



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: 5-02
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 5-02 Formation and Approval of Professional Limited Liability Companies

PRIMARY CONTACT

NAME: WV Board of Dentistry
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CITE STATUTORY AUTHORITY: §31B-13-1304

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:

§31B-13-1304 is the section of law giving licensing Boards the authority to propose rules concerning Professional Limited Liability Companies.

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: No

(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 proposed rule notice was placed on the Boards website. It was also sent to the WV Dental and Hygiene Associations to pass along to their members and to 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 addresses procedures for the formation and approval of professional limited liability companies for dentists. The changes in this rule will give a definitive time frame and guidance when a PLLC authorization is not renewed in a timely manner and the process to renew the authorization after expiration.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Board is of the opinion definitive guidance is needed in order to handle the expiration of authorization of a PLLC.

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:

none expected.

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 Board does not expect any changes in revenue due to this rule.

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 2
FORMATION AND APPROVAL OF PROFESSIONAL
LIMITED LIABILITY COMPANIES

§5-2-1. General.

1.1. Scope. -- This legislative rule addresses procedures for the formation and approval of professional limited liability companies for dentists.

1.2. Authority. -- W. Va. Code §31B-13-1304.

1.3. Filing Date. -- ~~April 21, 2015.~~

1.4. Effective Date. -- ~~June 1, 2015.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2032.

§5-2-2. Definitions.

2.1. Board. - The West Virginia Board of Dentistry, established in W. Va. Code §30-4-4.

2.2. Professional limited liability company. - A limited liability company organized under Chapter 31B of the W. Va. Code for the purpose of rendering a professional service.

2.3. Professional services. - The services rendered under W. Va. Code §30-4-1 et seq., by dentists.

§5-2-3. Procedures for Formation and Approval of Professional Limited Liability Companies for Dentists; Fees.

3.1. Dentists licensed to practice dentistry in an active status in this State who desire to render dental professional services as a limited liability company shall comply with the provisions of W. Va. Code §31B-13-1 et seq. No dental professional limited liability company shall have as a member anyone other than a person who is duly licensed by the Board or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.

3.2. The name of a professional limited liability company shall contain the words “professional limited liability company” or the abbreviation “P. L. L. C.” or “Professional L. L. C.”

3.3. The name of a dental limited liability company shall comply with the rules concerning the practice of dentistry under trade name.

3.4. Every professional limited liability, company shall file with the Board at the time of formation, and on an annual basis on or before the first day of July, the names of its one or more members, and written

documentation that the professional limited liability company carries at least one million dollars of professional liability insurance, together with an initial filing fee and an annual renewal fee as set forth in the Board's fee schedule 5CSR3.

3.4.a. The requirement of carrying one million dollars of professional liability insurance is satisfied if the professional limited liability company provides one million dollars of funds specifically designated and segregated for the satisfaction of judgments against the company members or any of its professional or nonprofessional managers or employees arising out of the performance of professional services to patients of the company, by:

3.4.a.1. the deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or

3.4.a.2. A blank letter of credit or an insurance company bond.

3.5. Every professional limited liability company shall file with the Board a copy of the annual report required to be filed with the secretary of state under W. Va. Code §31B-2-211. The copy of the annual report, and a copy of any corrected annual report filed with the secretary of state, shall be filed with the Board on or before the first day of July on an annual basis.

3.6. Every professional limited liability company in compliance with all the provisions of this rule shall be approved by and remain approved by the Board.

3.7. If any person ceases to be a member of any professional limited liability company, that person shall notify the Board in writing within twenty days from the date that he or she ceased to be a member of the professional limited liability company. The fact that a person ceases to be a member of a professional limited liability company shall not affect the approval of the professional limited liability company by the Board, if the Board determines that the professional limited liability company remains in compliance with all the provision of this rule.

§5-2-4. Approval and Authorization of Change of Name.

4.1. Any professional limited liability company seeking a name change shall submit a written request to the Board, along with the appropriate amending documents for approval, and appropriate fee as set forth by the Board's fee schedule 5CSR3. Once approved an authorization for the name change will be sent to the Secretary of State.

§5-2-5. Notification of Non-compliance, Cessation of Rendering Professional Services.

5.1. If the Board determines that a professional limited liability company is not in compliance with all the provisions of this rule and should cease rendering professional services in the State, the Board shall notify the professional limited liability company in writing, and upon receipt of the written notice, the professional limited liability company shall cease rendering professional services in the State.

5.2. Once the Board determines a professional limited liability company is not in compliance and/or that its certificate of authorization is expired 60 days or more, the Board will notify the Secretary of State that the professional limited liability company's certificate of authorization is no longer valid.

5.3. A professional limited liability company that is expired for 60 days or more may submit an application to reinstate its certificate of authorization on an application prescribed by the Board. The fee shall be in the amount of the renewal fee plus any applicable late fees as set forth in 5CSR3 of the Board's rules.

5.4. The Board may approve an application to reinstate a certificate of authorization if the professional limited liability company comes into compliance with the Board's statutes and rules and with the Secretary of State's Office.

5.5. Failure to adhere to the Board's statutes and rules concerning the practice of dentistry of a dental professional limited liability company may result in a complaint being filed and possible disciplinary actions against the company and/or its licensee members.

§5-2-6. Dentist - Patient Relationship.

6.1. The provisions of this rule shall not be construed to alter or affect the dentist - patient relationship.