



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: 5-13
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 5-13 Expanded Duties of Dental Hygienists and Dental Assistants

PRIMARY CONTACT

NAME: WV Board of Dentistry
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CITE STATUTORY AUTHORITY: §30-4-6

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:

§30-4-6 is the provision in the practice act authorizing the Board to promulgate rules.

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 notice of proposed rule was placed on the Board's website. It was sent to the WV Dental and Hygiene Associations to pass along to their members as well as the State Dental Director for 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 establishes expanded duties of dental hygienists and dental assistants.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The proposed changes update the sunset provisions, clarify what duties require certification from the Board, and add ability of dental hygienists to be trained and certified to use a laser for non-surgical duties as requested by dentists from several organizations in WV. Changes were made in the Board's agency approved rule in response to comments.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

none expected.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Certification of dental hygienists to use a laser could add a little revenue to the Board, but is not expected to be very much.

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

none 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):

the amount of revenue is unknown in the certification of dental hygienists to use a laser. It is unknown to what extent the interest is.

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.

TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTISTRY

SERIES 13
EXPANDED DUTIES OF DENTAL HYGIENISTS AND DENTAL ASSISTANTS

§5-13-1. General.

- 1.1. Scope. This legislative rule establishes expanded duties of dental hygienists and dental assistants.
- 1.2. Authority. -- W. Va. Code §30-4-6.
- 1.3. Effective Date. --~~September 1, 2016~~
- 1.4. Filing Date. -- ~~July 27, 2016~~
- 1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2032.

§5-13-2. Definitions.

- 2.1. "Board" means West Virginia Board of Dentistry.
- 2.2. "Dental auxiliary personnel" or "auxiliary" means dental hygienists or dental assistants who assist the dentist in the practice of dentistry.
- 2.3. "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.
- 2.4. "Final evaluation" means the supervising dentist has evaluated the dental auxiliary's work to ensure expanded duties are performed to the standard of care for the practice of dentistry.
- 2.5. "General supervision" means a dentist is not required to be in the office or treatment facility when procedures are being performed by the dental auxiliary 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.
- 2.6. "Prior approval" means the supervising dentist has determined the dental auxiliary is competent to perform expanded duties requiring prior approval and has approved these duties be performed before they are necessary.
- 2.7. "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 licensed dentist.
- 2.8. "Screening" means a general assessment of oral health conditions not to be considered a comprehensive, periodic or limited exam.

§5-13-3. General Assignment of Duties.

3.1. Licensed dentists may assign to their employed dental hygienists or assistants intraoral tasks as set out in this section for dental hygienists or assistants, subject to the following conditions:

3.1.1. ~~(a)~~ The performance of intraoral tasks by dental hygienists and a dental assistant shall be under the direct supervision of the employer dentist;

3.1.2. ~~(b)~~ The following procedures may not be assigned to a dental hygienist or assistant or to any other person not licensed to practice dentistry:

3.1.2.a. ~~(1)~~ Diagnosis, treatment planning and prescription (including prescriptions for drugs and medicaments or authorizations for restorative, prosthodontic or orthodontic appliances); or

3.1.2.b. ~~(2)~~ Surgical procedures on hard and soft tissue within the oral cavity or any other intraoral procedure that contributes to or results in an irremediable alteration of the oral anatomy; and

3.1.3. ~~(c)~~ The licensed dentist assigning expanded duties to a dental hygienist or assistant is solely responsible for evaluating the dental hygienist or assistant to determine that he or she is competent to handle assigned duties. No licensed dentist shall assign additional duties to a dental hygienist or assistant until he or she is assured that the dental hygienist or assistant is fully competent and completely qualified to perform the assigned expanded duty or duties.

§5-13-4. Expanded duties of Dental Assistants.

