligature wires;

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

(n). Placing and removing rubber dams;

(o). Taking intra and extra-oral photographs; and

(p). Removing oral sutures.

Section 9. ADMINISTRATION OF GENERAL ANESTHESIA AND PARENTERAL CONSCIOUS SEDATION BY DENTISTS.

9.01. 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 the 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.

9.02. Definitions.

(a). The scope of practice of a licensed "dentist" is defined in West Virginia Code 30-4-2.

(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.

9.03. 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 the dentist possesses a permit of authorization from the West Virginia board of dental examiners: Provided, That no 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.

9.04. 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 Board.

(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, 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 the anesthesiologist personally supervises or administers the general anesthesia and remains on the premises of the dental facility until any patient given a general anesthetic or parenteral conscious sedation regains consciousness.

9.05. 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 described in West Virginia Code 30-4A-4-(d).

(e). In the case of any dentist who treats children who applies for any permit under this section, 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 West Virginia Code 30-4A-4-(f).

(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 included 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 the dentist has satisfactorily completed the training and is competent to administer parenteral conscious sedation may be considered 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."

9.06. 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 his or her patients shall have a properly equipped facility for the administration of nitrous oxide-oxygen inhalation analgesia. The dentist and his or her 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.

9.07. 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, the 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 has 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 considers necessary.

9.08. 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 WV Code 30-4A-8. The subcommittee shall also make a recommendation for issuing or revoking a permit under WV Code 30-4A-8. 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 in this section 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.

9.09. 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 the facility, equipment, and auxiliary personnel of the applicant to determine if, in fact, all the requirements for the 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 West Virginia Code 30-4A-8. 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 considers necessary. However, all on-site inspections shall be held during regular business hours and with at least forty-eight hours' notification.

9.10. 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 the information, to be civilly liable under any law unless the information was false and the person providing such information knew or had reason to believe that the 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 provisions of this subsection shall not apply with respect to any action taken by any individual if the individual, in taking such action, was motivated by malice toward any person affected by the action.

9.11. New applicants.

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 in this rule. 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 West Virginia Code 30-4A-9.

9.12. 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 West Virginia Code 30-4A-16.

9.13. 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 the 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 the applicant has made reapplication.

9.14. Annual renewal of regular permits; fees.

The board of dental examiners requires an application for annual renewal of a previously issued general anesthesia or parenteral conscious sedation permit and requires 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 the renewal date that a reevaluation of his or her credentials is required. In determining whether the reevaluation is necessary, the board may consider

such factors as it considers 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 this permit. However, an on-site inspection of the facility, equipment, personnel, licentiate and procedures utilized by the holder of a permit will be required for all permit holders within a five-year period from the permit holder's last on-site inspection.

9.15. Violations; penalties for practicing general anesthesia or parenteral conscious sedation without a permit.

Violations of any of the provisions of West Virginia Code, 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.

#### SECTION 10. DESIGNATION OF TESTING BODIES.

10.01 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.

#### SECTION 11. CONTINUING EDUCATION REQUIREMENTS.

11.01. HOURS REQUIRED BIANNUALLY.--Each licensed dentist shall complete biannually not less than twenty (20) hours of continuing education. Each licensed dental hygienist shall complete bilannually not less than twelve (12) hours of continuing education.

11.02. 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 Americal 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). ADA recognized specialty societies;
- (10). The Academy of General Dentistry;
- (11). The Veteran's Administration;
- (12). The United States Uniformed Services;
- (13). The U. S. Department of Health and Human Services;
- (14). The West Virginia Department of Health;
- (15). The West Virginia Dental Association;

(16). The West Virginia Dental Hygienists' Association; and

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

(aa). Organize for the purpose of scientific study;

(bb). Operate under the direction of elected officers;

(cc). Maintain written by-laws;

(dd). Conduct regular meetings; and

(ee). Maintain written attendance records of all meetings.

(c). Providers not identified in the approved list may petition the Board for approval of continuing education that they offer. The Board may approve other sponsors of continuing education credits. This 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.

11.03. 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 must be maintained for a period of six (6) years.

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

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

(e). Each dentist and dental hygienist must 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.

11:04. 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 three (3) hours of continuing education shall be related to infection control during each continuing education reporting period.

11:05. Categories of Credit:

The licensee is free to 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 per cent (100%) of the requirement may be obtained in this category; Educational and scientific courses given by permanent or Board-approved biennial sponsors.

