

## **ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.**

### **§30-4-1. Unlawful acts.**

(a) It is unlawful for any person to practice or offer to practice dentistry or dental hygiene in this state without a license, issued under the provisions of this article, or advertise or use any title or description tending to convey or give the impression that they are a dentist or dental hygienist, unless the person is licensed under the provisions of this article.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of dentistry, except through a licensee.

### **§30-4-2. Applicable law.**

The practices authorized under the provisions of this article and the Board of Dentistry are subject to article one of this chapter, the provisions of this article and any rules promulgated hereunder.

### **§30-4-3. Definitions.**

As used in articles four, four-a and four-b, the following words and terms have the following meanings:

- (1) "AAOMS" means the American Association of Oral and Maxillofacial Surgeons;
- (2) "AAPD" means the American Academy of Pediatric Dentistry;
- (3) "ACLS" means Advanced Cardiac Life Support;
- (4) "ADA" means the American Dental Association;
- (5) "AMA" means the American Medical Association;
- (6) "ASA" means American Society of Anesthesiologists;
- (7) "Anxiolysis/minimal sedation" means removing, eliminating or decreasing anxiety by the use of a single anxiety or analgesia medication that is administered in an amount consistent with the manufacturer's current recommended dosage for the unsupervised treatment of anxiety, insomnia or pain, in conjunction with nitrous oxide and oxygen. This does not include multiple dosing or exceeding current normal dosage limits set by the manufacturer for unsupervised use by the patient at home for the treatment of anxiety;
- (8) "Approved dental hygiene program" means a program that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;
- (9) "Approved dental school, college or dental department of a university" means a dental school,

college or dental department of a university that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the Commission on Dental Accreditation of the American Dental Association;

(10) “Authorize” means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist’s diagnosis and treatment plan;

(11) “BLS” means Basic Life Support;

(12) “Board” means the West Virginia Board of Dentistry;

(13) “Business entity” means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity;

(14) “Central Nervous System Anesthesia” means an induced, controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method;

(15) “Certificate of qualification” means a certificate authorizing a dentist to practice a specialty;

(16) “CPR” means Cardiopulmonary Resuscitation;

(17) “Conscious sedation/Moderate sedation” means an induced, controlled state of depressed consciousness, produced through the administration of nitrous oxide and oxygen and/or the administration of other agents whether enteral or parenteral, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(18) “CRNA” means Certified Registered Nurse Anesthetist;

(19) “Defibrillator” means a device used to sustain asthmatic heartbeat in an emergency and includes an automatic electronic defibrillator (AED);

(20) “Delegated procedures” means those procedures specified by law or by rule of the board and performed by dental auxiliary personnel under the supervision of a licensed dentist;

(21) “Dentist Anesthesiologist” means a dentist who is trained in the practice of anesthesiology and has completed an additional approved anesthesia education course;

(22) “Dental assistant” means a person qualified by education, training or experience who aids or assists a dentist in the delivery of patient care in accordance with delegated procedures as specified by the board by rule or who may perform nonclinical duties in the dental office;

(23) “Dental auxiliary personnel” or “auxiliary” means dental hygienists and dental assistants who assist the dentist in the practice of dentistry;

(24) “Dental Hygiene” means the performance of educational, preventive or therapeutic dental services and as further provided in section eleven and legislative rule;

(25) “Dental hygienist” means a person licensed by the board to practice and who provides dental hygiene and other services as specified by the board by rule to patients in the dental office and in a public health setting;

(26) “Dental laboratory” means a business performing dental laboratory services;

(27) “Dental laboratory services” means the fabricating, repairing or altering of a dental prosthesis;

(28) “Dental laboratory technician” means a person qualified by education, training or experience who has completed a dental laboratory technology education program and who fabricates, repairs or alters a dental prosthesis in accordance with a dentist’s work authorization;

(29) “Dental office” means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry;

(30) “Dental prosthesis” means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics;

(31) “Dentist” means an individual licensed by the board to practice dentistry;

(32) “Dentistry” means the evaluation, diagnosis, prevention and treatment of diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures provided by a dentist;

(33) “Direct supervision” means supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office or treatment facility when procedures are being performed;

(34) “Facility Permit” means a permit for a facility where sedation procedures are used that correspond with the level of anesthesia provided;

(35) “General anesthesia” means an induced, controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation or the inability to respond purposefully to verbal command.