4.1. ~~(a)~~ The following duties and/or intra-oral tasks may be assigned by a licensed dentist to a dental hygienist and/or assistant in the licensed dentist's employment, provided that under no circumstances can an assistant use a power-driven instrument of any type intra-orally except as specifically set forth hereinafter:

4.1.1. ~~(1)~~ Placing, exposing, developing, and mounting dental radiographs;

4.1.2. ~~(2)~~ Placing and removing rubber dams;

4.1.3. ~~(3)~~ Charting existing restorations and missing teeth;

4.1.4. ~~(4)~~ Holding and removing materials, trays, strips, and sutures previously placed in the patient's mouth by the dentist;

4.1.5. ~~(5)~~ Removing excess cement from coronal surfaces of teeth without the use of rotating, power-driven or scaling instruments;

4.1.6. ~~(6)~~ Taking impressions for study cast and pouring models;

4.1.7. ~~(7)~~ Recording medical and dental histories for interpretation by the supervising dentist;

4.1.8. ~~(8)~~ Providing pre- and post-treatment instructions;

4.1.9. ~~(9)~~ Viewing the oral cavity and reporting the symptoms/problems to the supervising dentist;

4.1.10. ~~(10)~~ Performing pulp vitality testing (thermal or electrical) with a final evaluation by the supervising dentist;

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4.1.11. ~~(11)~~ Inserting and adjusting athletic mouth guards and bleaching trays with a final evaluation by the supervising dentist;

4.1.12. ~~(12)~~ Removing periodontal dressings with a final evaluation by the supervising dentist;

4.1.13. ~~(13)~~ Placing and removing matrices after a final evaluation by the supervising dentist;

4.1.14. ~~(14)~~ Applying topical anesthetic agents with prior approval by the supervising dentist;

4.1.15. ~~(15)~~ Applying topical anticariogenic agents after successful completion of a board-approved course and examination and with prior approval of the supervising dentist;

4.1.16. ~~(16)~~ Applying pit and fissure sealants after successful completion of a board-approved course and examination and with a final evaluation by the supervising dentist;

4.1.17. ~~(17)~~ Applying cavity liners and bases with a final evaluation by the supervising dentist;

4.1.18. ~~(18)~~ Removing soft tissue dressings with a final evaluation by the supervising dentist;

4.1.19. ~~(19)~~ Fabricating and cementing temporary crowns and bridges with a final evaluation by the supervising dentist;

4.1.20. ~~(20)~~ Placing and removing temporary restorations by a non power-driven method with a final evaluation by the supervising dentist;

4.1.21. ~~(21)~~ Taking intra- and extra-oral photographs;

4.1.22. ~~(22)~~ Chemical conditioning of the tooth to accept a restoration and/or bracket by topical application after successful completion of a board-approved course and examination;

4.1.23. ~~(23)~~ Using a power-driven hand piece with rubber cup and/or brush only for preparing a tooth for accepting a restoration and/or appliance, which shall in no way be represented to the patient as a prophylaxis, after successful completion of a board-approved course and examination;

4.1.24. ~~(24)~~ Placing retraction cords for crown impressions after successful completion of a board-approved course and examination and with prior approval of the supervising dentist;

4.1.25. ~~(25)~~ Taking final impressions for fixed or removable prosthesis and/or appliance with a final evaluation by the supervising dentist;

4.1.26. ~~(26)~~ Checking for loose orthodontic appliances with a final evaluation by the supervising dentist;

4.1.27. ~~(27)~~ Taking orthodontic measurements with a final evaluation by the supervising dentist;

4.1.28. ~~(28)~~ Fitting bands and brackets prior to final cementation and/or bonding by the supervising dentist;

4.1.29. ~~(29)~~ Bending archwires with a final evaluation by the supervising dentist at the time of placement;

4.1.30. ~~(30)~~ Placing or removing temporary space maintainers, orthodontic separating devices, ligatures, brackets and bands with a final evaluation by the supervising dentist at the time of placement or removal, after completion of a board-approved course and examination;

4.1.31. ~~(31)~~ Removing loose or broken bands, brackets or archwires when directed by the supervising dentist;

4.1.32. ~~(32)~~ Visually monitoring a nitrous oxide analgesia unit. A dental assistant or hygienist must successfully complete a board-approved course, and examination, and maintain current certification with the American Red Cross' or the American Heart Association's Cardio-Pulmonary Resuscitation (CPR) program to perform this duty.

