

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2022 MAY 10 A 10:00

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: 30-4

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 6

TITLE OF RULE BEING PROPOSED: Formation and Approval of Dental Corporations

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

SCANNED

\$5.60

**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: May 7, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Dental Examiners  
PO Drawer 1459  
Beckley, WV 25802-1459

LEGISLATIVE RULE TITLE: Formation and Approval of Dental Corporations

1. Authorizing statute(s) citation 30-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
March 20, 2002

b. What other notice, including advertising, did you give of the hearing?  
Was advertised in the Charleston Gazette on the 23rd day of March, 2002. A copy of the Public Comment Period and proposed rules were sent to the West Virginia Dental Association, West Virginia Dental Hygiene Association and West Virginia Dental Assistants Association by cover letter dated March 19, 2002.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
April 26, 2002

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

Attached \_\_\_\_\_ No comments received 2

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

May 10, 2002

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

James G. Anderson, III  
Executive Secretary  
PO Drawer 1459  
Beekley, WV 25802-1459

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- 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

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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.

Comment period only filed on March 20, 2002.

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b. Date of hearing or comment period:

Comment period ended on April 26, 2002.

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

May 10, 2002

d. Attach findings and determinations and reasons:

Attached **yes**

## FINDINGS, DETERMINATIONS AND REASONS

The Board received 2 written comments during the comment period from the same individual. This comment concerned the use of the word Limited or the abbreviation "Ltd." which was not included in the initial filing.

After the Board's review and consideration of the same, an amendment to the initial proposed rule was made.

## AMENDMENTS

The following amendments were made by the Board as a result of written comments received during the comment period; and reviewed as hereinabove set forth;

Section 3.2 was changed to read as follows:

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

APR 17 2002



James G. Anderson, III  
WV Board of Dental Examiners  
P.O. Drawer 1459  
Beckley, WV 25802-1459

April 15, 2002

Re: Comments on Title 5, Series 6

Dear Jim:

I have received and reviewed a copy of the Board's proposed rule for "Formation and Approval of Dental Corporations" at the most recent Executive Council Meeting of the WVDA in Charleston on April 13, 2002. I am the Executive Council Member representing the New River Valley Component Society.

After reviewing the proposed rule, I made note that under 5-2-2. Definitions, item 3.2, the rule only denotes the words "Incorporated", or "Company" or the abbreviations, "Inc." or "Co." may be used to identify a dental corporation in the State of WV.

Under provisions of WV Code Chapter 31, Article 1, Sections 27 and 28, I formed a new dental practice corporation in Summersville, WV on February 20, 1998, named "Dr. Lewis Dale Gilbert, DDS, LTD.", later on May 14, 1998, the corporation name was condensed to "Lewis D. Gilbert, DDS, LTD. These names were approved by the WV Board of Dental Examiners Office, registered with the WV Secretary of State's Office, and continue to be in effect as evidenced by my latest annual registration certificate dated 05/08/2001 from the WV Board of Dental Examiner's Office, (Renewal # 024).

With that stated, I would hope that one of two things will happen: 1) My current dental corporation name, **Lewis D. Gilbert, DDS, LTD**, will be "grand fathered" under the new rule for dental corporations; or 2) The Board can simply amend 5-2-2, item 3.2 to also include the word "Limited" or the abbreviation "Ltd", along with "Incorporated" and "Company".

If I am forced to amend my dental corporation name, I will incur thousands of dollars of expense to amend advertising, signs, web site name, stationary, etc. Based on current WV state law the word "Limited" or the abbreviation "Ltd" are still considered acceptable to denote a corporation in the state of WV. Please advise me of the Board's thoughts on this matter.

Sincerely,

  
Lewis D. Gilbert, DDS

Enclosures- Certificates of Incorporation

807 BROAD STREET • P O BOX 1008 • SUMMERSVILLE WV 26651 • 304-872-0300 • 888-872-5551 • FAX 304-872-5999

433 CARRIAGE DRIVE • BECKLEY WV 25801 • 304-256-3777 • 877-488-3331 • FAX 304-256-3779

[www.DrGsmilesurgery.com](http://www.DrGsmilesurgery.com)

# State of West Virginia<sup>no</sup>



## Certificate

*J. Hen Hechler, Secretary of State of the  
State of West Virginia, hereby certify that*

by the provisions of Chapter 31, Article 1, Sections 27 and 28 of the West Virginia Code, the  
Articles of Incorporation of

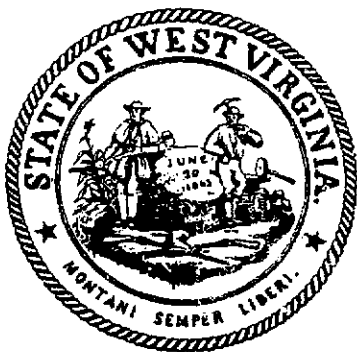
DR. LEWIS DALE GILBERT, D.D.S., LTD.

conform to law and are filed in my office. I therefore declare the organization to be a Corporation  
for the purposes set forth in its Articles, with the right of perpetual existence.

