



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Dentistry WV Board of TITLE-SERIES: 5-01
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 5-01 Rule for the West Virginia Board of Dentistry

PRIMARY CONTACT

NAME: WV Board of Dentistry
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CITE STATUTORY AUTHORITY: §§30-4-5, 30-4-6; §§30-1-23, 30-1-24; §30-1D1(d)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§30-4-5 is the section of the practice act explaining the powers of the board including proposing rules; §30-4-6 is the section of the act giving the Board rule-making authority; §30-1-23 allows the Board to waive initial licensing fees for certain individuals; §30-1-24 allows the Board to propose rules concerning the use of criminal records; §30-1D-1(d) allows the Board to propose rules concerning the provisions of Lynette's Law.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/18/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/21/2021

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

The filing notice was placed on the Board's website and sent to the WV Dental and Dental Hygiene Associations as well as the State Dental Director for their review and comment.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule mostly addresses permits and licensure issues. Changes in this rule were requested by an accredited program at Cabell Huntington Hospital to include a dental residency program in the teaching permit section. Other changes clarify intern permit processes as well as licensure process for foreign trained graduates with US accredited specialty training. It also adds the ability for a foreign trained graduate to be licensed after specified accredited training in general dentistry. It also changes secretary to director in 6.1.a. as the title was changed to director in the practice act a few years ago.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Board wishes to clarify the programs eligible for teaching permits. Also, to clarify the intern permit eligibility, specialties for foreign graduates with US accredited specialty training and to allow foreign graduates with US accredited general dentistry training a pathway to licensure.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There is no economic impact expected.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

There is no economic impact expected.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

There is no economic impact expected.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This rule does not change what the Board already allows with the exception of licensing foreign trained dentists after a specified accredited training in general dentistry. Revenue could increase, but it is unknown to what extent.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Susan Combs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

5CSR1

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTISTRY

SERIES 1
RULE FOR THE WEST VIRGINIA BOARD OF DENTISTRY

§5-1-1. General.

1.1. Scope. This rule regulates the W. Va. Board of Dentistry's proceedings and carries out the purposes and enforces the provisions of W. Va. Code §§30-1-1 et seq and 30-4-1 et seq which are applicable to the W. Va. Board of Dentistry.

1.2. Authority. -- W. Va. Code §30-4- 5 & 6, W. Va. Code §30-1-23 &24, and W. Va. Code §30-1D-1(d).

1.3. Filing Date. -- ~~April 10, 2020~~

1.4. Effective Date. -- ~~June 1, 2020~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~June~~ August 1, 203032.

1.6. Amend. -- This rule amends W. Va. Board of Dentistry Rule 5CSR1, W. Va. Administrative rules, W. Va. Board of Dentistry which became effective on June 1, 201720.

§5-1-2. Definitions.

2.1. Initial means obtaining a license in West Virginia for the occupation sought for the first time.

2.2. Low-income individuals means individuals in the local labor market as defined in §21-1C-2 of this code whose household adjusted gross income is below 130 percent of the federal poverty line. This term also includes any person enrolled in a state or federal public assistance program including, but not limited to, the Temporary Assistance for Needy Families Program, Medicaid, or the Supplemental Nutrition Assistance Program.

2.3. Military families means any person who serves as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U. S. C. §101, honorably discharged veterans of those forces, and their spouses. This term also includes surviving spouses of deceased service members who have not remarried.

2.4. "Trade name" means a fictitious name, firm name or doing business as name under which you do business other than the current official name on your business registration.

§5-1-3. Issuance of dental intern, dental resident, teaching permits; licensing of foreign trained dentists.

3.1. Dental Intern or Dental Residency Permit. The Board of Dentistry may issue a dental intern or dental residency permit to graduates of dental schools approved by the Board who are not licensed to practice dentistry in this State. An applicant for a permit shall be certified to the Board by the dental director of a hospital operated or licensed by the State which maintains a dental intern or residency program or the dean of a dental school located within the State. The permit shall authorize the holder of the permit to serve as a dental intern or a dental resident for a period of not more than one year in any hospital licensed or operated by the State which maintains an established dental department under the supervision of a licensed dentist or the school of dentistry located in the State. The permit may be reissued by the Board at its discretion. The holder of a permit shall function under the supervision of the dental staff of the hospital or dental school and shall limit his or her practice to patients selected by the hospital or school of dentistry. The holder of a permit is not entitled to receive any fee or other compensation other than the salary paid by the hospital or school of dentistry. Permits may be revoked by the Board for cause and expire at the end of one year or on the date the dental internship or residency is discontinued, whichever first occurs.