(b). Supervised self-instruction - Fifty (50) percent of the requirement may be obtained in this category. Supervised self instruction must include a testing mechanism supplied by a permanent or Board approved biennial sponsor. The licensee must complete a test and demon-

strate a level of comprehension before the Board will award credit. Tests must 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). Nonsupervised self-instruction - A maximum of ten percent 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 10% may also be obtained by 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 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 can also receive a maximum ten percent 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 equivalent to twenty (20) hours of continuing education:

(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). South East Regional Testing Agency's  
Written Examinations.

(8). Western Regional Examining Board's Written  
Examination.

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

11.06. 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 and/or disabled dentists or dental hygienists are not required to fulfill continuing education requirements.

11.07. 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 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 WV Code  
30-4-7.

BOARD OF DENTAL EXAMINERS' EMERGENCY RULE DECISION

There is not sufficient evidence of an emergency to justify putting the rule into effect on an emergency basis. Although the beginning date of the two year period is February 1, 1994, dentists and dental hygienist will probably have more than a year and a half, until February 1, 1996, to comply with the final rule that is approved by the legislature. Also, <sup>although</sup> the Board will not have an emergency rule in effect, it still has the statutory authority to establish and publish criteria for awarding continuing education credit.

The fact that the Board of Dental Examiners' missed deadlines for filing the rule on a timely basis so that it could be considered during the 1992 regular legislative session should not be allowed to impinge on the due process rights of those who are affected by the rule. An emergency rule could have a chilling effect on the input that affected parties may want to exert when the rule is considered in a few months during the 1993 regular legislative session. Administrative efficiencies, like saving on the costs of postage, are tremendously important to W. Va. tax payers but administrative concerns are not a higher priority than constitutional rights.



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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
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Charleston, WV 25305-0770

November 9, 1993

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Dental Examiners

RULE: Amendments, Series 1, Rules and Regulations for the West Virginia Board of Dental Examiners

DATE FILED AS AN EMERGENCY RULE: October 5, 1993

DECISION NO. 22-93

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

FILED

Nov 9 11 10 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER  
Secretary of State



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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
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Charleston, WV 25305-0770

DECISION

EMERGENCY RULE DECISION  
(ERD 22-93)

AGENCY: West Virginia Board of Dental Examiners  
RULE: Amendments, Series 1, Rules and Regulations for the West Virginia Board of Dental Examiners

FILED AS AN EMERGENCY RULE: October 5, 1993

- par. 1 The West Virginia Board of Dental Examiners (Board) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a 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-a(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 Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five 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 October 5, 1993 and with the LRMRC October 5, 1993.

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:

*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 §29A-1-1 et seq. 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:

Legislature passed continuing education requirements in its 1992 session. Due to the nature and work involved, the Board did not have regulations completed until fall of 1992 making it impossible to adopt with the Legislature in the 1993 session. Emergency rule not filed at that time due to the 15 month limitation. Rule filed with Legislative Rule Making Committee and Secretary of State's office with hearing held hereon and approved for 1994 session. Window for requirements begin 2-1-94 through 6-31-96 for first reporting period. In order to print and inform licensees it is necessary to file as emergency rule. To meet Legislative mandate of requiring continuing education for licensed dentists and dental hygienists in order to protect the public and citizens of this State - for example, one requirement is 3 hours of continuing education every 2 years in infection control

par. 13 It is the determination of the Secretary of State that this proposal **does not** qualify under the definition of an emergency as defined in §29A-3-15(g).

- par. 14 There is not sufficient evidence of an emergency to justify putting the rule into effect of an emergency basis. Although the beginning date of the 2 year period is February 1, 1994, dentists and dental hygienist will probably have more than a year and a half, until February 1, 1992, to comply with the final rule that is approved by the Legislature. Also, although the Board will not have an emergency rule in effect, it still has the statutory authority to establish and publish criteria for awarding continuing education credit.
- par. 15 The fact that the Board of Dental Examiners' missed deadlines for filing the rule on a timely basis so that it could be considered during the 1992 regular Legislative session should not be allowed to impinge on the due process rights of those who are affected by the rule. An emergency rule could have a chilling effect on the input that affected parties may want to exert when the rule is considered in a few months during the 1993 regular legislative session. Administrative efficiencies, like saving on the costs of postage, are tremendously important to West Virginia tax payers but administrative concerns are not a higher priority than constitutional rights.
- par. 16 This decision shall be cited as Emergency Rule Decision 22-93 or ERD 22-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Board of Dental Examiners, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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FILED