Therefore, I hereby issue this

### CERTIFICATE OF INCORPORATION

to which I have attached a duplicate original of the Articles of Incorporation



*Given under my hand and the  
Great Seal of the State of  
West Virginia on this  
\_\_\_\_\_ Twentieth \_\_\_\_\_ day of  
February 19 98  
\_\_\_\_\_  
J. Hen Hechler  
Secretary of State*

25x10

# State of West Virginia



## Certificate

*I, Ken Heckler, Secretary of State of the  
State of West Virginia, hereby certify that*

originals of the Articles of Amendment to the Articles of Incorporation of

DR. LEWIS DALE GILBERT, D.D.S., LTD.

are filed in my office, signed and verified, as required by the provisions of Chapter 31, Article 1,  
Section 31 of the West Virginia Code and conform to law. Therefore, I issue this

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION

changing the name of the corporation to

LEWIS D. GILBERT, D.D.S., LTD.

and I attach to this certificate a duplicate original of the Articles of Amendment.



*Given under my hand and the  
Great Seal of the State of  
West Virginia on this  
Fourteenth \_\_\_\_\_ day of  
May 19 98*

*Ken Heckler*  
Secretary of State

INCORPORATION DOCUMENTS

# State of West Virginia



## Certificate

*I, Ken Heckler, Secretary of State of the State of West Virginia, hereby certify that*

the following is a true and exact copy of the Articles of Incorporation for

LEWIS D. GILBERT, D.D.S., LTD.

There being one amendments or additions as contains in the records of my said office.



*Given under my hand and the Great Seal of the State of West Virginia on this SEVENTEENTH day of*

*JUNE 19 98*

*Ken Heckler*

*Secretary of State*

John C. Dixon, DDS  
President  
1961 Parkwood Road  
Charleston, WV 25314

Bernard J. Grubler, DDS  
Secretary  
21 Damian Road  
Wheeling, WV 26003

Thomas S. Wilkerson, DDS  
1400 Kanawha Boulevard, East  
Charleston, WV 25301

James G. Anderson, III  
Executive Secretary  
PO Drawer 1459  
Beckley, WV 25802-1459



## West Virginia Board of Dental Examiners

P.O. Drawer 1459  
Beckley, West Virginia 25802-1459  
(304) 252-8266  
Toll Free (877) 914-8266  
Fax: (304) 252-2779

H. Richard Marshall, Jr., DDS  
120 Maplewood Avenue  
Ronceverte, WV 24970

George D. Conard, Jr., DDS  
6353 East Pea Ridge Road  
Huntington, WV 25705

Mrs. Dina Agnone Vaughan, BSDH, MS  
151 May Apple Trail  
Lewisburg, WV 24901

Mrs. Dolores L. Gribble  
11 Davis Place  
Clarksburg, WV 26301

John F. Parkulo  
Assistant Executive Secretary  
PO Drawer 1459  
Beckley, WV 25802-1459

Renewal Number: 024

Date: 05/08/2001

### WEST VIRGINIA BOARD OF DENTAL EXAMINERS

hereby issues this

### ANNUAL REGISTRATION CERTIFICATE

TO:

Lewis D. Gilbert, DDS, Ltd.  
807 Broad Street (PO Box 1008)  
Summersville, WV 26651

To continue the practice of Dentistry as a Corporation in the State of  
West Virginia. Expires June 30, 2002.

Handwritten signature of James G. Anderson, III in cursive script.

JAMES G. ANDERSON, III  
Executive Secretary

JGA/smc

SEAL



April 19, 2002

James G. Anderson, III  
WV Board of Dental Examiners  
P.O. Drawer 1459  
Beckley, WV 25802-1459

Re: Additional Comments on Title 5, Series 6

Dear Jim:

Upon further review I have located the section of the WV Code that relates to Corporate names. The particular language is found in WV Code 31-1-11 (a) (1) "... the corporate name (1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words.

May I suggest to the Board that this section of the WV Code be substituted for the new proposed rule 5-2-2, item 3.2. This would allow for the Dental Corporation Rules to conform with present state statute in regard to Corporate names.

