

ABSTRACT

Proposed Legislative Rules

Licensing, Certification, Disciplinary and Complaint Procedures:
Physicians; Podiatrists; and Physician Assistants

Changes:

§11-1-3. Definitions:

addition of SPEX

§11-1-4. Qualification and Application for a License to Practice Medicine and Surgery.

§11-1-5. Application Required for Examination. Federation of Licensing Boards Examination (FLEX).

§11-1-6. Qualification For the Issuance of a License to Practice Medicine and Surgery by Reciprocal Endorsement.

§11-1-7. License to Practice Medicine and Surgery by Reciprocal Endorsement; Application Required.

These four sections have all been rewritten to conform with changes in the statute since 1986 and with practices of the Board and contain minor "cosmetic" changes. 4.9 specifies that the burden is on the applicant for licensure.

(Present Sections 8 - 12 have been removed. These sections pertain to temporary permits which no longer exist.)

§11-1-8. Application Forms and Processing.

This is present Section 13. At 8.6 the SPEX is referenced.

(Present Section 14 has been removed. The section pertains to educational training permits which no longer exist.)

§11-1-9. Examinations.

This is present section 15 and the SPEX is referenced.

(Present Section 16 pertaining to the setting of fees has been deleted. The Board has another (series 4) set of regulations specifically pertaining to all fees for services rendered by the Board of Medicine.)

§11-1-10. License Renewals; Renewal Application Form.

This is present Section 17. 10.1 has been rewritten to specify that it is the responsibility of the licensee to inform the Board of the licensee's correct address and of changes in address and that an expired license is not a valid license. 10.1 permits the Board to renew one-half the licenses for a one (1) year period next year in order to establish a system of biennial renewal where each year one-half the licensees renew. 10.2 has been updated to include more of the information presently requested by the Board.

§11-1-11. License Exemptions.

This sections remains essentially the same as present Section 18.

§11-1-12. Causes For Denial, Probation, Limitation Discipline, Suspension or Revocation of Licenses.

This is present Section 19. 12.1 has been rewritten to exclude "permits" which no longer exists and 12.1 (3) includes the phrase "or violated an order of any court entered pursuant to any proceedings commenced by the Board". 12.1 (6)(A) corrects "liability" to "lability" and 12.1 (e)(f)(g) and (h) are all new examples of unprofessional conduct the Board has previously voted to include, pertaining to charges for services rendered within 72 hours where free services are advertized; anabolic steroids; chelation therapy; violating the Board's dispensing rules, charging unconscionable fees. 12.3 has been rewritten to conform with the statute

§11-1-13. Appeal.

This is present Section 20.

§11-1-14. Severability.

This is present Section 21.

§11-1-15. Disposition of Reports and Complaints.

This is present Section 22 and has been rewritten to attempt to differentiate between reports required to be made to the Board and complaints made to the Board. 15.8 has been rewritten to conform with present law pertaining to access by the patient to medical records.

§11-1-16. Practice of Podiatry.

This is present Section 23 and has been rewritten to delete portions which are in conflict with the statute.

§11-1-17. Regulations for Physician Assistants.

This is present Section 24. The changes consist of renumbering the sections and removing present Section 24.5 pertaining to fees, as the Board has another (series 4) set of regulations specifically pertaining to all fees for services rendered by the Board of Medicine. There are no other changes except changing 17.12 to give the applicant thirty (30) days to appeal rather than ten (10) to conform with the requirements of 17.13.

WEST VIRGINIA LEGISLATIVE RULES
WEST VIRGINIA BOARD OF MEDICINE
CHAPTER 30-3
SERIES I

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TITLE: Licensing, Certification, Disciplinary and Complaint
Procedures, Physicians; Podiatrists; Physician
Assistants

§11-1-1. General.

- 1.1. Scope. -- West Virginia Code subdivision one, subsection (a), section seven, article three, chapter thirty authorizes the Board of Medicine to promulgate rules which are necessary to perform the duties and responsibilities of the Board, and West Virginia Code subsection (b), section sixteen, article three, chapter thirty requires the Board of Medicine to adopt rules governing the extent to which physician assistants may function in this State.
- 1.2. Authority. -- W.Va. Code §30-3-7(a)(1) and §30-3-16(b)
- 1.3. Filing Date. --
- 1.4. Effective Date. --
- 1.5. Repeal of former rule. -- These legislative rules repeal and replace 11 CSR 1 "Licensing, Disciplinary and Complaint Procedures; Podiatry; Physician Assistants" legislative rules that were filed on April 28, 1986, and became effective on April 28, 1986.

§11-1-2. Application And Enforcement.

These legislative rules implement the West Virginia Medical Practice Act, West Virginia Code section one, article three, chapter thirty, et seq.

§11-1-3. Definitions Applicable To All Board of Medicine Regulations.