4.1.33. ~~(b)~~ A dental assistant who has completed two years and at least three thousand hours of clinical experience in a dental office, as attested to by the supervising dentist, and who has a restorative expanded duties or orthodontic expanded duties certificate issued by the Board, and has successfully completed a coronal polishing course approved by the Board, may apply to the Board for a certificate to perform supragingival and coronal polishing on children under 21 years of age using a slow speed hand piece with a rubber cup.

4.1.34. All duties requiring a board-approved course and examination shall require certification issued by the Board to perform those duties. A dental assistant shall apply to the Board for certification on a form prescribed by the Board and pay a fee as set forth in the Board's fee rules.

§5-13-5. Expanded duties of Dental Hygienists.

5.1. Expanded duties of dental hygienists. In addition to and including those duties set forth in subsection 4.1 of this section, the following duties and/or intraoral tasks may be assigned by a licensed dentist to a dental hygienist in the licensed dentist's employment:

5.1.1. ~~(1)~~ Supra - and subgingival scaling of teeth;

5.1.2. ~~(2)~~ Polishing of coronal and/or exposed surfaces of teeth;

5.1.3. ~~(3)~~ Dental health education;

5.1.4. ~~(4)~~ Nutritional counseling;

5.1.5. ~~(5)~~ Recording periodontal findings;

5.1.6. ~~(6)~~ Scaling excessive cement from the surfaces of teeth and restorations;

5.1.7. ~~(7)~~ Performing screenings and diagnostic tests of teeth and surrounding tissues and recording findings for interpretation by a supervising dentist (including such procedures as restorative chartings, caries activity test, cytology smears, salivary analysis and smears, vitality test, etc.);

5.1.8. ~~(8)~~ Placing of subgingival medicaments, fibers, chips, etc.;

5.1.9. ~~(9)~~ Finishing and polishing restorations with a slow speed hand piece;

5.1.10. ~~(10)~~ Debridement and/or root planing of teeth;

5.1.11. ~~(11)~~ Applying bleaching agents ~~after successful completion of a board-approved course;~~

5.1.12. ~~(12)~~ Placing periodontal dressings with a final evaluation by the supervising dentist; and

5.1.13. ~~(13)~~ Administration of infiltration and block anesthesia after successful completion of a board-approved course and of a regional board examination and under the direct supervision of a licensed dentist; ~~and:~~

5.1.13.a. A hygienist shall apply for a certificate from the Board for the administration of infiltration and block anesthesia using a form prescribed by the Board and pay a fee as set forth in the Board's fee rules.

5.1.14. Use of a laser, provided the wavelength is limited to no higher than 1064 nanometers, for laser bacterial reduction, laser assisted periodontal therapy, other non-surgical periodontal therapeutic treatments, photobiomodulation (adjunctive low level laser therapy) and treatment of herpetic lesions and apthous ulcers after successful completion of a board-approved course and under the direct supervision of a licensed dentist.

5.1.14.a. A hygienist shall apply for a certificate from the Board to provide non-surgical periodontal treatment with the use of a laser using a form prescribed by the Board. The application fee shall be equal to the local anesthesia application fee as set forth in the Board's fee rules.

§5-13-6. General Supervision of Dental Hygienists.

6.1~~(a)~~ A dental hygienist may provide, for not more than fifteen consecutive business days or not more than three consecutive weeks, preventive dental hygiene services to patients when the supervising dentist is not physically present at the location at which the services are provided if all of the following requirements are met;

6.1.1. ~~(1)~~ The dental hygienist shall apply to the Board for a general supervision permit. The application shall be submitted on a form to be supplied by the Board and pay a fee as set forth in the Board's fee rules. ~~The application fee shall be equal to the fees charged for expanded duties certificates.~~

6.1.2. ~~(2)~~ The dental hygienist shall have two years and three thousand hours of clinical dental hygiene experience.