3.2. Teaching Permits. The Board may issue teaching permits to persons who are graduates of a school of dentistry or dental residency program approved by the Board where those persons are not licensed to practice dentistry in this State. The permit shall be issued only upon the certification of the dean of a dental school or program director of a dental residency program located in this State that the applicant is a member of the staff of that school or program. The permits are valid for one year and may be reissued by the Board in its discretion with a written recommendation of the dental school dean or program director. The holder of a permit may perform all operations which a person licensed to practice dentistry in this State may perform, but only within the facilities of the dental school, academic medical center, or teaching hospital adjacent to a dental school or academic medical center located within the state and as an adjunct to his or her teaching functions in the school. Permits may be revoked for cause and expire at the end of one year or on the date the teaching appointment ends, whichever first occurs.

3.3. Teaching Permits with U.S. Specialty Training. The Board of Dentistry may issue a teaching permit to an applicant trained in foreign dental schools, who possesses a certificate of completed dental specialty training from a U. S. or Canadian dental school and who ~~have~~ has received U. S. Board certification. The permit shall be issued only upon certification of the dean of a dental school located in this State, that the applicant is a member of the staff at that school. The permits are valid for one year and may be reissued by the Board with a written recommendation of the dental school dean. The holder of the permit may perform all operations which a person licensed in their particular specialty to practice dentistry in this State may perform, but only within the confines of the primary location of the dental school, or teaching hospital adjacent to a dental school located within the state and as an adjunct to his or her teaching functions in the dental school. Permits may be revoked for cause and expire at the end of one year or on the date the teaching appointment ends, whichever first occurs.

3.4. Foreign Trained Dental Graduates. The Board of Dentistry may issue a dental intern permit, dental resident permit or teaching permit to a foreign trained dentist who has been offered a position in an approved dental program in this state as verified by the program director, dean, or associate dean.

3.5. Foreign Trained Dental Graduates with Accredited Advanced General Dentistry Training. The Board may issue a dental license to an applicant trained in a foreign dental school, who possesses a

certification of a two-year, or more, advanced general dentistry training program from a U.S. or Canadian dental school accredited by the Commission on Dental Accreditation.

3.6. Foreign Trained Dental Graduates with Accredited Dental Specialty Advanced Education Training. The Board may issue a dental license to an applicant trained in a foreign dental school, who possesses a certification of a two-year, or more, dental specialty advanced education training program from a dental school accredited by the Commission on Dental Accreditation. The applicant shall apply for both a general and specialty dental license and shall limit his or her practice of dentistry only to the specialty in which he or she is licensed.

§5-1-4. Suspension or revocation of a license.

4.1. Board Meeting. Prior to the suspension or revocation of a license, a majority of the Board shall meet with a quorum voting for revocation or suspension of the license.

4.2. Notice. The Board shall notify the licensee concerning a revocation or suspension at least thirty (30) days prior to the hearing. The notice shall contain grounds for the revocation or suspension and notify the licensee that he or she may appear with witnesses and be heard in person, by counsel, or by both. The notice shall also contain the time and place of the hearing concerning the suspension or revocation. The notice shall also contain a statement informing the licensee that the Board will receive any evidence the licensee may wish to offer, that the licensee will be given the opportunity to cross-examine any witnesses appearing before the Board, and that the Board will receive any statement the licensee may desire to make to them.

4.3. Publicity. The Board shall give no advance publicity prior to the hearing, during the hearing or prior to its decision concerning a licensee's suspension or revocation of a license.

4.4. Service of Notice. The Board may serve notice by delivering a copy of the notice in writing to the party in person; or if he or she cannot be found, by delivering the copy at his or her usual place of abode, and giving information of its purport, to the spouse, or to any other person found there who is a member of the licensee's family and above the age of sixteen years; or if neither the spouse nor any other person is found there, and the licensee is not found, leaving the copy posted at the front door of the place of abode. Any sheriff or constable shall serve a notice within his or her county and make return of the manner and time of service; for a failure to do so he or she shall forfeit twenty dollars. The return, or a similar return by any other person who verified it by affidavit, is evidence of the manner and time of service.

4.5. Service by Publication. Any notice to a person not residing in this State may be served by the publication of the notice once a week for three successive weeks in a newspaper published in this State.