- (a) ACGME -- The Accreditation Council of Graduate Medical Education.
- (b) Adjudicatory hearing. -- A formal administrative hearing before the Board or designated hearing examiner, conducted to determine the truth and validity of complaints filed against a registrant. An adjudicatory hearing may result in disciplinary action including, but not limited to, suspension or revocation of a registrant's license or certificate of registration; reprimand, censure or other limitation, including probation, on a registrant's practice.
- (c) Affiliate. -- A member of a group of two (2) or more fully accredited health care institutions legally united by an agreement of affiliation, conceived to enhance the potential of all participants in the provision of health care and medical education
- (d) AMA. -- The American Medical Association.
- (e) Board. -- The West Virginia Board of Medicine, established in section five, article three, chapter thirty, of the West Virginia Code.
- (f) Certification. -- The approval of individuals by the Board to serve as physician assistants. It shall also mean the approval of programs by the Board for the training and education of physician assistants.
- (g) Crimes involving moral turpitude. -- Those crimes which have dishonesty as a fundamental and necessary element; including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud or misrepresentation.
- (h) Department. -- The West Virginia Department of Health.
- (i) ECFMG. -- The Educational Commission for Foreign Medical Graduates.

- (j) FLEX. -- The Federation of Licensing Boards of Examination.
- (k) Gender of pronouns. -- The use of word "He" in these regulations shall include the feminine gender.
- (l) LCME. -- The Liaison Committee on Medical Education.
- (m) NBME. -- The National Board of Medicine Examiners.
- (n) Number. -- Words in these regulations importing the singular include the plural, and words in these regulations importing the plural include the singular.
- (o) Order to show cause. -- A paper served by the Board upon a registrant ordering the person to appear before the Board for an adjudicatory proceeding.
- (p) Probation. -- Imposing such conditions and requirements upon a licensee for a period of time that the Board, in its discretion, determines to be justified under any provision of law. A licensee placed on probation shall be permitted to continue to practice subject to limitations imposed by the Board, including the requirements that the licensee appear before the Board, or an officer or agent thereof, at such times and places as are designated by the Board. A licensee may be placed on probation without a previous or concurrent suspension or revocation of his or her license.
- (q) SPEX. -- Special Purpose Examination of the Federation of State Medical Boards.

§11-1-4. Qualification and Application For A License To Practice Medicine And Surgery.

- 4.1 An application for a license to practice medicine and surgery shall be completed on a form provided by the Board. The application shall be completed in full with all required supporting documents

received by the Board not later than fifteen (15) days prior to the Board's consideration of such application.

4.2 An application for a license to practice medicine and surgery shall include the following:

- (a) A photograph taken within the previous twelve (12) months which substantially resembles the applicant;
- (b) Evidence of graduation from a medical school approved by the LCME or by the Board;
- (c) A sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character, and that the applicant is physically and mentally capable of engaging in the practice of medicine;
- (d) Evidence of completion of one (1) year of postgraduate clinical training approved by the ACGME;
- (e) A nonrefundable cashier's check or money order payable to the Board in an amount established by the Board; and
- (f) Any other documents as may be required by the Board.

4.3. An applicant for a license to practice medicine and surgery shall be required to obtain a passing score on the FLEX. For those applicants who did not take the two (2) component FLEX program, a passing score shall consist of a weighted average score of seventy-five percent (75%) or better obtained in one sitting. For those applicants taking the two (2) component FLEX program, a passing score shall consist of seventy-five (75) or better on component one of the FLEX and seventy-five (75) or better on component two of the FLEX. A weighted average score of the two (2) component FLEX program shall not be utilized by the Board in the determination of a passing score.

Any applicant who passes either component one or component two of the FLEX, but not both, shall be required to retake only the component upon which the applicant did not obtain a passing score to be eligible for licensure. An applicant must obtain a passing score of seventy-five (75) or better on both components before the elapse of seven (7) consecutive years. Failure to obtain a passing score on both components before the elapse of seven (7) consecutive years shall render the applicant ineligible for licensure.

- 4.4. The Board (or a majority of them) shall accept the certificate of the NBME, in lieu of a passing score on the FLEX. The Board (or a majority of them) may also accept successful passage of a State Board Examination in lieu of the certificate of the NBME or a passing score on the FLEX. An applicant relying on the certificate of the NBME shall request certification of scores from the NBME on forms provided by the Board
- 4.5. All applicants for a license to practice medicine and surgery shall demonstrate their ability to communicate in the English language to the satisfaction of the Board.
- 4.6. An applicant for a license to practice medicine and surgery who is a graduate of a school of medicine located outside the United States, the Commonwealth of Puerto Rico or Canada, shall also provide evidence of certification by the ECFMG or of receipt of a passing score on the examination of the ECFMG and proof of successful completion of a total of three (3) years of postgraduate clinical training in a program approved by the ACGME.
- 4.7. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting at which his or her application will be considered. Any applicant may be required to appear before the Board at the meeting at which his or her application is to be considered. The purpose of such interview or required attendance at a Board meeting is to verify the existence and the identity of all required documents and

information and to enable the Board to clarify information contained in the application. The Board may require production of original documents at such interview or required attendance at a Board meeting.

