

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

FILED

JUL 28 8 36 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY _____

AMENDMENT TO AN EXISTING RULE: YES ___ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____ Series 2

TITLE OF RULE BEING PROPOSED: Legislative Rule West Virginia Board of
Dental Examiners

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature
James G. Anderson, III
Executive Secretary

\$6.00

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Board of Dental Examiners

LEGISLATIVE RULE TITLE: West Virginia Administrative Regulations West Virginia Board of Dental Examiners

1. **Authorizing statute(s) citation** WV Code 31B-13 et. seq.

2. a. **Date filed in State Register with Notice of Hearing**

May 12, 1997

b. **What other notice, including advertising, did you give of the hearing?**

Charleston Newspaper (copy attached)

c. **Date of Hearing(s)** June 26, 1997

d. **Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.**

Attached _____ No comments received x

e. **Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)**

July 28, 1997

f. **Name and phone number(s) of agency person(s) to contact for additional information:**

James G. Anderson, III

PO Drawer 1459

Beckley, WV 25802-1459

304-252-8266

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing: n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a



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WV BOARD OF DENTAL EXAMINERS
JAMES G ANDERSON III
PO DRAWER 1459
BECKLEY WV 25802

*I certify that service was rendered.
Jim M. Conner
5/24/97*

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SALES REP ID	0016
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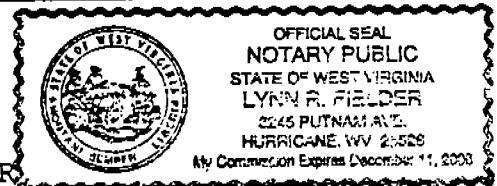
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05/23	LEGF	GZ	DENTAL EXAM	429935001	L360141	1X0500 5.00	6.19	30.95	30.95
TOTAL INVOICE AMOUNT									30.95

State of West Virginia.

AFFIDAVIT OF PUBLICATION

I, Sandra Legoy of _____



THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:

DENTAL EXAM was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 24TH day of MAY 1997. Published during the following dates: 05/23/97-05/23/97
Subscribed and sworn to before me this 28 day of May
Printers fee \$ 30.95

Lynn R. Fielder
Notary Public of Kanawha County, West Virginia

NOTICE OF PUBLIC HEARING

Please take notice that a public hearing will be held at the office of the West Virginia Board of Dental Examiners, 207 South Heber Street, Beckley, Raleigh County, West Virginia, on Thursday, June 26, 1997, at 1:00 o'clock p.m., for the purpose of receiving oral and/or written comments on a new rule being proposed to the West Virginia Administrative Regulations, Title Number 5, Agency: West Virginia Board of Dental Examiners. The issues to be heard shall be limited to the proposed new rule. The basic substance of the rule is as follows:

Addresses procedures for the formation and approval of professional limited liability companies for dentists.

Copies of the proposed new rule may be obtained from the Secretary of State's Office as follows: Secretary of State, Administrative Law Division, Capitol Complex, Charleston, WV 25305, or by writing the West Virginia Board of Dental Examiners as follows: West Virginia Board of Dental Examiners, P.O. Drawer 1459, Beckley, West Virginia 25802-1459. Comments may also be mailed to the following address: West Virginia Board of Dental Examiners, P.O. Drawer 1459, Beckley, West Virginia 25802-1459. Persons wishing to make comments at the hearing should make an effort to submit written comments in order to facilitate the review of these comments.

West Virginia Board
of Dental Examiners
James G. Anderson, III
Executive Secretary
(360141)



Dr. Charles L. Lake
President
4511 Spring Hill Avenue
S. Charleston, WV 25309

Mrs. Susan F. Lilly, R.D.H.
Secretary
297 Spring Valley Drive
Berkeley Springs, WV 25411

Daniel W. Nunley, D.D.S.
204 Echols Lane
Lewisburg, WV 24901

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Beckley, WV 25802-1459

West Virginia Board of Dental Examiners

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Huntington, WV 25705

John C. Dixon, D.D.S.
1961 Parkwood Road
Charleston, WV 25314

Mrs. Lydia Winfrey
112 Circle Drive
Princeton, WV 24740

SUMMARY OF THE PROPOSED RULE

Promulgation for implementation of 31B-13 et. seq. of procedures for the formation and approval of Professional Limited Liability Companies by the West Virginia Board of Dental Examiners for the dental profession.



