

FALL 2012

November 2012



WEST VIRGINIA BOARD OF DENTAL EXAMINERS

THE DENTAL EXAMINER

President's Message

I am honored to be giving you this report from the Board of Dental Examiners. I am just completing my first 5-year term on the Board, and it has been both challenging and exciting.

The Board has been extremely busy with the revisions of the Dental Practice Act, the Dental Anesthesia Laws, and the preparation, filing and enforcement of Governor Tomblin's Controlled Substance Act. This law, effectuated July 8, 2012, mandated the Board promulgate an emergency rule regarding prescribing for chronic non-malignant pain. Senate Bill 437 is actually a war on drugs. It will control unnecessary prescribing and distribution of controlled substances by practitioners to patients. It is a huge endeavor which requires understanding and cooperation of health care providers and their regulatory boards with the Board of Pharmacy. We are in the first stage of a multi-step process that will be executed by the Controlled Substance Monitoring Program Panel. Dr. Lee Allen has been chosen to represent and design parameters for West Virginia dentists. The Board has been active in explaining Senate Bill 437 and the promulgated emergency rule to component dental societies. Please do not hesitate to contact the Board office or any Board member with your questions in regards to this new law.

The last Dental Practice Act revision was 12 years ago, and since dentistry has changed so significantly in the past decade, these revisions are essential to address standard of care issues today. The Board felt the existing language of the act made it difficult to interpret and rewriting it would make it easier to enforce. The education of dentists has also changed significantly in the last decade. Acquiring faculty at the West Virginia University School of Dentistry has been challenging, as well as licensing issues with foreign graduates. We have proposed language to address these issues, always with public protection in mind.

The Dental Anesthesia laws were rewritten in 2005 with no major revisions since that time. The Anesthesia Committee communicated to the Board its opinion that the law was in need of updating to coincide with ADA Anesthesia Guidelines and to facilitate enforcement. The Committee also recommended rules be developed to pro-



Diane M. Paletta, DDS
President

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vide checklists for providers of anesthesia, as well as aid in the work of the committee.

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President's Message Continued...

As the dental regulatory board, our primary duty is to protect the public health and safety. Keeping that in mind, I want to communicate what else your board has done and proposes to do during the next year:

On March 23, the Board passed a resolution directing its executive secretary to access pharmacy records in accordance with the law and the amendments under Senate Bill 437.

The Board has a new attorney, James Casey, Esq., who has a wealth of experience. As a former legislator, he will be instrumental in directing our efforts in revising the practice act, legislative rules, and anesthesia laws.

The Board staff has been working on a new database with the Treasurer's office over the past year. There are some glitches that still need to be worked out before the staff can go live with the new database. The Board had a successful first year of online renewals: 207 dentists and 265 dental hygienists renewed online. The Board encourages online renewal. Online renewals should be available by the 1st of December for

2013 licensing renewals.

The Board is now a member of 5 regional testing agencies: NERB, CRDTS, WREB, SRTA, and CITA. WV is represented by our past and present Board members on the boards of directors, exam and other committees of these agencies. This demonstrates that the West Virginia Board is in favor of developing a national clinical licensing exam.

The Board is exploring the possibility of using the WVU School of Dentistry faculty and staff to manage Board-ordered remediation instructions and assessments.

The Board is having their November quarterly meeting in Morgantown this year. We are planning our first "lunch and learn" day with WVU dental and dental hygiene students. We are presenting a program on "What gets a young dentist in trouble with the Board". We want them to know that we are not just a disciplinary board, but we are there to answer any questions and provide them help to develop into confident and ethical clinicians.

Finally, at the WVDA Executive Council meeting in July, I pledged to the WVDA Officers and Executive Council members that the Board is committed to working with them to build a bridge of communication, honesty, and respect for the benefit of the practice of dentistry and the public that we serve, here in West Virginia. I serve with some of the most wonderful, hard-working and dedicated Board members. Our doors are always open to help you, and we are committed to working with and for you to improve the profession of dentistry, access of dental care, and the overall health of all West Virginians, while keeping public health and safety protected.