- 4.8. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.
- 4.9. The burden of satisfying the Board of the applicant's qualifications for licensure shall be upon the applicant.
- 4.10. Subject to the provision in and implementation of 10.1 pertaining to one-half of the licensees renewing for a one year period in nineteen hundred and ninety one, a license to practice medicine and surgery in this state shall be valid for a term of two (2) years and shall be renewed upon the receipt of a nonrefundable fee, as established by the Board, together with an application provided by the Board: Provided, That an initial license shall expire on the thirtieth day of June of the ensuing odd-numbered year.
- 4.11. The Board may renew, on an inactive basis, the license of a physician who is currently licensed to practice medicine and surgery, but who is not actually practicing medicine and surgery in this State. A physician holding an inactive license shall not practice medicine and surgery in this State, but such inactive license may be converted by the Board to an active license, upon request of the physician to the Board, provided that the period of inactivity is accounted for to the satisfaction of the Board. An inactive license may be obtained upon receipt of a nonrefundable fee, as established by the Board and submission of an application on forms provided by the Board. Subject to the provision in an implementation of 10.2 pertaining to one-half of the licensees renewing for a one year period in nineteen hundred and ninety one, an inactive license shall be valid for a term of two (2) years, and shall be renewable.

§11.1.5. Application Required For Examination - Federation Of Licensing Boards Examination (FLEX).

- 5.1. The FLEX shall be administered each June and December by the Board in Charleston, West Virginia.
- 5.2. An application for the FLEX shall be completed on a form provided by the Board. The Application shall be completed in full prior to the examination.
- 5.3. An application for the FLEX must be received by the Board not later than ninety (90) days prior to the date of examination.
- 5.4. An application to take the FLEX shall include the following:
 - (a) Evidence of graduation from a medical school approved by the LCME or by the Board;
 - (b) Two (2) photographs taken within the previous twelve (12) months which substantially resemble the applicant's appearance at the time examination is to be given;
 - (c) A sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character and is physically and mentally capable of engaging in the practice of medicine;
 - (d) Evidence of certification by or receipt of a passing score on the examination of the ECFMG, where applicable;
 - (e) A nonrefundable cashier's check or money order payable to the Board in an amount as established by the Board; and
 - (f) Any other documents as may be required by the Board.

- 5.5. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.
- 5.6. Procedures for each examination shall be provided to each approved applicant at least fifteen (15) days prior to such examination.
- 5.7. Applicants to take the FLEX who have taken and who have failed the FLEX in west Virginia on two (2) or more occasions must prepare and submit to the Board a detailed plan of study designed to improve the applicant's competence to practice medicine and surgery before the applicant shall be permitted to take the examination again. The applicant's plan of study shall be verified by proof of enrollment in a course of study, or other such information as would be accepted by a reasonable person as demonstration of a concerted effort by the applicant to correct such deficiencies. The Board shall approve all plans of study.

§11-1-6. Qualification For The Issuance Of A License To Practice Medicine And Surgery By Reciprocal Endorsement.

- 6.1. An applicant for a license to practice medicine and surgery by reciprocal endorsement from another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico, shall provide proof of licensure in such jurisdiction under licensure requirements substantially similar to those existing in this State, and proof that he or she has the requisite qualifications to provide the same standard of care as a physician initially licensed in this State. These requirements and qualifications are specifically enumerated in this section below.
- 6.2. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide evidence of graduation from a medical school approved by the LCME or by the Board.
- 6.3. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide proof of successful completion of at least

one (1) year of postgraduate clinical training in a program approved by the ACGME.

6.4. An applicant for a license to practice medicine and surgery by reciprocal endorsement who is a graduate of a medical school located outside of the United States, Canada, or the Commonwealth of Puerto Rico shall also provide evidence of certification by the ECFMG or receipt of a passing score on the examination of the ECFMG and proof of successful completion of a total of three (3) years of postgraduate clinical training in a program approved by the ACGME.

6.5. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide proof of passage of the FLEX, which scores must meet the requirements established in Section 4.3 of these regulations. The Board (or a majority of them) shall accept in lieu of the FLEX the certificate of the NBME in lieu of a passing score on the FLEX. The Board (or a majority of them) may also accept successful passage of a State Board Examination in lieu of the certificate of the NBME or a passing score on the FLEX.

6.6. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide a sworn and notarized statement from another physician that the applicant is of good moral character and is physically and mentally capable of engaging in the practice of medicine and surgery.

6.7. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide a statement that the physician is in good standing in each jurisdiction in which he or she is licensed, and that he or she has no medical disciplinary action pending against him or her.

§11-1-7. License To Practice Medicine And Surgery By Reciprocal Endorsement; Application Required.

7.1. An application for a license to practice medicine and surgery by reciprocal endorsement shall be

completed on forms provided by the Board. All parts of the application shall be completed in full with all required supporting documents received by the Board not later than fifteen (15) days prior to consideration by the Board.

- 7.2. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting during which his or her application is to be considered. The purpose of such interview or required attendance at a Board meeting is to verify the existence and the identity of all required documents and information and to enable the Board to clarify any information contained in the application. The Board may require production of original documents at such interview or required attendance at a Board meeting.
- 7.3. An applicant shall have available for review by a Board member, or by the Board, if the applicant appears at the meeting, the following original documents:
 - (a) Medical school diploma;
 - (b) ECFMG certificate, if applicable;
 - (c) A document attesting to the successful completion of the required minimum of one (1) year postgraduate clinical training;
 - (d) A certified copy of the scores attained by the applicant on the FLEX, which scores must meet the requirements established in Section 4.3. of these regulations;
 - (e) A sworn and notarized statement on a form provided by the Board stating that the applicant is of good moral character, and is physically and mentally capable of engaging in the practice of medicine and surgery;
 - (f) A statement that the physician is in good standing in each jurisdiction in which he or she is licensed to practice and that he or