(36) “Deep conscious sedation/general anesthesia” includes partial loss of protective reflexes and the patient retains the ability to independently and continuously maintain an airway;

(37) “General supervision” means a dentist is not required to be in the office or treatment facility when procedures are being performed by the auxiliary dental personnel, but has personally diagnosed the condition to be treated, has personally authorized the procedures and will evaluate the treatment provided by the dental auxiliary personnel;

(38) “Good moral character” means a lack of history of dishonesty;

(39) “Health Care Provider BLS/CPR” means Health Care Provider Basic Life Support/Cardiopulmonary Resuscitation;

(40) “License” means a license to practice dentistry or dental hygiene;

(41) “Licensee” means a person holding a license;

(42) “Mobile Dental Facility” any self-contained facility in which dentistry or dental hygiene will be practiced which may be moved, towed or transported from one location to another;

(43) “Portable dental unit” means any nonfacility in which dental equipment, utilized in the practice of dentistry, is transported to and utilized on a temporary basis an out-of-office location, including but not limited to, patients’ homes, schools, nursing homes or other institutions;

(44) “Other dental practitioner” means those persons excluded from the definition of the practice of dentistry under the provisions of subdivisions (3), (4) and (5), section twenty-four, article four of this chapter and also those persons who hold teaching permits which have been issued to them under the provisions of section fourteen, article four of this chapter;

(45) “PALS” means Pediatric Advanced Life Support;

(46) “Pediatric patient” means infants and children;

(47) “Physician anesthesiologist” means a physician, medical doctor or doctor of osteopathy, who is specialized in the practice of anesthesiology;

(48) “Public health practice” means treatment or procedures in a public health setting which shall be designated by a rule promulgated by the board to require direct, general or no supervision of a dental hygienist by a dentist;

(49) “Public health setting” means hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the West Virginia Department of Health and Human Resources, public health facilities, homebound settings, accredited dental hygiene education programs and any other place designated by the board by rule;

(50) “Qualified monitor” means an individual who by virtue of credentialing and/or training is qualified to check closely and document the status of a patient undergoing anesthesia and observe utilized equipment;

(51) “Relative analgesia /minimal sedation” means an induced, controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen or single oral premedication without the addition of nitrous oxide and oxygen in which the

patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

(52) “Specialty” means the practice of a certain branch of dentistry;

(53) “Subcommittee” means West Virginia Board of Dentistry Subcommittee on Anesthesia; and

(54) “Work authorization” means a written order for dental laboratory services which has been issued by a licensed dentist or other dental practitioner.

#### **§30-4-4. Board of Dental Examiners.**

(a) The West Virginia Board of Dental Examiners is continued and on July 1, 2013, the board shall be renamed the West Virginia Board of Dentistry. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint:

(1) Six licensed dentists;

(2) One licensed dental hygienist;

(3) One nationally certified dental assistant or currently practicing dental assistant with a minimum of ten years experience; and

(4) One citizen member who is not licensed under the provisions of this article and does not perform any services related to the practice of dentistry.

(c) The West Virginia Dental Association may submit recommendations to the Governor for the appointment of the licensed dentists board members, the West Virginia Association of Dental Hygienists may submit recommendations to the Governor for the appointment of a Dental Hygienist board member and the West Virginia Dental Assistant Association may submit recommendations to the Governor for the appointment of a dental assistant board member.

(d) A person connected with a commercial entity that may derive financial gain from the profession of dentistry and a person employed as full-time faculty with a dental college, school or dental department of a university are not eligible for appointment to the board.

(e) After the initial appointment term, the appointment term is five years. A member may not serve more than two consecutive terms. A member who has served two consecutive full terms may not be reappointed for at least one year after completion of his or her second full term. A member may continue to serve until his or her successor has been appointed and qualified.

(f) Each licensed member of the board, at the time of his or her appointment, shall have held a

license in this state for a period of not less than five years immediately preceding the appointment.

(g) Each member of the board shall be a resident of this state during the appointment term.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked in any jurisdiction.

(k) A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(l) The board shall elect annually one of its members as president and one member as secretary who shall serve at the will and pleasure of the board.

(m) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with article one of this chapter.