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STATEMENT OF CIRCUMSTANCES

Promulgation for implementation of 31B-13 et. seq. of procedures for the formation and approval of Professional Limited Liability Companies by the West Virginia Board of Dental Examiners for the dental profession.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Formation & Approval of Professional Limited Liability Companies
 Type of Rule: **Legislative** **Interpretive** **Procedural**
 Agency: West Virginia Board of Dental Examiners
 Address: 207 S. Heber Street
 PO Drawer 1459
 Beckley, WV 25802-1459

1. Effect of Proposed Rule UNKNOWN

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

Please note rule requires initial filing fee of \$200.00 and renewal fee of \$150.00 annually being the same as dental corporations. Since the Board handles dental corporations there will be no additional personnel, equipment, etc. and the above fees will cover additional time for processing.

3. Objectives of these rules:

Implementation of legislative requirement.

Rule Title: Formation & Approval of Professional Limited Liability Companies

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: May 9, 1997

Signature of Agency Head or Authorized Representative



James G. Anderson, III
Executive Secretary

FILED

JUL 28 8 37 AM '97

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 2
FORMATION AND APPROVAL OF PROFESSIONAL
LIMITED LIABILITY COMPANIES

§5-2-1. General.

- 1.1. Scope. - This legislative rule addresses procedures for the formation and approval of professional limited liability companies for dentists.
- 1.2. Authority. - W. Va. Code §31B-13-1304
- 1.3. Filing Date. -
- 1.4. Effective Date. -

§5-2-2. Definitions.

- 2.1. Board. - The West Virginia Board of Dental Examiners, established in W. Va. Code §30-4-4.
- 2.2. Professional limited liability company. - A limited liability company organized under Chapter 31B of the W. Va. Code for the purpose of rendering a professional service.
- 2.3. Professional services. - The services rendered under W. Va. Code §30-4-1 et seq. by dentists.

§5-2-3. Procedures for Formation and Approval of Professional Limited Liability Companies for Dentists; Fees.

- 3.1. Dentists licensed to practice dentistry in an active status in this State who desire to render dental professional services as a limited liability company shall comply with the provisions of West Virginia Code §31B-13-1 et seq. No professional limited liability company shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.
- 3.2. The name of a professional limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or

“Professional L.L.C.”

- 3.3. Dentists licensed to practice dentistry in an active status in this State who desire to render professional services as a limited liability company shall also comply with the provisions of West Virginia Code §30-4-4b, §30-4-4c, and further that any such limited liability company in the area of dentistry shall contain nothing but the surname of every member of such firm or partnership.
- 3.4. Every professional limited liability company shall file with the Board at the time of formation, and on an annual basis on or before the first day of July, the names of its two or more members, and written documentation that the professional limited liability company carries at least one million dollars of professional liability insurance, together with an initial filing fee of \$200 and an annual renewal fee of \$150.
 - 3.4.a. The requirement of carrying one million dollars of professional liability insurance is satisfied if the professional limited liability company provides one million dollars of funds specifically designated and segregated for the satisfaction of judgements against the company members or any of its professional or nonprofessional managers or employees arising out of the performance of professional services to patients of the company, by:
 - (1) Deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or
 - (2) A blank letter of credit or insurance company bond.
- 3.5. Every professional limited liability company shall file with the Board a copy of the annual report required to be filed with the secretary of state under West Virginia Code §31B-2-211. The copy of the annual report, and a copy of any corrected annual report filed with the secretary of state, shall be filed with the Board on or before the first day of July on an annual basis.
- 3.6. Every professional limited liability company in compliance with all the provisions of this rule shall be approved by and remain approved by the Board.
- 3.7. If any person ceases to be a member of any professional limited liability company, the Board shall be so notified in writing within twenty days thereafter that such person has ceased to be a member of such professional limited liability company. The fact that a person ceases to be a member of a professional limited liability

company shall not affect the approval of such professional limited liability company by the Board, provided that the Board determines that the professional limited liability company remains in compliance with all the provisions of this rule.