she has no medical disciplinary actions pending; and

(g) Such other documents as may be required by the Board

- 7.4. An applicant for a license to practice medicine and surgery by reciprocal endorsements shall also provide photocopies of all documents presented to the Board. Such photocopies shall be attached to the application and made a part thereof. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.
- 7.5. An applicant for licensure a license to practice medicine and surgery by reciprocal endorsement shall pay by cashier's check or money order payable to the Board a nonrefundable fee in an amount established by the Board.
- 7.6. An applicant for a license to practice medicine and surgery by reciprocal endorsement whose application is complete may request a temporary license to practice until the next regular meeting of the Board, by meeting the qualifications of the Board, by paying an additional nonrefundable fee in an amount established by the Board, and by appearing before a member of the Board for a personal interview.
- 7.7. An applicant for a license to practice medicine and surgery by reciprocal endorsement has the burden of demonstrating to the satisfaction of the Board that the applicant has the requisite qualifications of a physician initially licensed in the State.

§11-1-8. Application Forms and Processing.

- 8.1. Application forms for licenses shall include, but not be limited to, requirements for the following information:
 - (a) An AMA biographical printout;

- (b) A Federation of State Licensing Boards derogatory information sheet regarding other state Board actions;
- (c) A list of all states where the physician has held and holds a medical license, even if such medical license is not active;
- (d) A list of all hospitals where the physician has had privileges in the last five (5) years;
- (e) A list of all state and county medical societies where the physician is currently practicing, whether or not he or she is a member;
- (f) The applicant's medical school;
- (g) A list of all training programs, including postgraduate;
- (h) The state from which the physician is requesting endorsement, with specific reference to that state's examination and grades;
- (i) A copy of the individual's birth certificate, passport or baptismal, to be used in identifying the applicant and the appropriate spelling of his or her name;
- (j) A copy of a marriage license, divorce decree or court order, to document any name change; and
- (k) The place and date of the applicant's birth.

8.2. In the event the staff finds derogatory information during the processing of an application, such information shall be presented to the Board for its review and determination as to whether an individual should be scheduled for an interview during a regular Board meeting or if the staff should obtain additional information.

- 8.3. It shall be the applicant's responsibility to mail necessary forms to selected institutions for response to the Board.
- 8.4. Completion of verification forms shall be mailed directly from selected institutions to the Board and not from the applicant.
- 8.5. The Board reserves the right to obtain additional information through oral or written examinations, psychiatric evaluation, physical examination or other tests as may be necessary to determine the competency of the applicant.
- 8.6. The Board reserves the right to require applicants to take the SPEX or an oral competency examination in their field of practice prior to issuing a license, whenever the Board deems it necessary.

§11-1-9. Examinations.

- 9.1. An applicant for a license who requires a written examination shall be required to take the FLEX, the SPEX, or such other examination as the Board may require. The FLEX and SPEX will be administered by the Board in accordance with instructions and directions issued by the NBME/FLEX and NBME/SPEX.
- 9.2. The conduct of FLEX and SPEX examinees shall be governed by written guidelines issued by the NBME/FLEX and NBME/SPEX.

§11-1-10. License Renewals; Renewal Application Form.

- 10.1. A license shall be renewed every two (2) years, as of the first day of July of the year, upon timely submission of a fully completed renewal application form and payment of a nonrefundable renewal fee in an amount established by the Board: Provided, that in nineteen hundred and ninety one the Board may renew one-half the licenses at one-half the biennial renewal fee for a one (1) year period, in order to establish a system of biennial renewal wherein each year one-half the licenses are renewed for a two (2) year period. Forms shall be mailed to each known licensee at his or

her last known address. It is the responsibility of the licensee to inform the Board of the licensee's correct address and of any change of address. It is the responsibility of the licensee to acquire and submit renewal application forms. Failure of the licensee to receive a renewal form will not constitute justification for any physician to practice on an expired license. An expired license is not deemed a valid license.

10.2. Subject to the provision in and implementation of 10.1 pertaining to one-half the licensees renewing for a one (1) year period in nineteen hundred and ninety one, the Board's renewal application form shall include, at a minimum, a request for the following information:

- (a) The applicant's name, date of birth, home and principal business addresses and telephone numbers;
- (b) Personal characteristics of the applicant, such as sex and race;
- (c) A statement of the applicant's medical training and work experience;
- (d) A statement concerning any disciplinary action taken against the applicant in the last two (2) years;
- (e) A statement concerning any civil litigation related to the practice of medicine or any criminal litigation commenced against the applicant within the last two (2) years;
- (f) A statement describing an applicant's present ability to possess or dispense controlled substances; and
- (g) A statement of all other jurisdictions in which the applicant is licensed to practice medicine.
- (h) The number of malpractice settlements made or judgements against the applicant in the last two (2) years.

- (i) Any treatment received for mental illness, chemical substance or alcohol dependency in the last two (2) years.
- (j) Any limitation of hospital privileges in the last two (2) years.

§11-1-11. License Exemptions.

- 11.1. In addition to exemptions provided by law, no license shall be required of any duly licensed nonresident physician who participates in a continuing medical education course within the State.
- 11.2. Duly licensed physicians in another state may transmit medical instructions by radio to personnel in this State in emergency situations.