(n) A simple majority of the membership serving on the board at a given time is a quorum for the transaction of business.

(o) The board shall hold at least two meetings annually. Other meetings shall be held at the call of the president or upon the written request of four members, at the time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(q) The members of the board, when acting in good faith and without malice, shall enjoy immunity from individual civil liability while acting within the scope of their duties as board members.

#### **§30-4-5. Powers of the board.**

The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law, including:

(1) Hold meetings;

(2) Establish procedures for submitting, approving and rejecting applications for a license,

certificate and permit;

(3) Determine the qualifications of any applicant for a license, certificate and permit;

(4) Establish the fees charged under the provisions of this article;

(5) Issue, renew, deny, suspend, revoke or reinstate a license, certificate and permit;

(6) Prepare, conduct, administer and grade written, oral or written and oral examinations for a license;

(7) Contract with third parties to administer the examinations required under the provisions of this article;

(8) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

(9) Maintain an office and hire, discharge, establish the job requirements and fix the compensation of employees and contract with persons necessary to enforce the provisions of this article.

(10) Employ investigators, attorneys, hearing examiners, consultants and other employees as may be necessary who are exempt from the classified service and who serve at the will and pleasure of the board.

(11) Investigate alleged violations of the provisions of this article and articles four-a and four-b of this chapter and legislative rules, orders and final decisions of the board;

(12) Conduct disciplinary hearings of persons regulated by the board;

(13) Determine disciplinary action and issue orders;

(14) Institute appropriate legal action for the enforcement of the provisions of this article;

(15) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(16) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(17) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;

(18) Sue and be sued in its official name as an agency of this state; and

(19) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

**§30-4-6. Rule-making authority.**

(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 and articles four-a and four-b of this chapter including:

- (1) Standards and requirements for licenses, certifications and permits;
- (2) Requirements for third parties to prepare and/or administer examinations and reexaminations;
- (3) Educational and experience requirements;
- (4) Continuing education requirements and approval of continuing education courses;
- (5) Procedures for the issuance and renewal of licenses, certifications and permits;
- (6) Establish a fee schedule;
- (7) Regulate dental specialities;
- (8) Delegate procedures to be performed by a dental hygienist;
- (9) Delegate procedures to be performed by a dental assistant;
- (10) Designate the services and procedures performed under direct supervision, general supervision in public health practice;
- (11) Designate additional public health settings;
- (12) Regulate the use of firm or trade names;
- (13) Regulate dental corporations;
- (14) Regulate mobile dental facilities;
- (15) Regulate portable dental units;
- (16) Regulate professional limited liability companies;
- (17) Establish professional conduct requirements;
- (18) Establish the procedures for denying, suspending, revoking, reinstating or limiting the practice of licensees, certifications and permittees;
- (19) Establish requirements for inactive or revoked licenses, certifications and permits;



(20) Regulate dental anesthesia, including:

(A) Fees;

(B) Evaluations;

(C) Equipment;

(D) Emergency drugs;

(E) Definitions;

(F) Qualified monitor requirements; and

(G) Education;

(21) Any other rules necessary to implement this article.

(b) All of the board's rules in effect and not in conflict with these provisions shall remain in effect until they are amended or rescinded.

**§30-4-7. Fees; special revenue account; administrative fines.**

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the Board of Dentists and Dental Hygienist Special Fund, which is continued and shall be known as the Board of Dentistry Special Fund. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the general revenue fund of the State Treasury.

**§30-4-8. License to practice dentistry.**

(a) The board shall issue a license to practice dentistry to an applicant who meets the following requirements:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Is a graduate of and has a diploma from a school accredited by the Commission on Dental Accreditation or equivalently approved dental college, school or dental department of a university

as determined by the board;

(4) Has passed the National Board examination as given by the Joint Commission on National Dental Examinations and a clinical examination as specified by the board by rule;

(5) Has not been found guilty of cheating, deception or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule; and

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered.

(b) A dentist may not represent to the public that he or she is a specialist in any branch of dentistry or limit his or her practice to any branch of dentistry unless first issued a certificate of qualification in that branch of dentistry by the board.

(c) A license to practice dentistry issued by the board shall for all purposes be considered a license issued under this section: Provided, That a person holding a license shall renew the license.