§5-2-4. Notification of Non-compliance, Cessation of Rendering Professional Services.

- 4.1. Should the Board determine that a professional limited liability company is not in compliance with all the provisions of this rule and should cease rendering professional services in the State, the Board shall so notify the professional limited liability company in writing, and upon receipt of such written notice, said professional limited liability company shall cease rendering professional services in the State.

§5-2-5. Dentist - Patient Relationship.

- 5.1. The provisions of this rule shall not be construed to alter or affect the dentist - patient relationship.

TRANSCRIPT
OF
PUBLIC HEARING
ON PROPOSED RULE

LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

SERIES 2
FORMATION AND APPROVAL OF PROFESSIONAL
LIMITED LIABILITY COMPANIES

Twenty-sixth day of June, 1997 and the time is now 1:11 p.m. After waiting eleven minutes no one appears other than the following people:

Susan Combs - Office Manager, Board of Dental Examiners
Lydia Winfrey - Member, Board of Dental Examiners
John Parkulo - Assistant Executive Secretary, Board of Dental Examiners
James G. Anderson, III - Executive Secretary, Board of Dental Examiners

Filed as part of the record in this matter is an affidavit of publication from the Charleston Gazette with the attached notice of public hearing which was published on May 24, 1997, the Charleston Gazette being a Statewide paper.

Also attached as part is a letter May 14, 1997 to the West Virginia Dental Association, West Virginia Dental Hygienists Association and the West Virginia Dental Assistants Association, attaching the enclosed proposed rules for public hearing for the formation and approval of professional limited liability companies as being a requirement by legislature under Chapter 31B, Article 13, et. seq. of the West Virginia Code.

Also made part of the record for this hearing is a letter to the Honorable Cecil H. Underwood, Governor of the State of West Virginia also dated May 14, 1997 with the same information sent the previous three associations. Further, the West Virginia Association of Licensing Boards, Ms. Nancy Wilson, received the same information by cover letter along with the Honorable Aaron Allred, Legislative Auditor enclosing the same information and cover letter.

Also made part of the record is the summary of the proposed rule which states "Promulgation for implementation of 31B-13 et. seq. of procedures for the formation and approval of Professional Limited Liability Companies by the West Virginia Board of Dental Examiners for the dental profession."

Also made part of the record is the Statement of Circumstances which states

“Promulgation for implementation of 31B-13 et. seq. of procedures for the formation and approval of Professional Limited Liability Companies by the West Virginia Board of Dental Examiners for the dental profession.”

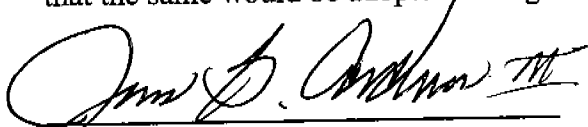
It should be noted that in discussing the proposed rule that the effect is unknown. Not knowing how many people will want to use Professional Limited Liability Companies.

The rule will require an initial filing fee of \$200.00 and a renewal fee of \$150.00 annually being the same as dental corporations under Chapter 30, Article 4 of the West Virginia Code and should not create any additional costs because the professional limited liability companies will be handled in the same manner that dental corporations. Therefore, it does not require any additional personnel, equipment, etc. and the fees will be sufficient to cover processing.

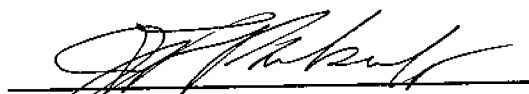
There will be no economic impact on State Government; Political Subdivision; Specific Industries; Specific groups of Citizens or on the Citizens/Public at large. Since the immunity that normal corporations receive does not exist under a dental corporation under Chapter 30, Article 4, nor does it exist by law under a limited liability company for professionals under Chapter 31B, Article 13 et. seq.