§11-1-12. Causes For Denial, Probation, Limitation, Discipline, Suspension Or Revocation of Licenses.

- 12.1. The Board may deny an application for a license, place a licensee on probation, suspend a license, limit or restrict a license or revoke any license heretofore or hereafter issued by the Board, upon satisfactory proof that the licensee holder has:
 - (a) Knowingly made, or presented or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other material in connection with an application for a license;
 - (b) Been or is involved in fraud, forgery, deception, collusion or conspiracy in connection with an examination for a license;
 - (c) Become addicted to a controlled substance;
 - (d) Become a chronic or persistent alcoholic;
 - (e) Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof;

- (f) Willfully violated a confidential communication;
- (g) Had his or her license to practice medicine in any other state, territory or foreign nation revoked, suspended, restricted or limited, or has been subjected to other disciplinary action by the licensing authority thereof;
- (h) Been or is unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals or any other type of material, or by reason of any physical or mental abnormality;
- (i) Demonstrated a lack of professional competence to practice medicine with a reasonable degree of skill and safety for patients. In this connection, the Board may consider repeated acts of a physician indicating his or her failure to properly treat a patient and may require such physician to submit to inquiries or examinations, written or oral, by members of the Board, or by other physicians licensed to practice medicine in this State, as the Board deems necessary to determine the professional qualifications of such licensee;
- (j) Engaged in unprofessional conduct, including, but not limited to, any departure from, or failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession, irrespective of whether or not a patient is injured thereby, or has committed any act contrary to honesty, justice or good morals, whether the same is committed in the course of his or her practice or otherwise and whether committed within or without this State;
- (k) Had a license to practice medicine revoked, suspended or otherwise acted against, including the denial of licensure by the

licensing authority of another state, territory or country;

- (l) Been convicted or found guilty of a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine. Any plea of nolo contendere shall be considered conviction for purposes of these regulations;
- (m) Advertised, practice or attempted to practice under a name other than his or her own;
- (n) Failed to report to the Board any person whom the licensee knows is in violation of these regulations or of provisions of the Medical Practice Act;
- (o) Aided, assisted, procured or advised any unlicensed person to practice medicine contrary to these regulations or the Medical Practice Act;
- (p) Failed to perform any statutory or legal obligation placed upon a licensed physician;
- (q) Made or filed a report which the licensee knows to be false; intentionally or negligently failed to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensed physician.
- (r) Paid or received any commission, bonus, kickback or rebate, or engaged in any split-fee arrangement in any form whatsoever with a physician, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician

from receiving a fee for professional consultation services;

- (s) Exercised influence within a patient-physician relationship for purposes of engaging a patient in sexual activity;
- (t) Made deceptive, untrue or fraudulent representations in the practice of medicine or employed a trick or scheme in the practice of medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community;
- (u) Solicited patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or by overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate response from the recipient;
- (v) Failed to keep written medical records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and test results;
- (w) Exercised influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances or drugs and the promoting or advertising on any prescription form of a community pharmacy. For the purposes of the paragraph, it shall be legally presumed that prescribing, dispensing, administering, mixing or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities, is not in the best interests of the patient and is not in the course of the physician's professional practice, without regard to his or her intent;

- (x) Prescribed, dispensed or administered any medicinal drug appearing on any schedule set forth in chapter sixty-a of the West Virginia Code by the physician to himself or herself, except one (1) prescribed, dispensed or administered to the physician by another practitioner authorized to prescribe, dispense or administer medicinal drugs;
- (y) Engaged in malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent, similar physician as being acceptable under similar conditions and circumstances;
- (z) Performed any procedure or prescribed any therapy which, by the prevailing standards of medical practice in the community, would constitute experimentation on a human subject, without first obtaining full, informed and written consent;
- (1) Practiced or offered to practice beyond the scope permitted by law or, accepted and performed professional responsibilities which the licensee knows or has reason to know he or she is not competent to perform;
- (2) Delegated professional responsibilities to a person whom the licensee knew or had reason to know is not qualified by training, experience or licensure to perform;
- (3) Violated or attempted to violate any law or lawfully promulgated rule or regulation of this State, any other state, the Board, the United States or any other lawful authority (without regard to whether the violation is criminally punishable), which law or rule or regulation relates to or in part regulates the practice of medicine, when the licensee or applicant knows or should know that such action is violative of such law or rule; or violated a lawful order of the Board, previously entered by the Board in a disciplinary hearing; or failed to comply

with a lawfully issued subpoena of the Board; or violated an order of any court entered pursuant to any proceedings commenced by the Board;