#### **§30-4-9. Scope of practice of a dentist.**

The practice of dentistry includes the following:

(1) Coordinate dental services to meet the oral health needs of the patient;

(2) Examine, evaluate and diagnose diseases, disorders and conditions of the oral cavity, maxillofacial area and adjacent and associated structures;

(3) Treat diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(4) Provide services to prevent diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(5) Fabricate, repair or alter a dental prosthesis;

(6) Administer anesthesia in accordance with the provisions of article four-a of this chapter;

(7) Prescribe drugs necessary for the practice of dentistry;

(8) Execute and sign a death certificate when it is required in the practice of dentistry;

(9) Employ and supervise dental auxiliary personnel;

(10) Authorize delegated procedures to be performed by dental auxiliary personnel; and

(11) Perform any other work included in the curriculum of an approved dental school, college or dental department of a university.

**§30-4-10. License to practice dental hygiene.**

(a) The board shall issue a dental hygienist license to an applicant who meets the following requirements:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Is a graduate with a degree in dental hygiene from an approved dental hygiene program of a college, school or dental department of a university;

(4) Has passed the national board dental hygiene examination, a regional or state clinical examination and a state law examination that tests the applicant's knowledge of subjects specified by the board by rule;

(5) Has not been found guilty of cheating, deception or fraud in the examination or any part of the application;

(6) Has paid the application fee specified by rule; and,

(7) Not be an alcohol or drug abuser, as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered.

(b) A dental hygienist license issued by the board and in good standing on the effective date of the amendments to this section shall for all purposes be considered a dental hygienist license issued under this section: Provided, That a person holding a dental hygienist license shall renew the license.

**§30-4-11. Scope of practice for a dental hygienist.**

The practice of dental hygiene includes the following:

(1) Perform a complete prophylaxis, including the removal of any deposit, accretion or stain from supra and subgingival, the surface of a tooth or a restoration;

(2) Apply a medicinal agent to a tooth for a prophylactic purpose;

(3) Take a radiograph for interpretation by a dentist;

(4) Instruct a patient on proper oral hygiene practice;

(5) Place 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 practice permit issued by the board, 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;

(6) Perform all delegated procedures of a dental hygienist specified by rule by the board; and

(7) Performing all delegated procedures of a dental assistant specified by rule by the board.

**§30-4-12. License renewal.**

(a) All persons regulated by this article shall annually or biannually, renew his or her board authorization by completing a form prescribed by the board and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a board authorization and shall charge a late fee for any renewal not paid by the due date.

(c) The board shall require as a condition of renewal that each licensee, certificate holder or permittee complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application.

**§30-4-13. Board authorizations shall be displayed.**

(a) The board shall prescribe the form for a board authorization, and may issue a duplicate upon payment of a fee.

(b) Any person regulated by the article shall conspicuously display his or her board authorization at his or her principal business location.

**§30-4-14. Dental intern, resident, or teaching permit.**

(a) The board may issue a dental intern or dental resident permit to an applicant who has been accepted as a dental intern or dental resident by a licensed hospital or dental school in this state which maintains an established dental department under the supervision of a licensed dentist and meets the following qualifications:

(1) Has graduated from a Commission on Dental Accreditation or equivalent approved dental

college, school or dental department of a university with a degree in dentistry;

(2) Has paid the application fee specified by rule; and

(3) Meets the other qualifications specified by rule.

(b) The dental intern or dental resident permit may be renewed and expires on the earlier of:

(1) The date the permit holder ceases to be a dental intern or dental resident; or

(2) One year after the date of issue.

(c) The board may issue a teaching permit to an applicant who is not otherwise licensed to practice dentistry in this state and who meets the following conditions:

(1) Is authorized or is eligible, as determined by the board, for a authorization to practice dentistry in another jurisdiction;

(2) Has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated: Provided, That the dental school or academic medical center is accredited by the Commission on Dental Accreditation or Joint Commission on Accreditation of Health Care Organizations;

(3) The permittee may teach and practice dentistry in or on behalf of a dental school or college offering a doctoral degree in dentistry operated and conducted in this state, in connection with an academic medical center or at any teaching hospital adjacent to a dental school or an academic medical center;

(4) Shall successfully complete the West Virginia Dental Law Examination;

(5) Shall pay annual renewal fees to the board;

(6) Shall comply with continuing education requirements; and

(7) Has had no disciplinary actions taken or pending against him or her by any other jurisdiction.

