



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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SECRETARY OF STATE

Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel

May 22, 2002

Joseph A. Altizer, Associate Counsel
Connie A. Bowling, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: James G. Anderson, III
Dental Examiners, WV Board of
PO Drawer 1459
Beckley, WV 25802

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Formation and Approval of Dental Corporations, 5CSR6**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Dental Examiners

Subject: Formation and Approval of Dental Corporations, 5CSR6

PERTINENT DATES

Filed for public comment: March 20, 2002
Public comment period ended: April 26, 2002
Filed following public comment period: May 10, 2002
Filed LRMRC: May 10, 2002
Filed as emergency:

Fiscal Impact: No

ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to procedures for formation and approval of dental corporations for dentists; fees. It requires each member of dental corporations to be licensed as a dentist. It sets forth an initial filing fee of \$200 and an annual renewal fee of \$150.

This section also requires every dental corporation to file certain reports with the Board on an annual basis. Finally, this section requires any person who ceases to be a member of any dental corporation to notify the Board in writing within 20 days from the date he or she ceases to be a member.

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Section 4 relates to notification of non-compliance, cessation of rendering dental services. It requires the Board to notify a corporation in writing, if the Board determines the corporation is not in compliance with the rule and requires the corporation to cease rendering dental services.

Section 5 relates to dentist - patient relationship. It provides that the provisions of the rule are not to be construed to alter or affect the dentist - patient relationship.

AUTHORITY

Statutory authority: W.Va. Code, §30-4-6, which provides, in part, as follows:

(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article including, but not limited to, the following:

(1) The examinations administered under this article;

(2) Issuing and renewing a license;

(3) Issuing temporary permits, teaching permits and dental intern or resident permits;

(4) Specialities that a dentist may practice;

(5) Issuing and renewing a certificate of qualification;

(6) Denying, suspending, revoking, reinstating or limiting the practice of a licensee or certificate of qualification;

(7) Continuing education requirements for licensees;

(8) Delegated procedures to be performed by a dental hygienist;

(9) Delegated procedures to be performed by a dental assistant;

(10) Use of firm or trade names;

(11) Dental corporations; and

(12) Professional conduct requirements...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. Subsection 3.4 requires annual renewal on or before the first day of July. W.Va. Code §30-4-28 requires annual renewal on or before June 30.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.