

## Form #3

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2008 AUG 28 AM 10:19

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Authorized Signature

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: August 27, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: Formation and Approval of Dental Corporations

1. Authorizing statute(s) citation §30-4-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
July 29, 2008

b. What other notice, including advertising, did you give of the hearing?  
Notified the West Virginia Dental Association, Dental Hygienists' Association and Dental Assistants Association by letter.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 27, 2008 @ 12:00 Noon

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, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

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

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

same as above

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 or comment period:

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

## SUMMARY OF PROPOSED RULE

During the 2008 Legislative Session, the corporate license tax return was repealed. A copy of this form was required to be filed with the Board of Dental Examiners with corporation renewals. The Board is proposing changes to require a copy of the annual report, which is now required to be filed with the Secretary of State. The Board is proposing a change in the due date of corporate renewals to the Board to allow an additional 30 days from the time this form is due to the Secretary of State.

Also, this rule will protect the public in limiting ownership and thereby control of dental practices. It will allow heirs of deceased or incapacitated dentists to keep a practice going by employing other dentists, for the oral health of their patients, for a period of time, until the practice can be sold or properly closed.

## STATEMENT OF CIRCUMSTANCES

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## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Formation and Approval of Dental Corporation

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Board of Dental Examiners

Address: PO Box 1447  
Crab Orchard, WV 25827

Phone Number: (304)252-8266 Email: wvbde@suddenlinkmail.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule should have no impact on costs and revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: Formation and Approval of Dental Corporation

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

There should be no increase or decrease in fees.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

We do not anticipate a fiscal impact.

Date: 7-25-08

Signature of Agency Head or Authorized Representative

Mary G. Hanna



FILED  
2008 AUG 28 AM 10:20  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

**SERIES 6  
FORMATION AND APPROVAL OF DENTAL CORPORATIONS;  
AND DENTAL PRACTICE OWNERSHIP**

**§5-6-1. General.**

1.1. Scope. -- This legislative rule addresses procedures for the formation and approval of dental corporations for dentists and ownership of dental practices.

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

1.3. Filing Date. --

1.4. Effective Date. --

**§5-6-2. Definitions.**

2.1. Dental Corporation - a company organized under W. Va. Code §30-4-28 for the purpose of rendering dental services.

2.2. Dental services. - The services rendered under W. Va. Code §30-4-1 et seq., by dentists.

**§5-6-3. Procedures for Formation and Approval of Dental Corporations for Dentists; Fees.**

3.1. Dentists licensed to practice dentistry in an active status in this State who desire to render dental services as a corporation shall comply with the provisions of W. Va. Code §30-4-1 et seq and apply to the Board for a certificate of authorization. No corporation shall have as a shareholder anyone other than a person who is duly licensed or otherwise legally authorized to render the dental services for which the corporation was organized.

3.2. The name of a dental corporation shall contain the words "corporation," "company," "incorporated," or "limited" or shall contain an

abbreviation of one of those words.

3.3. The name of a dental corporation shall contain nothing but the name, which must include surnames of one, some or every shareholder of the corporation, except in a case where a city, town or municipality may be used when necessary to make a name unique with the Secretary of State's Office.

3.4. Every corporation shall file with the Board, at the time of formation, the names of every shareholder of the corporation together with an initial filing fee as set forth in the Board's fee schedule. Also, on an annual basis thereafter on or before the thirtieth day of June, every corporation shall file with the Board the names of every shareholder of the corporation together with an annual renewal fee as set forth in the Board's fee schedule 5CSR3.

3.5. Every dental corporation shall file with the Board a copy of the annual report ~~corporate license tax return~~ required to be filed with the ~~tax commissioner of the Secretary of State of West Virginia~~ under W. Va. Code ~~§11-12C-3~~ 59-1-2a on or before the ~~thirtieth~~ thirty first day of ~~June~~ July on an annual basis.

3.6. Every dental corporation 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 shareholder of any dental corporation, that person shall notify the Board in writing within twenty days from the date that he or she ceased to be a shareholder of the corporation. The fact that a person ceases to be a shareholder of a corporation shall not affect the approval of the dental corporation by the

Board, if the Board determines that the corporation remains in compliance with all the provision of this rule.

**§5-6-4. Notification of Non-compliance, Cessation of Rendering Dental Services.**

4.1. If the Board determines that a dental corporation is not in compliance with all the provisions of W. Va. Code §30-4-1 et. seq., and this rule and should cease rendering dental services in the State, the Board shall notify the corporation in writing, and upon receipt of the written notice, the corporation shall cease rendering dental services in the State.

**§5-6-5. Dentist - Patient Relationship.**

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

**§5-6-6. Dental Practice Ownership.**

6.1. Only duly licensed dentists may own a dental practice in this state with the following exceptions:

(a) Health departments or clinics of the State or local government agencies;

(b) Non-profit or charitable organizations;

(c) Community health centers;

(d) Hospitals; and

(e) Institutions or programs accredited by the Commission on Dental Accreditation of the American Dental Association to provide education and training.

**§5-6-7. Deceased or Incapacitated Dentists.**

7.1. In the case of a deceased or incapacitated dentist, in order to protect the interests and the oral health of the patients in that practice, the dentist's non-dentist surviving spouse, heir(s), or

legal representative(s), as appropriate, will be allowed to maintain ownership of the dental practice for two years to allow for continuity of care during the orderly transition to a new owner or proper closure of the practice.

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August 27, 2008

Mrs. Judy Cooper  
Office of the Secretary of State  
Administrative Law Division  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305

**RE: 5CSR6**

Dear Mrs. Cooper:

Enclosed please find a Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee with attachments to be filed with your office and copies for the Legislative Rule-Making Review Committee. Please place the same on the State Register and return to us a copy of the same with the filing date shown for our records. If additional information is needed please do not hesitate to contact this office.

I wish to thank you for your help and cooperation. The Board greatly appreciates it.

Very truly yours,

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

MARC L. HARMAN  
Executive Secretary

MLH/smc  
Enclosure