6.1.3. ~~(3)~~ The dental hygienist shall provide proof of successful completion of a three hour course in the identification and prevention of medical emergencies as part of continuing education credits for licensure every two years.

6.1.4. ~~(4)~~ The supervising dentist shall have examined the patient, including medical history review, diagnosis and treatment planning, not more than twelve months prior to the date the dental hygienist provides the dental hygiene services to the patient. No patient may be treated two consecutive times by a dental hygienist under general supervision without a licensed dentist conducting an examination.

6.1.5. ~~(5)~~ The dental hygienist shall comply with written protocols or written standing orders established by the supervising dentist, including an updated medical history, informs the patient or parent or guardian of a child and documents in the patient record that dental hygiene services were provided under general supervision.

6.1.6. ~~(6)~~ The dental hygienist shall consult with the supervising dentist or an attending physician if a significant change has occurred in the patient's medical history to determine that the patient is in a medically stable condition prior to receiving dental hygiene services.

6.1.7. ~~(7)~~ The supervising dentist shall not have more than three dental hygienists treating patients under general supervision in dental offices or treatment facilities at any time when the dentist is not physically present.

6.1.7.a. ~~(b)~~ The dental hygienist may practice under general supervision, consistent with conditions outlined above, in the following settings; private dental offices, hospitals, schools, correctional facilities, jails, community clinics, long term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health and Human Resources, public health facilities, homebound settings and accredited dental hygiene education programs.

6.1.7.a.1. ~~(1)~~ Facilities utilized for oral prophylaxis, sealant placement, or both, shall have adequate lighting, suction and isolation of teeth.

6.1.7.a.2. ~~(2)~~ The dental hygienist shall submit an annual report to the Board of services rendered while practicing under general supervision in all settings other than a private dental office or Accredited Dental Hygiene Education program. The supervising dentist shall review and sign this report.

6.1.7.a.3. ~~(3)~~ All applications and reporting forms shall be provided by the Board.

6.1.7.b. ~~(c)~~ The following procedures may be performed by a dental hygienist when practicing under general supervision;

6.1.7.b.1. ~~(1)~~ Placing, exposing, developing, and mounting dental radiographs;

6.1.7.b.2. ~~(2)~~ Charting existing restorations and missing teeth;

6.1.7.b.3. ~~(3)~~ Taking impressions for study cast and pouring models;

6.1.7.b.4. ~~(4)~~ Recording medical and dental histories;

6.1.7.b.5. ~~(5)~~ Applying topical anesthetic agents;

6.1.7.b.6. ~~(6)~~ Applying topical anticariogenic agents;

6.1.7.b.7. ~~(7)~~ Applying pit and fissure sealants following diagnosis within four months by the supervising dentist;

6.1.7.b.8. ~~(8)~~ Checking for and removal of loose orthodontic bands and loose brackets;

6.1.7.b.9. ~~(9)~~ Taking intra- and extra-oral photographs;

6.1.7.b.10. ~~(10)~~ Complete dental prophylaxis, which may include supra- and subgingival scaling of teeth and polishing of coronal and/or exposed surfaces of teeth;

6.1.7.b.11. ~~(11)~~ Dental health education;

6.1.7.b.12. ~~(12)~~ Nutritional counseling;

6.1.7.b.13. ~~(13)~~ Recording periodontal findings;

6.1.7.b.14. ~~(14)~~ Scaling excessive cement from the surfaces of teeth and restorations;

6.1.7.b.15. ~~(15)~~ Performing screenings and diagnostic tests of teeth and surrounding tissues, including but not limited to restorative chartings, caries activity test, cytology smears, salivary analysis and smears, vitality tests, and recording findings for interpretation by a supervising dentist;

6.1.7.b.16. ~~(16)~~ Placing of subgingival medicaments, fibers, chips, etc.;

6.1.7.b.17. ~~(17)~~ Finishing and polishing restorations with a slow speed hand piece;

6.1.7.b.18. ~~(18)~~ Debridement and/or root planing of teeth; and

6.1.7.b.19. ~~(19)~~ Applying bleaching agents ~~after successful completion of a board-approved course.~~

6.2. The following procedures may be performed by a dental hygienist with no supervision of a licensed dentist:

6.2.1. ~~(1)~~ Dental health education;

6.2.2. ~~(2)~~ Nutritional counseling;

6.2.3. ~~(3)~~ Preparing a generalized oral screening with subsequent referral to a dentist; and

6.2.4. ~~(4)~~ Applying flouride.