Respectfully yours,

Diane M. Paletta, DDS, President

WV Board of Dental Examiners

Board Actions

2009-DB-0056D - Consent Decree (10/28/2011), Standard of Care; Reprimand with other stipulations; Fine \$500.00; Assessed Costs \$3,250.00.

2011-DB-0015D - Consent Decree (1/06/2012), Standard of Care; Suspension with other stipulations; Fine \$500.00; Assessed Costs \$3,250.00.

2009-DB-0054D - Consent Decree (1/06/2012), Violation of Consent Decree; Suspension with other stipulations; Fine \$500.00; Assessed Costs \$500.00.

2008-DB-0062D - Order of Reinstatement (4/24/2012).

2008-DB-0063D - Order of Reinstatement (7/27/2012).



Legislative Review

During the 2012 Session of the West Virginia Legislature, Governor Earl Ray Tomblin requested an extensive bill concerning substance abuse, Senate Bill 437. This bill required certain licensed or certified health care professionals to complete drug diversion training and best practice prescribing or controlled substance training.

The Board has filed rules for the 2013 Session in response to this requirement as follows:

Current licensees shall complete at least three hours of continuing education regarding drug diversion training and best practice prescribing of controlled substances training and shall be reported beginning with the February 1, 2014 reporting deadline. Every person upon initial licensure shall complete at least three hours of continuing education regarding drug diversion training and best practice prescribing of controlled substances training within one year of receiving his or her initial license from the

Board. These requirements may be waived by the Board upon receipt of a board-developed certification form from a licensee attesting that he or she has not prescribed, administered, or dispensed a controlled substance during the reporting period.

Further, this bill required various boards regulating professions with prescriptive authority to require persons licensed by the Board to conduct an initial search of the Controlled Substance Monitoring Program (CSMP) database for specific patients for whom they are providing pain-relieving controlled substances as part of a course of treatment for chronic non-malignant pain, but who are not suffering from a terminal illness. The Board filed an Emergency Rule with the West Virginia Secretary of State to fulfill its obligation of the new law. This rule was effectuated on August 17, 2012. The Board filed an amendment to this rule on August 31, 2012, to add a definition of chronic non-malignant pain, and

authorized agent to assist the dentist in accessing the CSMP database and to give instructions when there may be a loss of power, internet access or when there is no access to broadband internet services.

House Bill 4077 was passed during the Legislative Session amending the scope of practice for a dental hygienist. The following language was added to the Dental Practice Act and went into effect June 8, 2012:

Placing sealants on a patient's teeth without a prior examination by a licensed dentist: Provided, That for this subdivision, the dental hygienist has a Public Health Permit issued by the West Virginia Board of Dental Examiners, and subject to a collaborative agreement with a supervising dentist and the patient is referred for a dental examination within six months of sealant application.

The Board's proposed fee rules passed during the 2012 Session and became effective April 15, 2012.

Legislative Forecast

The Board has proposed the following rules for the 2013 Legislative Session:

Series 1 - Due to the requirements of Senate Bill 437 to promulgate continuing education requirements for licensees prescribing, administering or dispensing controlled substances, the Board has proposed this rule. The Board is taking this opportunity to amend this rule to update, do some cleanup, and remove several sections that will be inserted in newly created rules. This includes a series of rules for Continuing Education and Expanded Duties of Dental Assistants and Dental Hygienists.

Series 10 - Required by the Governor's controlled substance bill which passed the 2012 legislature, practitioner require-

ments for accessing the WV Controlled Substances Monitoring Program Database.

Series 11 - Continuing Education Requirements, taken out of Series 1 for its own series of rules, which requires at least three hours of continuing education to be completed regarding drug diversion training and best practice prescribing of controlled substances training and shall be reported beginning with the February 1, 2014 reporting deadline. This is also a requirement placed upon the Board, as well as other health care licensing boards, from the Governor's controlled substance bill.