(d) A teaching permit may be renewed annually with a written recommendation from the dental school dean.

(e) While in effect, a permittee is subject to the restrictions and requirements imposed by this article to the same extent as a licensee. In addition, a permittee may not receive any fee for service other than a salary paid by the hospital or dental school

**§30-4-15. Special volunteer dentist or dental hygienist license; civil immunity for voluntary services rendered to indigents.**

(a) There is continued a special volunteer dentist and dental hygienist license for dentist and dental hygienists retired or retiring from the active practice of dentistry and dental hygiene who wish to donate their expertise for the care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge. The special volunteer dentist or dental hygienist license shall be issued by the board to dentist or dental hygienists licensed or otherwise eligible for licensure under this article and the legislative rules promulgated hereunder without the payment of an application fee, license fee or renewal fee, shall be issued for the remainder of the licensing period and renewed consistent with the boards other licensing requirements. The board shall develop application forms for the special license provided in this subsection which shall contain the dental hygienist's acknowledgment that:

(1) The dentist or dental hygienist's practice under the special volunteer dentist or dental hygienist license will be exclusively devoted to providing dentistry or dental hygiene care to needy and indigent persons in West Virginia;

(2) The dentist or dental hygienist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any dentistry or dental hygiene services rendered under the special volunteer dentist or dental hygienist license;

(3) The dentist or dental hygienist will supply any supporting documentation that the board may reasonably require; and

(4) The dentist or dental hygienist agrees to continue to participate in continuing professional education as required by the board for the special volunteer dentist or dental hygienist.

(b) Any dentist or dental hygienist who renders any dentistry or dental hygiene service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the dental hygiene service at the clinic unless the act or omission was the result of the dentist's or dental hygienist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the dentist or dental hygienist and the clinic pursuant to which the dentist or dental hygienist will provide voluntary uncompensated dental hygiene services under the control of the clinic to patients of the clinic before the rendering of any services by the dentist or dental hygienist at the clinic: Provided, That any clinic entering into such written agreement is required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (b) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of a dentist or dental hygienist rendering voluntary dental hygiene services at or for the clinic under a special volunteer dentist or dental hygienist license authorized under subsection (a) of this section.

(d) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section eight of this article and in the legislative rules promulgated thereunder, except the fee requirements of subdivision (6) of said section and of the legislative rules promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer dentist or dental hygienist license to any dental hygienist whose license is or has been subject to any disciplinary action or to any dentist or dental hygienist who has surrendered a license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her dentist or dental hygienist license, or who has elected to place a dentist or dental hygienist license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a dentist or dental hygienist license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any dentist or dental hygienist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by a dentist or dental hygienist who holds a special volunteer dentist or dental hygienist license.

#### **§30-4-16. Dental corporations.**

(a) Dental corporations are continued.

(b) One or more dentists may organize and become a shareholder or shareholders of a dental corporation domiciled within this state under the terms and conditions and subject to the limitations and restrictions specified by rule.

(c) No corporation may practice dentistry, or any of its branches, or hold itself out as being capable of doing so without a certificate of authorization from the board.

(d) When the Secretary of State receives a certificate of authorization to act as a dental corporation from the board, he or she shall attach the authorization to the corporation application and, upon compliance with the applicable provisions of chapter thirty-one of this code, the Secretary of State shall issue to the incorporators a certificate of incorporation for the dental corporation.

(e) A corporation holding a certificate of authorization shall renew annually, on or before June 30, on a form prescribed by the board and pay an annual fee in an amount specified by rule.

(f) A dental corporation may practice dentistry only through an individual dentist or dentists licensed to practice dentistry in this state, but the dentist or dentists may be employees rather than shareholders of the corporation.

(g) A dental corporation holding a certificate of authorization shall cease to engage in the practice

of dentistry upon being notified by the board that any of its shareholders is no longer a licensed dentist or when any shares of the corporation have been sold or disposed of to a person who is not a licensed dentist: Provided, That the personal representative of a deceased shareholder has a period, not to exceed twenty-four months from the date of the shareholder's death, to dispose of the shares; but nothing contained herein may be construed as affecting the existence of the corporation or its right to continue to operate for all lawful purposes other than the practice of dentistry.