The attached proposed rules, Title 5, Series 2, Formation and Approval of Professional Limited Liability Companies, consists of three typed pages.

It should be noted that Notice of Public Hearing on a Proposed Rule was filed with the Secretary of State's Office. There were no oral or written objections by those in attendance or otherwise. Since the Board has previously approved the proposed rules it would want to proceed further filing what is necessary with the Secretary of State and also with the Legislative Rule Making Committee so this can go before the joint committee to proceed with the hearing in order that the same would be adopted during the next legislative session in 1998.



JAMES G. ANDERSON, III
Executive Secretary



JOHN F. PARKULO
Assistant Executive Secretary



Dr. Charles L. Lake
President
4511 Spring Hill Avenue
S. Charleston, WV 25309

Mrs. Susan F. Lilly, R.D.H.
Secretary
297 Spring Valley Drive
Berkeley Springs, WV 25411

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Mrs. Lydia Winfrey
112 Circle Drive
Princeton, WV 24740

May 14, 1997

West Virginia Dental Association
300 Capitol St., Suite 1002
Charleston, WV 25301

West Virginia Dental Hygienists Association
123 Ridgewood Road
St. Albans, WV 25177

West Virginia Dental Assistants Association
PO Box 13383
Sissonville, WV 25360

Please find enclosed rules for public hearing for the formation and approval of professional limited liability companies. Please note that this is a requirement of legislature under Chapter 31B, Article 13, et. seq.

If you have any further questions please do not hesitate to contact this office.

Very truly yours,

JAMES G. ANDERSON, III
Executive Secretary

JGA/smc
Enclosure



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President
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Mrs. Lydia Winfrey
112 Circle Drive
Princeton, WV 24740

May 14, 1997

Honorable Cecil Underwood
Governor
State Capitol Building
Charleston, WV 25305

Dear Governor Underwood:

Please find enclosed rules for public hearing for the formation and approval of professional limited liability companies. Please note that this is a requirement of legislature under Chapter 31B, Article 13, et. seq.

If you have any further questions please do not hesitate to contact this office.

Very truly yours,

JAMES G. ANDERSON, III
Executive Secretary

JGA/smc
Enclosure



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May 14, 1997

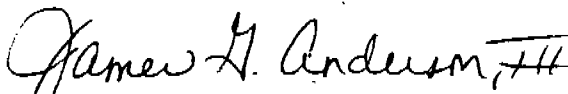
Ms. Nancy Wilson
WV Association of Licensing Boards
101 Dee Drive
Charleston, WV 25311

Dear Ms. Wilson:

Please find enclosed rules for public hearing for the formation and approval of professional limited liability companies. Please note that this is a requirement of legislature under Chapter 31B, Article 13, et. seq.

If you have any further questions please do not hesitate to contact this office.

Very truly yours,


JAMES G. ANDERSON, III
Executive Secretary

JGA/smc
Enclosure



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Mrs. Lydia Winfrey
112 Circle Drive
Princeton, WV 24740

May 14, 1997

Honorable Aaron Allred
Legislative Auditor
Building 1, Room 132E
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Mr. Allred:

Please find enclosed rules for public hearing for the formation and approval of professional limited liability companies. Please note that this is a requirement of legislature under Chapter 31B, Article 13, et. seq.

If you have any further questions please do not hesitate to contact this office.

Very truly yours,

JAMES G. ANDERSON, III
Executive Secretary

JGA/smc
Enclosure



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SUMMARY OF THE PROPOSED RULE

Promulgation for implementation of 31B-13 et. seq. of procedures for the formation and approval of Professional Limited Liability Companies by the West Virginia Board of Dental Examiners for the dental profession.