4.6. Hearing. The Board may compel the attendance of witnesses and administer oaths. A stenographic report of a proceeding to suspend or revoke a license shall be made at the expense of the Board and a transcript of the hearing retained in the Board's file. The Board shall make a written report of its findings, which constitute part of the record and a copy of the findings shall be filed with the Secretary of State.

4.7. Review by Circuit Court and Supreme Court of Board's Decision on Suspension and Revocation of License. A person having his or her license suspended or revoked may, within thirty days after the

decision of the Board, present a petition in writing to the circuit court of the county in which the person resides, or to the judge of the court in vacation, praying for the review and reversal of the decision. Before presenting his or her petition to the court or judge, the petitioner shall mail copies of the petition to the president and secretary, respectively, of the Board. Upon receipt of the copy, the secretary shall immediately transmit to the clerk of the court the record of the proceedings before the Board. The court or judge shall fix a time for the review of the proceedings at his or her earliest convenience. Notice in writing of the time and place of the hearing shall be given to the president and secretary of the Board at least ten days before the date set for the hearing. The court or judge shall, without a jury, hear and determine the case upon the record of the proceedings before the Board. The court or judge may enter an order affirming, revising, or reversing the decision of the Board if it appears that the decision was clearly wrong. Prior to the entry of the order, no order shall be made or entered by the court to stay or supersede any suspension, revocation or cancellation of any certificate, license, registration or authority. The judgement of the Circuit Court may be reviewed upon appeal in the Supreme Court of Appeals.

§5-1-5. Practice of dentistry under trade name.

5.1. A person shall not practice, or offer or undertake to practice, dentistry under any name other than his or her own true name. This section may not prohibit the practice of dentistry by a partnership under a trade name, or a licensed dentist from practicing dentistry as the employee of a licensed dentist, practicing under his own name or under a trade name, or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company or as the employee of a dental clinic operated as specified.

5.2. A dentist, partnership, professional corporation, or professional limited liability company that owns a dental practice may adopt a trade name for that practice so long as the trade name meets the following requirements:

5.2.a. The trade name incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location; (ii) type of practice; or (iii) a derivative of the dentist's name.

5.2.b. Derivatives of American Dental Association approved specialty board certifications may be used to describe the type of practice if one or more dentists in the practice are certified in the specialty or if the specialty name is accompanied by the conspicuous disclosure that services are provided by a general dentist in every advertising medium in which the trade name is used.

5.2.c. The trade name is used in conjunction with either (i) the name of the dentist or (ii) the name of the sole proprietorship, partnership, professional corporation, or professional limited liability company that owns the practice. The owner's name shall be conspicuously displayed along with the trade name used for the practice in all advertisements in any medium.

5.2.d. Marquee signage, web page addresses, and email addresses are not considered to be advertisements and may be limited to the trade name adopted for the practice.

5.3. False or misleading trade names may be subject to disciplinary actions by the Board.

§5-1-6. Annual information and renewal notice; reinstatement; penalty fees; waiver of payment of fees; change of address.

6.1. Annual information and renewal notice; reinstatement and penalty fees.

6.1.a. On or before the first day of February of each year, every dentist licensed to practice dentistry in this state, and every dental hygienist licensed to practice dental hygiene in this state, shall transmit to the ~~secretary~~ director of the board upon a form prescribed by the board, on a paper form or an internet-based online form, his or her signature, or electronic signature, post-office address, office address, serial number of his or her license certificate, whether he or she has been engaged during the preceding year in the active and continuous practice of dentistry or dental hygiene, as the case may be, whether within or without this state, and any other information required by the board, together with an information and renewal fee.

6.1.b. Upon receipt of the required information and the payment of the proper renewal fee, the board shall issue a renewal certificate authorizing him or her to continue the practice of dentistry or the practice of dental hygiene in this state for a period of one year from the first day of February.

6.1.c. Upon failure of any licensee to submit the required information and pay the annual renewal fee as required by the statutory date, the board shall attempt to notify the licensee in writing by mailing to his or her address of record a notice of the expiration of his or her license on the statutory date: Provided, that the Board's failure to mail or receive the notice shall not affect the expiration of his or her license.

6.1.d. A license to practice dentistry or dental hygiene expires on the first day of February if the licensee fails to secure a current renewal certificate by that day. Any licensee whose license is expired by reason of the failure, neglect or refusal to secure the proper renewal certificate may have his or her license reinstated by the board at any time within one year from the date of the expiration of the license upon the payment of the proper renewal fee and a penalty fee as set by the board's fee schedule 5CSR3. If the licensee does not apply for renewal of his or her license as required by this section within one year, that person shall, at the discretion of the board, file an application for reinstatement.