Series 13 - Are the Expanded duties rules, with no changes of substance, taken

out of Series 1 for its own series of rules.

The Board continues to review the dental practice act for proposed changes for the 2013 legislative session.

The Anesthesia committee and Board staff have been hard at work reviewing and making proposed changes to the dental anesthesia law and drafting rules to bring them up to date with the current standard of care. The rules concerning dental anesthesia will be Series 12 and will be proposed once the dental anesthesia law is updated and becomes effective.

Sedation Guidelines for Pediatric Patients

by Don E. Skaff, Anesthesia Committee Member

Dentists with a Class 2, 3a or 3b permit, and who treat children, should make themselves aware of the AAPD (American Academy of Pediatric Dentistry) document: Guideline for Monitoring and Management of Pediatric Patients During and After Sedation for Diagnostic and Therapeutic Procedures. This document was developed and endorsed by The American Academy of Pediatrics and The AAPD and can be found in the AAPD Reference Manual. These guidelines are an excellent reference for practitioners who sedate children.

I will highlight some of the important points in this guideline. The safe sedation of children for procedures requires a systematic approach that includes the following: no administration of a sedating

medication without the safety net of medical supervision (no medications to be given the night before or morning of at the home), careful pre-sedation evaluation, appropriate fasting for elective procedures, a focused airway examination for large tonsils, a clear understanding of the effects of the medications, appropriate training in airway management, appropriate medications and reversal agents, appropriate monitoring during and after the procedures, recovery to pre-sedation level of consciousness for discharge.

The pediatric patient shall be accompanied to and from the treatment facility by a parent, legal guardian, or other responsible person. It is preferable to have two or more adults accompany children who are still in car safety seats if transporta-

tion to and from a treatment facility is provided by the adults. Children who have undergone sedation could and have had their airways compromised due to their posture in the car seat. If there are two adults, the non-driver should sit next to the child and observe them while the child is in the car seat. Consideration for a longer period of observation shall be given if the responsible person's ability to observe the child is limited (if there is only one adult who also has to drive).

Senator Rockefeller Hosts Roundtable on Children's Oral Health in West Virginia

Senator Jay Rockefeller hosted a roundtable discussion focusing on children's oral health in West Virginia at the Academy of Careers and Technology in Beckley on February 22, 2012. The Board, as well as other stakeholders such as dentists, hygienists, physicians, school nurses, outreach workers, and non-profit organizations were invited to listen and participate in this discussion.

Senator Rockefeller saw this as a great opportunity for the stakeholders to come together to find ways to encourage parents to have their children examined by a dentist at an earlier age and on a regular basis.

More children than ever are seeing a dentist due to the success of the CHIP program, which requires states to include dental benefits, and health care providers who have worked hard to provide access to care.

Senator Rockefeller states "I have always encouraged good dental health, and making sure children receive dental care is without a doubt the most important first step. While there has been some progress, there is still work to be done, and I am committed to making dental coverage a reality for all children. We must raise awareness of the importance of oral care to see that all children in West Virginia grow up to have healthy teeth and mouths." quote taken from the Senator's you tube channel at <http://www.youtube.com/user/SenatorRockefeller>.



Pictured above Assistant Executive Secretary, Susan Combs, Senator Jay Rockefeller and Dr. Buck Conard, Board President at that time.

"While there has been some progress, there is still work to be done, and I am committed to making dental coverage a reality for all children."

Refusal to Prescribe/Notifying Law Enforcement of Violations

Recently the Board received questions concerning what to do if you discover a patient may be doctor shopping after reviewing the Controlled Substance Monitoring Program Database and could a practitioner refuse to prescribe to that patient. Here's a few excerpts from the WV Code that will answer this question.

§60A-9-5(g), Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or declining to prescribe or dispense a schedule II, III or IV controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense.

§60A-9-5(h), a prescribing or dispensing practitioner may notify law enforcement of a patient who, in the prescribing or dispensing practitioner's judgment, may be in violation of section four hundred ten, article four of this chapter, based on information obtained and reviewed from the controlled substances monitoring database. A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune from any civil, administrative or criminal liability that otherwise might be incurred or imposed because of the notification if the notification is made in good faith.