6.3 No person shall do any of the following:

6.3.1. ~~(1)~~ Practice dental hygiene in a manner that is separate or otherwise independent from a supervising dentist:

6.3.2. ~~(2)~~ Establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services; ~~and~~

6.3.3. ~~(3)~~ Administer local anesthesia under general supervision; ~~and:~~

6.3.4. Use dental lasers under general supervision.

§5-13-7. Public Health Practice of Dental Hygienists.

7.1. A dental hygienist may engage in public health practice rendering all services provided in subsection 6.1.7.b. ~~(c)~~ of this section allowed under general supervision and as provided below:

7.1.1. ~~(a)~~ The dental hygienist shall submit application to the Board for Public Health Practice and pay a fee as set forth in the Board's fee rules. ~~The application fee shall be equal to the fees charged for expanded duties certificates.~~

7.1.2. ~~(b)~~ The dental hygienist shall have two years and three thousand hours of clinical dental hygiene experience.

7.1.3. ~~(c)~~ The dental hygienist shall, in addition to the number of twenty hours required for dental hygiene licensure, complete six hours of continuing education during each continuing education cycle which must include three hours in medical emergencies and three hours in general public health content.

7.1.4. ~~(d)~~ The dental hygienist and supervising dentist shall submit an annual report to the Board of services rendered.

7.1.5. ~~(e)~~ The dental hygienist, in cooperation with the supervising dentist, shall have a written plan for referral, recording conditions that should be called to the attention of the dentist.

7.1.6. ~~(f)~~ A licensed dentist may not supervise more than four dental hygienists engaged in public health practice.

7.1.7. ~~(g)~~ Facilities utilized for oral prophylaxis, sealant placement, or both, shall have adequate lighting, suction and isolation of teeth.

7.1.8. ~~(h)~~ The dental hygienist may engage in public health practice, consistent with conditions outlined above, in the following settings; hospitals, schools, correctional facilities, jails, community clinics, long term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health and Human Resources, public health facilities, homebound settings and accredited dental hygiene education programs.

7.1.9. ~~(i)~~ All applications and reporting forms shall be provided by the Board.

7.1.10. ~~(j)~~ The following procedures may be performed by a dental hygienist with no supervision of a licensed dentist:

7.1.10.a. ~~(1)~~ Dental health education;

7.1.10.b. ~~(2)~~ Nutritional counseling;

7.1.10.c. ~~(3)~~ Preparing a generalized oral screening with subsequent referral to a dentist;

7.1.10.d. ~~(4)~~ Applying flouride;

7.1.10.e. ~~(5)~~ Charting existing restorations and missing teeth;

7.1.10.f. ~~(6)~~ Recording medical and dental histories;

7.1.10.g. ~~(7)~~ Recording periodontal findings ; and

7.1.10.h. ~~(8)~~ Complete dental prophylaxis, which may include supra- and subgingival scaling of teeth and polishing of coronal and/or exposed surfaces of teeth. The dental hygienist and a licensed dentist shall attempt to reach a collaborative agreement regarding such treatment. If such an agreement cannot be reached then the dental hygienist shall have a written order from a licensed dentist prescribing such treatment.

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7.1.11. ~~(*)~~ No person shall do any of the following:

7.1.11.a. ~~(1)~~ Practice dental hygiene in a manner that is separate or otherwise independent from a supervising dentist;

7.1.11.b. ~~(2)~~ Establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services; ~~and~~

7.1.11.c. ~~(3)~~ Administer local anesthesia under public health practice permit; ~~and~~

7.1.11.d. Use dental lasers under public health practice permit.