Sincerely,

  
Dr. Lewis D. Gilbert

Enclosure: Copy of WV Code- Corporate Names

APR 22 2002

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§ 31-1-10

CORPORATIONS

§ 31-1-10. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a shareholder, member or director against the corporation to enjoin the doing of any act or the continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders or members in a representative action, against the incumbent or former officers or directors of the corporation.

(c) In any proceeding by the State, or by any of its agencies or departments or by the attorney general, as provided in this article, or as provided or authorized by any other provisions of this Code, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts or transacting unauthorized business or in any other proceeding brought by or in the name of or for the benefit of the State. (1974, c. 13.)

§ 31-1-11. Corporate name; requirements; certain names prohibited.

(a) Except for corporations in existence prior to the effective date of this article, the corporate name:

(1) Shall contain the word "corporation," "company," "incorporated" or "limited," or shall contain an abbreviation of one of such words.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(3) Shall not be the same as, and shall be distinguishable from: (A) The name of any domestic corporation, domestic limited partnership, domestic limited liability partnership, or domestic limited liability company existing under the laws of this state; (B) the name of any foreign corporation, foreign limited partnership, foreign limited liability partnership, foreign limited

liability company, or affairs or transact b which is, at the time, of a corporation, limi liability company wh provided by law. The applicant files with tl and a written unde reserved name subn change the name to : r (Y) a certified co establishing the pri state. For purposes c be included in the b no alone be suffici

(c) Shall be trans English.

(b) A corporation merged, or which is more domestic or for to or exchange with, of another corporati same name as that corporation was org or do or transact bu

(c) After the effec in this state under a "engineering" or any is to practice profess et seq.), chapter th incorporation is a re 83; Code 186, c. 54; 3; Code 1923, c. 54, 20; 196, c. 19; 196

ALR references - V of statute prohibiting use engineering by busines ticing profession of eng 676.

Similar names. - All or potential unfair co matters for the courts state in the exercise of mining whether a corpor to another as to lead to sum that these things



## SUMMARY OF PROPOSED RULE

To establish rules for the formation and approval of dental corporations.

## STATEMENT OF CIRCUMSTANCES

To establish rules for the formation and approval of dental corporations charged under new dental law (§30-4-28(b)) effective July 1, 2001.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Formation and Approval of Dental Corporations

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Board of Dental Examiners

Address: PO Drawer 1459  
Beckley, WV 25802-1459

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0			
PERSONAL SERVICES	0	0			
CURRENT EXPENSE	0	0			
REPAIRS & ALTERATIONS	0	0			
EQUIPMENT	0	0			
OTHER	0	0			

2. Explanation of Above Estimates:

Establish rules for the formation and approval of dental corporations as charged under 30-4-28(b).

3. Objectives of These Rules:

Establish rules for the formation and approval of dental corporations.

Rule Title: Formation and Approval of Dental Corporations

4. Explanation of Overall Economic Impact of Proposed Rule:

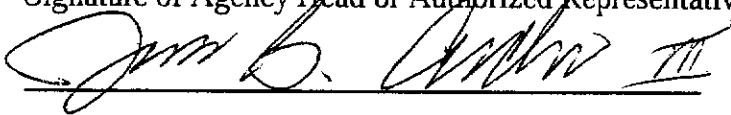
A. Economic Impact on State Government:  
none

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: none

C. Economic Impact on Citizens/Public at Large.  
none

Date: March 19, 2002

Signature of Agency Head or Authorized Representative:



TITLE 5  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

FILED

SERIES 6  
FORMATION AND APPROVAL OF DENTAL CORPORATIONS

2007 MAY 10 A 10:00

**§5-2-1. General**

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

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

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

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

**§5-2-3. 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. No corporation shall have as a member 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 such words.

3.3. Dentists licensed to practice dentistry in an active status in this State who

desire to render dental services as a corporation shall also comply with the provisions of W. Va. Code §30-4-1 et seq. The name of a dental corporation shall contain nothing but the surname of every member of the corporation.

3.4. Every corporation 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 every member of the corporation, together with an initial filing fee of \$200 and an annual renewal fee of \$150.

3.5. Every dental corporation shall file with the Board a copy of the annual return required to be filed with the tax commissioner of the State of West Virginia under W. Va. Code §11-12C-3. The copy of the annual report, and a copy of any corrected annual report filed with the tax commissioner be filed with the Board on or before the first day of 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 member 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 member of the corporation. The fact that a person ceases to be a member 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.

**§5-2-4. 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 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.

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

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