§60A-4-410, (a) It is unlawful for a patient, in an attempt to obtain a prescription for a controlled substance, to knowingly withhold from a practitioner, that

the patient has obtained a prescription for a controlled substance of the same or similar therapeutic use in a concurrent time period from another practitioner. (b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not more than nine months, or fined not more than \$2,500, or both fined and confined. (c) The offense established by this section is in addition to and a separate and distant offense from any other offense set forth in this code.

"A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune ..."

2013 Renewal Information & General Reminders

COMPLETING YOUR FORM

Each year there is a section on your annual renewal form where you are requested to list your current employer and related business information. THIS REQUEST APPLIES TO OUT-OF-STATE LICENSEES, AS WELL AS IN-STATE LICENSEES. If you are unemployed or retired, please make a notation indicating your current status. It is important that the Board have complete, accurate, and up-to-date information on each licensee.

Address changes and change of employers are information that need to be sent to the Board whenever they occur. These changes should be faxed, emailed, or mailed no later than 30 days of the change. Your cooperation with these requirements will be greatly appreciated by the Board staff.

FEES

Licensure renewal fees have increased for a majority of the Board's licensees. The new fees are as follows:

Dentists - \$185.00

Late Fee - \$185.00

Dental Hygienist - \$75.00

Late Fee - \$75.00

Dental Hygienist employed by a public health agency* - \$65.00

Late Fee - \$65.00

*A hygienist employed by a public health agency such as a federal, state, or county health department or Health Rite qualify for this discounted renewal fee.

GENERAL REMINDERS

Late fees, as previously mentioned, will be applied to renewals received in the office after February 1, 2013.

CPR certification is to remain current. Also, online CPR certification is not acceptable unless the course includes a skills examination with a certified instructor.

The current Continuing Education period started February 1, 2012 and ends January 31, 2014. CE credits are to be reported by February 1, 2014.

ONLINE RENEWALS

Don't forget online renewals will be available again this year. They should be available by December 1st.

Policy Concerning Prescription Writing

The following is policy of the WV Board of Dental Examiners. It is an excerpt, used with permission, from the American Association of Dental Examiners Guidelines for Evaluating Allegations of Inappropriate Prescribing Practices, Drug Diversion, and Substance-related Impairment of the Dental Licensee and is used with the permission of the American Association of Dental Boards.

Dentists who order, prescribe, dispense or administer controlled substances, or non-controlled substances with abuse potential, should always do so in the usual course of professional practice, as dictated by the federal Controlled Substances Act of 1970, as amended.¹ It is inadvisable and, in some jurisdictions, unlawful, for a licensed health care practitioner to order, prescribe, dispense or administer con-

trolled substances or other medications to or for themselves, their family, their friends or their employees. It is imperative that all ordering, prescribing, dispensing or administering of medicines by dentists be done for a legitimate medical purpose in the usual course of professional practice in the context of a documented, *bona fide* therapeutic dentist-patient relationship. The provision of "usual course of professional practice" is generally interpreted as meaning that dentists should confine their diagnosis and treatment to conditions affecting the head and neck and should not be engaged in the primary treatment of conditions occurring in other regions of the body.

i. 21USC802, et seq. and 21CFR1306.04–11.



Boards Oppose ADA's Involvement in Clinical Licensure Examinations

In 2010 the ADA House of Delegates passed Resolution 42H-2010 to initiate a request for proposal to develop a portfolio-style examination for licensure purposes. A workgroup was appointed to oversee the process comprised of various representatives from the American Dental Association (ADA), American Dental Education Association (ADEA), American Association of Dental Boards (AADB) and American Student Dental Association (ASDA).

