

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

**FILED**

2005 JUN 16 A 10:41

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

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

RULE TYPE: Legislative CITE AUTHORITY: 30-4-6

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: 8

TITLE OF RULE BEING PROPOSED: Dental Advertising

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 20, 2005 AT 4:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Board of Dental Examiners  
207 South Heber Street  
Beckley, WV 25801

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$4.00

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

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1501 Seventh Avenue  
Charleston, WV 25312

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

Susan M. Combs  
Office Manager  
207 S. Heber Street  
Beckley, WV 25801

June 15, 2005

The Honorable Betty Ireland  
Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

Dear Secretary Ireland:

The West Virginia Board of Dental Examiners in session June 10, 2005, approved for filing, the proposed rule CSR §5-8 titled Dental Advertising.

Enclosed is a Notice of a Comment Period on a Proposed Rule with attachments for filing. Please return to us one copy of the proposed rule with the filing date shown for our records.

If further information is needed, please do not hesitate to contact me at your earliest convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "John F. Parkulo".

JOHN F. PARKULO  
Executive Secretary

JFP/smc  
Enclosures

## SUMMARY OF RULE

This rule is proposed to regulate dental advertising and the protection of the public against misleading or deceptive advertising in the practice of dentistry in the State of West Virginia. While the Dental Practice Act of the State of West Virginia contains language for disciplinary measures for fraudulent or deceptive advertising, there is no advertising statute and/or rule currently setting forth advertising standards.

This rule will regulate the manner in which a dentist may advertise which includes but is not limited to: business cards, signs, insignias, letterheads, web pages, internet communications, radio, television, newspaper and magazine ads, and display or group ads or listings in telephone directories. This rule is intended for the protection of the public through regulation of advertising by Dentists in the State of West Virginia.

## STATEMENT OF CIRCUMSTANCES

This rule is proposed to regulate dental advertising and the protection of the public against misleading or deceptive advertising in the practice of dentistry in the State of West Virginia. While the Dental Practice Act of the State of West Virginia contains language for disciplinary measures for fraudulent or deceptive advertising, there is no advertising statute and/or rule currently setting forth advertising standards.

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APPENDIX B

***FISCAL NOTE FOR PROPOSED RULES***

Rule Title: Dental Advertising

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Board of Dental Examiners

Address: 207 South Heber Street  
Beckley, WV 25801

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Phone Number: 304-252-8266 Email: wbde@charterinternet.com

**Fiscal Note Summary**

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

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**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	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: Dental Advertising

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

There will be no financial gain of the Board of Dental Examiners to regulate dental advertising.

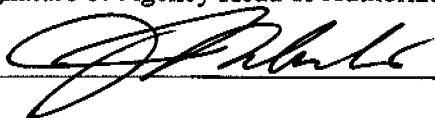
**MEMORANDUM**

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.

The fiscal impact, if any, is expected to be on those individuals regulated by the Board.

Date: 6/15/05

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

TITLE 5  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF DENTAL EXAMINERS

FILED

JUN 16 A 10:41  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 8

DENTAL ADVERTISING

**§5-8-1. General.**

- 1.1. Scope. -- This rule regulates the advertising of the practice of dentistry.
- 1.2. Authority. -- W. Va. Code §30-4-6
- 1.3. Filing Date. --
- 1.4. Effective Date. --

**§5-8-2. Definitions.**

2.1. As used in this rule, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Board" means the West Virginia Board of Dental Examiners;

(b) "Advertising" means any communication, whether oral or written, between a dentist or other entity acting on behalf of one or more dentists and the public. It includes, but is not limited to: business cards, signs, insignias, letterheads, web pages, internet communications, radio, television, newspaper and magazine ads, and display or group ads or listings in telephone directories.

**§5-8-3. Dentists may advertise.**

3.1. Any advertising engaged in by a duly registered and currently licensed dentist in West Virginia shall be in compliance with the provisions set forth herein and as set forth in article four of this chapter.

3.2. A duly registered and currently licensed dentist may not use or participate in the use of any advertising containing a false, fraudulent, misleading, deceptive or unfair statement or claim.

3.3. Any advertisement must contain the name of or names of all of the duly registered and currently licensed dentists providing patient care and who are regularly employed in or responsible for the management, supervision and operation of each office location listed in the advertisement.

3.4. A duly registered and currently licensed dentist may:

(a) Use the titles or degrees, such as doctor, dentist, D.D.S. or D.M.D. if the dentist holds a degree or degrees from an accredited dental school. A dentist who has a medical degree may also use that degree;

(b) Use the title diplomate in connection with his or her specialty if he or she has been conveyed that status by the Specialty Board recognized by the American Dental Association and has

a current license to practice his or her specialty issued by the Board entitling him or her to engage in a specialty practice; and

(c) Use the words specialist, specializing in, limited to the specialty of, or practice limited to if the dentist has a current license to practice his or her specialty issued by the board entitling him or her to engage in a specialty practice.

**§5-8-4. Announcement of Services.**

4.1. Any announcement of services by a general practitioner shall state in a prominent manner that the dental practice is one of general dentistry.

4.2. The announcement of services of the general practice of dentistry shall be clearly legible, with print equal to or larger than the announcement of services, and clearly audible, with speech volume and pace equal to the announcement of services.

4.3. Any announcement or advertisement of general anesthesia or parenteral conscious sedation services, which includes but is not limited to sleep dentistry and twilight sleep, may only be allowed by a licensed dentist in compliance with the provisions of article four-a of this chapter.

4.4. Any duly registered and currently licensed dentist who directly or indirectly advertises the availability and price of goods, appliances or services shall do so in a clear and nondeceptive manner and include all material information necessary to fully inform members of the general public about the nature of the goods, appliances or services offered at the announced price. Any listed prices shall be extended for a reasonable period of time. Any advertised price for a routine service shall be a fixed price, with no range of fees, and no patient can be charged a fee in excess of that advertised price for that particular service.

4.5. Any consumer who receives any free services, examination or treatment, in response to an advertisement, from any duly registered and licensed dentist in West Virginia shall have the right to refuse to pay, cancel payment or be reimbursed for payment for any other service, examination or treatment which is performed as a result of and within seventy-two hours of receiving the free service, examination or treatment, unless the other service, examination or treatment is requested by the patient at the time she or he seeks the free offer. The dentist shall inform patients in writing of their rights under this section prior to the patient receiving the free service, examination or treatment.

4.6. Any advertising engaged in by a duly registered or licensed dentist in West Virginia containing an offer of a discount or a credit toward a fee, whether expressed in terms of a particular dollar amount or a particular percentage shall contain a statement of the highest fee normally charged by the advertising dentist for the services which the discount or credit applies and a statement of exactly what services are included in the offer. If the offer of a discount or credit applies to the full range of dental services offered by the dentist, then a fee schedule stating all fees for the dental services shall be made available to any person requesting it and its availability shall be noted in the advertisement.

**§5-8-5. Articles, messages or newsletters.**

5.1. Any dental health article, message or newsletter published under a dentist's byline to the public without making truthful disclosure of the source and authorship, or designed to give



rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dentist, or designed to imply specialization or unusual expertise in a recognized specialty area unless the sponsoring dentist is currently licensed in the particular specialty area discussed in the article is a false, misleading or deceptive representation to the public.

**§5-8-6. Compliance.**

6.1. Any registered and currently licensed dentist in West Virginia failing to comply with the provisions of this article is subject to disciplinary action as provided in section twenty, article four of this chapter.

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