- (4) Presigned blank prescription forms;
- (5) Prescribed any medicinal drug appearing on Schedule II in chapter sixty-a of the West Virginia Code for office use;
- (6) Prescribed, ordered, dispensed, administered, supplied, sold or given any drug which is an amphetamine or sympathomimetic amine drug and a compound designated as a Schedule II controlled substance, pursuant to chapter sixty-a of the West Virginia Code, to or for any person except for:
 - (A) The treatment of narcolepsy; attention deficit disorder, a behavioral syndrome characterized by inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability and impulsivity; or drug-induced brain dysfunction;
 - (B) The differential diagnostic psychiatric evaluation of depression or the treatment of depression or the treatment of depression shown to be refractory to other therapeutic modalities; or
 - (C) The clinical investigation of the effects of such drugs or compounds when an investigative protocol therefore is submitted to, reviewed and approved by the Board before such investigation is begun;
- (7) Knowingly maintained a professional connection or association with any person who is in violation of the Medical Practice Act or the rules or regulations of the Board; or knowingly aided, assisted, procured or advised any person to practice medicine contrary to the Medical Practice Act or to

the Rules and Regulations of the Board; or knowingly performed any act which in any way aids, assists, procures, advises or encourages any unlicensed person or entity to practice medicine; or divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation or other entity for bringing or referring a patient; or engaged in the practice of medicine as an officer or employee of any corporation other than one organized and existing pursuant to the Medical Practice Act, except as a licensed physician, intern or resident of a hospital or teaching institution licensed by this State;

- (8) Offered, undertaken or agreed to cure or treat disease by a secret method, procedure, treatment or medicine; or treated, operated or prescribed for any human condition, by a method, means, or procedure which the licensee has refused to divulge upon demand of the Board.
- (9) Engaged in false or deceptive advertising. "False or Deceptive Advertising" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results or includes representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived;
- (10) Engaged in advertising that is not in the public interest. Advertising that is not in the public interest includes the following, with the exceptions specifically listed:
 - (A) Advertising that has the effect of intimidating or exerting undue pressure;
 - (B) Advertising that uses testimonials;

- (C) Advertising which is false, deceptive, misleading, sensational or flamboyant;
- (D) Advertising which guarantees satisfaction or a cure;
- (E) Advertising which offers gratuitous services or discounts, the purpose of which is to deceive the public. This subdivision does not apply to advertising which contains an offer to negotiate fees, nor to advertising in conjunction with an established policy or program of free care for patients; and
- (F) Advertising which makes claims of professional superiority which a licensee is unable to substantiate.

12.2. Acts declared to constitute dishonorable, unethical or unprofessional conduct: As used in these regulations, "Dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof" shall include, but not be limited to, the following acts by a licensee:

- (a) Prescribes or dispenses any "Controlled Substance" as defined in chapter sixty-a of the West Virginia Code:
 - (1) With the intent or knowledge that a controlled substance will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose;
 - (2) With the intent to evade any law with respect to sale, use or disposition of such controlled substance(s);
 - (3) For the licensee's personal use or for the use of his or her immediate family when the licensee knows or has reason to know that an abuse of controlled substance(s) is occurring, or may result from such a practice; or

- (4) In such amounts that the licensee knows or has reason to know, under the attendant circumstances, that said amounts so prescribed or dispensed are excessive under accepted and prevailing medical practice standards;
- (b) Issues or publishes in any manner whatsoever, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including, but not limited to:
- (1) Any representation in which the licensee claims that he or she is able to cure or treat manifestly incurable diseases, ailments or infirmities by any method, procedure, treatment or medicine which the licensee knows or has reason to know has little or no therapeutic value;
 - (2) Represents or professes or holds himself or herself out as being able and willing to treat diseases, ailments or infirmities under a system or school of practice:
 - (A) Other than that for which he or she holds a certificate or license granted by the Board;
 - (B) Other than that for which he or she holds a degree or diploma from a school otherwise recognized as accredited by the Board; or
 - (C) Which he or she professes to be self-taught;
- (c) A serious act, or a pattern or acts committed during the course of his or her medical practice which, under the attendant circumstances, would be deemed to be gross incompetence, gross ignorance, gross negligence or malpractice, including the

performance of any unnecessary service or procedure;

- (d) Conduct which is calculated to or has the effect of bringing the medical profession into disrepute, including, but not limited to, any departure from, or failure to conform to, the standards of acceptable and prevailing medical practice within the state, and any departure from, or failure to conform to the principles of medical ethics of the AMA. For the purposes of this subsection, actual injury to a patient need not be established;
- (e) Any charges or fees for any type of service rendered within 72 hours of the initial visit, if the licensee advertises free service, free examination or free treatment.
- (f) The administration of anabolic steroids for other than therapeutic purposes.
- (g) The use of chelation therapy for diseases and conditions other than acute hypercalcemia, lead poisoning, and intoxications caused by some other heavy metals.
- (h) Violation of the Board rules for dispensing of legend drugs.
- (i) Charging or collecting an excessive, unconscionable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:
 - (1) The time and effort required;
 - (2) The novelty and difficulty of the procedure or treatment;
 - (3) The skill required to perform the procedure or treatment properly;
 - (4) Any requirements or conditions imposed by the patient or circumstances;

- (5) The nature and length of the professional relationship with the patient;
- (6) The experience, reputation, and ability of the licensee;
- (7) The nature of the circumstances under which the services are provided.

In any case where it is found that an excessive, unconscionable fee has been charged, in addition to any actions taken under the the provisions of 12.3 of these regulations, the Board may require the licensee to reduce the fee.

- (j) Failure by a licensee to report a known or observed violation of these regulations, the rules for dispensing legend drugs, and/or the provisions of the Medical Practice Act.