#### **§30-4-17. Reinstatement.**

(a) A licensee against whom disciplinary action has been taken under the provisions of this article shall be afforded an opportunity to demonstrate the qualifications to resume practice. The application for reinstatement shall be in writing and subject to the procedures specified by the board by rule.

(b) A licensee who does not complete annual renewal, as specified by the board by rule, and whose license has lapsed for one year or longer, shall make application for reinstatement as specified by the board by rule.

(c) The board, at its discretion and for cause, may require an applicant for reinstatement to undergo a physical and/or mental evaluation to determine a licensee is competent to practice or if the licensee is impaired by drugs or alcohol.

#### **§30-4-18. Actions to enjoin violations.**

(a) If the board obtains information that any person has engaged in, is engaging in or is about to engage in any act which constitutes or will constitute a violation of the provisions of this article, the rules promulgated pursuant to this article or a final order or decision of the board, it may issue a notice to the person to cease and desist in engaging in the act and/or apply to the circuit court in the county of the alleged violation for an order enjoining the act.

(b) The circuit court may issue a temporary injunction pending a decision on the merits and may issue a permanent injunction based on its findings in the case.

(c) The judgment of the circuit court on an application permitted by the provisions of this section is final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals.

#### **§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary action.**

(a) The board may initiate a complaint upon receipt of credible information and shall, upon the receipt of a written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.



(b) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(c) Upon a finding of probable cause to go forward with a complaint, the board shall provide a copy of the complaint to the licensee, certificate holder or permittee.

(d) Upon a finding that probable cause exists that the licensee, certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for disciplinary action against the licensee, certificate holder or permittee. Any hearing shall be held in accordance with the provisions of this article and shall require a violation to be proven by a preponderance of the evidence.

(e) A member of the complaint committee or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license, certificate or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder or permittee for any of the following reasons:

- (1) Obtaining a board authorization by fraud, misrepresentation or concealment of material facts;
- (2) Being convicted of a felony or a misdemeanor crime of moral turpitude;
- (3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;
- (4) Intentional violation of a lawful order or legislative rule of the board;
- (5) Having had a board authorization revoked or suspended, other disciplinary action taken, or an application for a board authorization denied by the proper authorities of another jurisdiction;
- (6) Aiding or abetting unlicensed practice;
- (7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public;
- (8) Having an incapacity that prevents a licensee from engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence and safety to the public;

(9) Committing fraud in connection with the practice of dentistry or dental hygiene;

(10) Failing to report to the board one's surrender of a license or authorization to practice dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this section;

(11) Failing to report to the board any adverse judgment, settlement or award arising from a malpractice claim arising related to conduct that would constitute grounds for action as defined in this section;

(12) Being guilty of unprofessional conduct as contained in the American Dental Association principles of ethics and code of professional conduct. The following acts are conclusively presumed to be unprofessional conduct:

(A) Being guilty of any fraud or deception;

(B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

(C) Abusing alcohol or drugs;

(D) Violating any professional confidence or disclosing any professional secret;

(E) Being grossly immoral;

(F) Harassing, abusing, intimidating, insulting, degrading or humiliating a patient physically, verbally or through another form of communication;

(G) Obtaining any fee by fraud or misrepresentation;

(H) Employing directly or indirectly, or directing or permitting any suspended or unlicensed person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof;

(I) Practicing, or offering or undertaking to practice dentistry under any firm name or trade name not approved by the board;

(J) Having a professional connection or association with, or lending his or her name to another, for the illegal practice of dentistry, or professional connection or association with any person, firm or corporation holding himself or herself, themselves or itself out in any manner contrary to this article;

(K) Making use of any advertising relating to the use of any drug or medicine of unknown formula;

(L) Advertising to practice dentistry or perform any operation thereunder without causing pain;

(M) Advertising professional superiority or the performance of professional services in a superior manner;

(N) Advertising to guarantee any dental service;

(O) Advertising in any manner that is false or misleading in any material respect;

(P) Soliciting subscriptions from individuals within or without the state for, or advertising or offering to individuals within or without the state, a course or instruction or course materials in any phase, part or branch of dentistry or dental hygiene in any journal, newspaper, magazine or dental publication, or by means of radio, television or United States mail, or in or by any other means of contacting individuals: Provided, That the provisions of this paragraph may not be construed so as to prohibit:

(i) An individual dentist or dental hygienist from presenting articles pertaining to procedures or technique to state or national journals or accepted dental publications; or

(ii) Educational institutions approved by the board from offering courses or instruction or course materials to individual dentists and dental hygienists from within or without the state; or

(Q) Engaging in any action or conduct which would have warranted the denial of the license.