6.2. Waiver of payment of renewal fee for active duty military or accompanying spouse.

6.2.a. After the proper submission of a waiver request, the board may waive the annual payment of the renewal fee required by this section, during periods when a licensee is on active duty or is the accompanying spouse of a member of the Armed Forces of the United States, the National Guard of this state or any other state or any other military reserve component and deployed outside this state, and for six months after discharge from active duty, the license of a person regulated by this Board shall continue in good-standing and shall be renewed without payment of any fees for the maintenance or renewal of the license and without meeting continuing education requirements for the license when circumstances associated with military duty prevent the individual from obtaining the required continuing education.

6.3. Waiver of payment of initial application fee for low-income individuals and military families.

6.3.a. Low-Income individuals, as defined in this rule, may seek a waiver of the initial application fee for licensure as a dentist or dental hygienist and must apply in a format prescribed by the board.

6.3.b. Military families, as defined in this rule, may seek a waiver of the initial application fee for

licensure as a dentist or dental hygienist and must apply in a format prescribed by the board.

6.4. Change of Address.

6.4.a. Every licensed dentist or dental hygienist within thirty days of changing their place of residence or their place of practice or establishing additional offices shall furnish the secretary of the board with his or her new addresses.

§5-1-7. Criminal History Record Check. Use of Criminal Records as Disqualification from Licensure.

7.1. Beginning July 1, 2017, and in addition to all of the requirements for licensure, all applicants for an initial license to practice as a dentist or dental hygienist in West Virginia shall request and submit to the Board the results of a state and a national criminal history record check.

7.2. The purpose of the criminal history record check is to assist the Board in obtaining information that may relate to the applicant's fitness for licensure.

7.3. In addition to the State Police, the Board may contract with and designate a company specializing in the services required by this section instead of requiring the applicant to apply directly to the West Virginia State Police or similar out-of-state agency for the criminal history records checks. Provided, that any such company must utilize protocols consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact.

7.4. The applicant shall furnish to the State Police, or other organization duly designated by the Board, a full set of fingerprints and any additional information required to complete the criminal history record check.

7.5. The applicant is responsible for any fees required by the State Police, or other organization duly designated by the Board, for the actual costs of the fingerprinting and the actual costs of conducting a complete criminal history record check.

7.6. The Board may require the applicant to obtain a criminal history records check from a similar Board approved agency or organization in the state of the applicant's residence, if outside of West Virginia.

7.7. The applicant shall authorize the release of all records obtained by the criminal history record check to the Board.

7.8. A criminal history record check submitted in support of an application for licensure must have been requested by the applicant no earlier than twelve (12) months immediately prior to the Board's receipt of the applicant's electronic application for licensure.

7.9. An initial licensure application is not complete until the Board receives the results of a state and a national criminal history record check conducted by the State Police or another entity duly authorized by the Board. The Board shall not grant an application for licensure submitted by any applicant who fails or refuses to submit the criminal history record check required by this section.

7.10. Should criminal offenses be reported on an applicant's criminal history record check, the board will consider the nature, severity, and recency of offenses, relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession of dentistry or dental hygiene, as well as rehabilitation and other factors on a case by case basis for licensure.

7.10.a. The Board may not disqualify an applicant from initial licensure as outlined in West Virginia Code chapter thirty, article one, section twenty-four.

7.10.b. Criminal history record checks shall be verified by a source acceptable to the Board, other than the applicant.

7.10.c. The Board shall permit an applicant to apply for initial licensure who was previously denied because of a criminal conviction according to the requirements of West Virginia Code chapter thirty, article one, section twenty-four(b)(3).

7.10.d. Convictions of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure in the profession of dentistry or dental hygiene as set-forth in West Virginia Code chapter thirty, article one, section twenty-four(b)(3)(C).

7.10.e. An individual with a criminal record who has not previously applied for licensure may petition the board according to the requirements of West Virginia Code chapter thirty, article one, section twenty-four(b)(4) The board may charge a fee of \$100.00 to recoup its costs for each petition.

7.11. The results of the state and national criminal history record check may not be released to or by a private entity except:

7.11.a. To the individual who is the subject of the criminal history record check;

7.11.b. With the written authorization of the individual who is the subject of the criminal history record check; or

7.11.c. Pursuant to a court order.

7.12. Criminal history record checks and related records are not public records for the purposes of chapter twenty-nine-b of the West Virginia Code.