12.3. When the Board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to Section 12.1 of this section, the Board may take any one or more of the following actions:

- (a) Refuse to grant a license to an applicant;
- (b) Administer a public reprimand.
- (c) Suspend, limit or restrict any license for a definite period, not to exceed five (5) years;
- (d) Require any licensee to participate in a program of education prescribed by the Board;
- (e) Revoke any license;
- (f) Require the licensee to submit to care, counseling or treatment by physicians or other professional persons.

- (g) Assess a civil fine of between \$1,000 and \$10,000 and/or assess costs of Board investigation and administrative proceedings against the licensee;
- (h) Require him or her to practice under the direction or supervision of another practitioner.
- (i) Require the licensee to provide a period of free public or charitable service.

In addition to and in conjunction with the foregoing actions, the Board may make a finding adverse to the licensee or applicant, but withhold imposition of judgment and penalty, or it may impose the judgement and penalty but suspend enforcement thereof and place the physician on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. In its discretion, the Board may restore and reissue a license to practice medicine issued under the Medical Practice Act or any antecedent law, and as a condition thereof, it may impose any disciplinary or corrective measure provided in these Rules and Regulations.

12.4. The Board shall have the authority to place a licensee in a probationary status and to apply varying conditions upon the licensee during the probationary period.

- (a) Conditions for probation: Upon reaching the conclusion that a licensee to practice medicine should be placed on probation, the Board may impose any one or more of the following conditions:

- (1) The Board may appoint one or more Board members to be responsible for having the concerned licensee report for interviews on a regular basis. These visits may be set up on a periodic basis as determined by the Board and the Board members so designated shall then report back to the

Board at its regularly scheduled meeting on the progress of the concerned licensee;

- (2) The Board may cause the concerned licensee to appear before the Board at such intervals as the Board may determine in order that said licensee may report on his or her progress. During these appearances by the concerned licensee, the Board may ask the concerned licensee questions so as to observe his or her behavior and progress;
- (3) The Board may select a physician, or request the concerned licensee to select a physician, or both, who shall be approved by the Board and said physician shall submit periodic progress reports on the concerned licensee as the Board may then thereafter so direct;
- (4) The Board may appoint a medical consultant whose responsibility shall be to handle interviews with the concerned licensee. The concerned licensee shall then report to the so appointed medical consultant on a regular basis as determined by the Board, and said medical consultant shall then thereafter report to the Board at intervals determined by the Board;
- (5) In cases of alcoholism and/or drug abuse, as a condition of probation, the Board may require that the concerned licensee submit periodic blood samples and/or urine drug screen samples;
- (6) The Board may require that a concerned licensee report all medications that he or she may be utilizing and that he or she make such reports to the Board, at such intervals as the Board may direct from time to time;

- (7) The Board may require that the concerned licensee authorize his or her personal physician to submit to the Board, for review, the concerned licensee's medical history, both as to past medical history and any and all new medical history as may become available to the personal physician during the period of the probationary term;
- (8) The Board may require that prior to the termination of a probationary term, the concerned licensee appear at a regularly scheduled Board meeting and furnish the Board with information as it may then request, and the Board may utilize subpoenas, subpoenas duces tecum and its investigators as it deems necessary to gather facts and evidence to determine compliance by the concerned licensee with the terms of probation; and
- (9) In those situations where indicated, the Board may impose additional terms of probation upon a licensee who has initially been placed on probation, as long as the entire period of any additional imposed probationary period does not exceed five (5) years from the initiation date of the originally imposed probationary period.

§11-1-13. Appeal.

- 13.1. Any applicant for a license or permit who has had his or her application denied by order of the Board may appeal such order within thirty (30) days of such action, in accordance with the contested case hearing procedure, article nine-a, chapter six and article five, chapter twenty-nine-a, Series I (1983): Provided, That such appeal shall not include cases in which the Board issues a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

13.2. Any physician practicing medicine and surgery in this State, who has had his or her license denied, suspended, restricted, or revoked by order of the Board, may appeal such order within thirty (30) days of such action in accordance with the contested case hearing procedure, article, nine-a, chapter six and article five, chapter twenty-nine-a, Series I (1983): Provided, That such appeal shall not include cases in which the Board issues a license, permit or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

§11-1-14. Severability.

If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.

§11-1-15. Disposition of Reports And Complaints.

15.1. Any person, medical peer review committee, firm, corporation, member of the Board or public officer may make a complaint to the Board which charges a physician with a violation of the Medical Practice Act or of the Rules and Regulations of the Board. The Secretary may provide a form for such purpose, but such a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint shall contain the following:

- (a) The name and address of the individual(s) against whom the complaint is lodged;
- (b) The date of care;
- (c) The name(s) of individual(s) who may have treated the patient after the alleged incident; and
- (d) The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.

15.2. Reports submitted by a medical peer review committee, a physician, a podiatrist, the chief executive officer of a hospital, a professional society, an insurer or any other person, in compliance with the provisions of West Virginia Code subsection (b), section fourteen, article three, chapter thirty, may result in the initiation of its own complaint by the Board.