Boards including Alabama, Alaska, Arkansas, Delaware, Louisiana, Minnesota, New Hampshire, Oregon, Tennessee, and Wyoming, to name a few, have written letters to William R. Calnon, DDS, President of the American Dental Association, opposing ADA involvement in the clinical licensing examination process. On January 19, 2012, Dr. George D. Conard, Jr., corresponded with Dr. Calnon, pursuant to vote of the Board, informing him of the West Virginia Board's opposition.

The West Virginia Board is adamant that it is the responsibility and privilege of individual states to regulate the practice of dentistry and dental hygiene, which includes the responsibility of administering clinical license examinations. It is not the responsibility of the American Dental Association. All of the licensed members of our Board, as well as some previous licensed Board members, participate with some or all of the regional examination organizations. Since 1997 the Board has recognized all regional and state clinical examinations as part of the requirements for licensure. The Board does not recognize licenses obtained through PGY-1 or other non-clinical means.

West Virginia Code, Chapter 30, Article 1, Section 1a, states in part as follows: "The Legislature finds and declares as a matter of public policy the practice of the professions... is a privilege and is not a natural right of individuals. The fundamental purpose of licensure and registration is to protect the public..."

The West Virginia Board will not abrogate its responsibility to ensure the public, its only master, that minimally competent dentists and dental hygienists are licensed. The license process includes an independent, third-party, clinical examination. To imply clinical examinations are onerous, or unfair, or just a snapshot is utter nonsense. After all, the candidates are not being tested for proficiency or mastership, only minimal competency. With due respect to ASDA, ADEA, and the ADA, licensure of candidates is the business of the state regulatory agencies.

Licensure Statistics

DENTAL

Total Active	1235
Practicing in WV	882
Active Volunteer	4

DENTAL ANESTHESIA

Class 2	32
Class 3A	31
Class 3B	23
Class 4	38

HYGIENE

Total Active	1258
Practicing in WV	824
Active Volunteer	0

HYGIENE PERMITS

General Supervision	445
Public Health	45
Local Anesthesia	145
Bleaching	310
Nitrous Monitoring	346

DENTAL ASSISTANTS

Coronal Polishing	121
Nitrous Monitoring	831
Restorative	651
Restorative & Ortho	26
Orthodontic	309

Fees increased effective April 15, 2012. Due to these increases, please do not use old applications for licensure or certificates issued by the Board. Updated applications are available on the Board's Website.

Sealant Placement

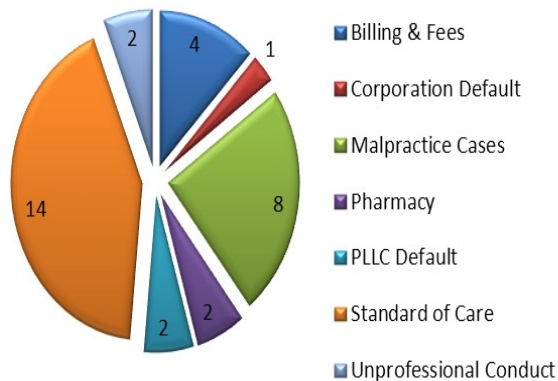
Dental Assistants who hold an expanded duties certificate, which includes, applying pit and fissure sealants (5CSR 8.2 (p)), are allowed to apply sealants under **direct supervision** of a licensed dentist.

Due to the passage of House Bill 4077, effective June 8, 2012, the following applies to Dental Hygienists' application of sealants:

Dental Hygienists are allowed to apply sealants under direct supervision or general supervision (must hold a general supervision permit issued by the Board) in a private practice setting **only**.

Dental Hygienists holding a Public Health Permit issued by the Board are allowed to apply sealants in settings as listed in 5CSR 8.7(h) and in compliance with §30-4-17(5).

Complaint Statistics 2012





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MOUNTAINEERS ARE ALWAYS FREE!!!

The West Virginia Board of Dental Examiners is an agency of the State mandated by legislature to protect the public health, safety, and welfare of its citizens. The Board regulates the profession of dentistry and licenses dentists and dental hygienists who have proven minimal competency standards by examination.

We're on the web!
www.wvdentalboard.org

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