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STATEMENT OF CIRCUMSTANCES

Promulgation for implementation of 31B-13 et. seq. of procedures for the formation and approval of Professional Limited Liability Companies by the West Virginia Board of Dental Examiners for the dental profession.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Formation & Approval of Professional Limited Liability Companies

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency West Virginia Board of Dental Examiners

Address 207 S. Heber Street

PO Drawer 1459

Beckley, WV 25802-1459

1. Effect of Proposed Rule UNKNOWN

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THREKAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

Please note rule requires initial filing fee of \$200.00 and renewal fee of \$150.00 annually being the same as dental corporations. Since the Board handles dental corporations there will be no additional personnel, equipment, etc. and the above fees will cover additional time for processing.

3. Objectives of these rules:

Implementation of legislative requirement.

Rule Title: Formation & Approval of Professional Limited Liability Companies

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: May 9, 1997

Signature of Agency Head or Authorized Representative



James G. Anderson, III
Executive Secretary

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

SERIES 2
FORMATION AND APPROVAL OF PROFESSIONAL
LIMITED LIABILITY COMPANIES

§5-2-1. General.

- 1.1. Scope. - This legislative rule addresses procedures for the formation and approval of professional limited liability companies for dentists.
- 1.2. Authority. - W. Va. Code §31B-13-1304
- 1.3. Filing Date. -
- 1.4. Effective Date. -

§5-2-2. Definitions.

- 2.1. Board. - The West Virginia Board of Dental Examiners, established in W. Va. Code §30-4-4.
- 2.2. Professional limited liability company. - A limited liability company organized under Chapter 31B of the W. Va. Code for the purpose of rendering a professional service.
- 2.3. Professional services. - The services rendered under W. Va. Code §30-4-1 et seq., by dentists.

§5-2-3. Procedures for Formation and Approval of Professional Limited Liability Companies for Dentists; Fees.

- 3.1. Dentists licensed to practice dentistry in an active status in this State who desire to render dental professional services as a limited liability company shall comply with the provisions of West Virginia Code §31B-13-1 et seq. No professional limited liability company shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.
- 3.2. The name of a professional limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or

“Professional L.L.C.”

- 3.3. Dentists licensed to practice dentistry in an active status in this State who desire to render professional services as a limited liability company shall also comply with the provisions of West Virginia Code §30-4-4b, §30-4-4c, and further that any such limited liability company in the area of dentistry shall contain nothing but the surname of every member of such firm or partnership.
- 3.4. Every professional limited liability company shall file with the Board at the time of formation, and on an annual basis on or before the first day of July, the names of its two or more members, and written documentation that the professional limited liability company carries at least one million dollars of professional liability insurance, together with an initial filing fee of \$200 and an annual renewal fee of \$150.
 - 3.4.a. The requirement of carrying one million dollars of professional liability insurance is satisfied if the professional limited liability company provides one million dollars of funds specifically designated and segregated for the satisfaction of judgements against the company members or any of its professional or nonprofessional managers or employees arising out of the performance of professional services to patients of the company, by:
 - (1) Deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or
 - (2) A blank letter of credit or insurance company bond.
- 3.5. Every professional limited liability company shall file with the Board a copy of the annual report required to be filed with the secretary of state under West Virginia Code §31B-2-211. The copy of the annual report, and a copy of any corrected annual report filed with the secretary of state, shall be filed with the Board on or before the first day of July on an annual basis.
- 3.6. Every professional limited liability company in compliance with all the provisions of this rule shall be approved by and remain approved by the Board.
- 3.7. If any person ceases to be a member of any professional limited liability company, the Board shall be so notified in writing within twenty days therefrom that such person has ceased to be a member of such professional limited liability company. The fact that a person ceases to be a member of a professional limited liability

company shall not affect the approval of such professional limited liability company by the Board, provided that the Board determines that the professional limited liability company remains in compliance with all the provisions of this rule.

§5-2-4. Notification of Non-compliance, Cessation of Rendering Professional Services.

- 4.1. Should the Board determine that a professional limited liability company is not in compliance with all the provisions of this rule and should cease rendering professional services in the State, the Board shall so notify the professional limited liability company in writing, and upon receipt of such written notice, said professional limited liability company shall cease rendering professional services in the State.

§5-2-5. Dentist - Patient Relationship.

- 5.1. The provisions of this rule shall not be construed to alter or affect the dentist - patient relationship.