(13) Knowing or suspecting that a licensee is incapable of engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence and safety to the public, and failing to report any relevant information to the board;

(14) Using or disclosing protected health information in an unauthorized or unlawful manner;

(15) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;

(16) Failing to furnish to the board or its representatives any information legally requested by the board or failing to cooperate with or engaging in any conduct which obstructs an investigation being conducted by the board;

(17) Announcing or otherwise holding himself or herself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his or her practice to any branch of dentistry without first complying with the requirements established by the board for the specialty and having been issued a certificate of qualification in the specialty by the board;

(18) Failing to report to the board within seventy-two hours of becoming aware thereof any life threatening occurrence, serious injury or death of a patient resulting from dental treatment or complications following a dental procedure;

(19) Failing to report to the board any driving under the influence and/or driving while intoxicated

offense; or

(20) Violation of any of the terms or conditions of any order entered in any disciplinary action.

(h) For the purposes of subsection (g) of this section, effective July 1, 2013, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Suspension;

(5) Revocation;

(6) Administrative fine, not to exceed \$1,000 per day per violation;

(7) Mandatory attendance at continuing education seminars or other training;

(8) Practicing under supervision or other restriction; or

(9) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

(j) A person authorized to practice under this article who reports or otherwise provides evidence of the negligence, impairment or incompetence of another member of this profession to the board or to any peer review organization is not liable to any person for making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

#### **§30-4-20. Procedures for hearing; right of appeal.**

(a) Hearings are governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath.

(e) If, after a hearing, the board determines the licensee or permittee has violated provisions of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

#### **§30-4-21. Judicial review.**

A person adversely affected by a decision of the board denying an application or entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code and may appeal any ruling resulting from judicial review in accordance with article six of said chapter.

#### **§30-4-22. Criminal offenses.**

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person authorized under this article has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) Any person who intentionally practices, or holds himself or herself out as qualified to practice dentistry or dental hygiene, or uses any title, word or abbreviation to indicate to or induce others to believe he or she is licensed to practice as a dentist or dental hygienist without obtaining an active, valid West Virginia license to practice that profession or with a license that is:

(1) Expired, suspended or lapsed; or

(2) Inactive, revoked, suspended as a result of disciplinary action, or surrendered, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000.

#### **§30-4-23. Single act evidence of practice.**

In any action brought under this article, article four-a or article four-b any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

#### **§30-4-24. Inapplicability of article.**

The provisions of this article do not apply to:

(1) A licensed physician or surgeon in the practice of his or her profession when rendering dental relief in emergency cases, unless he or she undertakes to reproduce or reproduces lost parts of the human teeth or to restore or replace lost or missing teeth in the human mouth;

(2) A dental laboratory in the performance of dental laboratory services, while the dental laboratory, in the performance of the work, conforms in all respects to the requirements of article four-b of this chapter and further does not apply to persons performing dental laboratory services under the direct supervision of a licensed dentist or under the direct supervision of a person authorized under this article to perform any of the acts in this article defined to constitute the practice of dentistry while the work is performed in connection with, and as a part of, the dental practice of the licensed dentist or other authorized person and for his or her dental patients;

(3) A student enrolled in and regularly attending any dental college recognized by the board, provided their acts are done in the dental college and under the direct and personal supervision of their instructor;

(4) A student enrolled in and regularly attending any dental college, recognized by the board, practicing dentistry in a public health setting, provided their acts are done under the direct supervision of their instructor, adjunct instructor or a dentist;

(5) An authorized dentist of another state temporarily operating a clinic under the auspices of a organized and reputable dental college or reputable dental society, or to one lecturing before a reputable society composed exclusively of dentists; or

(6) A dentists whose practice is confined exclusively to the service of the United States Army, the United States Navy, the United States Air Force, The United States Coast Guard, the United States Public Health Service, the United States Veteran's Bureau or any other authorized United States government agency or bureau.