- (a) The Board shall prepare copies of the provisions of Section 12.1 of these regulations and of the provisions of West Virginia Code subsection (c), section fourteen, article three, chapter thirty and mail them to all known medical peer review committees in the state, every licensed physician in the state, the chief executive officer of every hospital in the state and every known medical professional society in the state.
- (b) The Board may prepare forms for filing required reports and make them available upon request.
- (c) The Board will advise all medical peer review committees in the state that it desires any and all information which such committee has, or may any time obtain, which relates to improper practice or performance of a physician. Any such information may be submitted by the Board to the physician concerned for his or her written comment and his or her reply shall be submitted within fifteen (15) days.
- (d) Any individual or any medical entity having reason to believe that the conduct of a physician amounts to professional malpractice or professional incompetence shall be encouraged to report such information to the Board.
- (e) The chief executive officer of every hospital shall within sixty (60) days after the completion of the hospital's formal disciplinary procedure, and also after any resulting legal action, report in writing to the Board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause, including resignation, together with all pertinent

information relating to such action. The chief executive officer shall also report within sixty (60) days after the action is taken any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. This subsection does not apply to any temporary suspension for failure to maintain records on a timely basis or for failure to attend staff or section meetings.

- (f) Any professional society in this State comprised primarily of physicians, which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall, within sixty (60) days of a final decision, report in writing to the Board the name of such member, together with all pertinent information relating to such action.
- (g) Every insurer providing professional liability insurance to a physician in this State shall submit to the Board the following information within thirty (30) days from any judgment, dismissal or settlement of a civil action involving the insured: The date of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information within the knowledge of the insurer as the Board requires. The Board shall mail a copy of this Section 15.2 of these rules to every insurer in the state which has sold or may hereafter sell, professional liability insurance to a physician licensed to practice medicine in this State.
- (h) Within thirty (30) days after the conviction of a person known to be a physician licensed or otherwise lawfully practicing medicine and surgery and podiatry in this State, or applying to be so licensed, of a felony under the laws of this State, or of any crime under the laws of this state involving alcohol or drugs in any way,

including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the Board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of such physician or podiatrist or applicant, the nature of the offense committed and the final judgment and sentence of the court. The Board shall mail a copy of this Section 15.2 of these rules to every circuit clerk in the state.

- (i) Information received by the Board under the provisions of West Virginia Code subsection (c), section fourteen, article three, chapter thirty and this Section 15.1 of these rules may be used by the Board in its determination as to whether to deny an application for a license or to initiate disciplinary action against a physician licensed in this State, and such information may be submitted into evidence notwithstanding its prior use in any administrative civil or criminal hearing involving such physician.

15.3. All communications with the Board charging a physician with such violations are conditionally privileged and a person making a communication is privileged from liability based upon the communication unless the person makes the communication in bad faith or for a malicious reason.

15.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

15.5. An individual making a complaint should receive one of the following acknowledgments:

- (a) That the matter will be reviewed by the Board;
- (b) That the complaint is outside of the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or
- (c) That more information will be required in order to adequately review the individual complaint.

- 15.6. A separate investigative or complaint folder shall be maintained on each case reviewed, and each folder shall have a case number assigned to it.
- 15.7. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of Section 15.5 (b) of these regulations, the committee shall cause to be conducted any reasonable inquiry or investigation it deems necessary to determine the truth and validity of the allegations set forth in the complaint. The committee shall provide reports to the Board on the number, nature, procedure and handling of the complaints received.
- 15.8. A complaint against an individual must allege that in his or her professional capacity he or she is acting in violation of the law, regulations or good and accepted medical practice and may be founded on any violation enumerated in Section 12.1 of these regulations or of any rule or regulation hereinafter promulgated by the Board.
- 15.9. The complaint committee may request the Board to issue subpoenas and subpoena duces tecum as required to complete its investigation and may utilize the Board investigator to conduct whatever investigations are necessary to determine the truth and validity, or lack thereof, of complaints. In the event the Board initiates its own complaint, it may utilize subpoenas, subpoenas duces tecum and its investigators as it determines necessary to gather facts and evidence.
- 15.10. To facilitate disposition of a complaint, the Board or the Complaint Committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the commencement of an adjudicatory proceeding. The Board or Committee shall give fifteen (15) days' notice of the conference, which notice shall include a statement of the issues to be informally discussed. Statements made at a conference may not be introduced at any hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

- 15.11. If the complaint committee determines that a complaint complies substantially with these Rules and Regulations and that it relates to matters set forth in Section 15.8 herein, it may request that the individual complained of (hereinafter referred to as the "Respondent") make a response to the complaint within thirty (30) days. The committee shall attach a copy of the complaint to the order for answering or shall describe the acts alleged in the complaint. A respondent may answer either personally or through his attorney, but the answer must address the substantive allegations set forth in the complaint or order.
- 15.12. Upon receipt of the respondent's answer or at any point in the course of investigation or inquiry into a complaint, the committee may determine that there is not and will not be sufficient evidence to warrant further proceedings or that the complaint fails to allege misconduct for which a registrant may be sanctioned by the Board. In such event, the committee shall recommend to the Board to dismiss the complaint. The committee shall retain a file of all complaints and shall review this file periodically.
- 15.13. At any point in its investigation of a complaint, the Board or complaint committee may assign the matter to one of its medical consultants for review. The report of the medical consultant shall contain a statement of the allegations, the facts, analysis of the complaint and care provided, a brief description of the records reviewed and a recommendation and finding. The medical consultant shall, upon request, be afforded an opportunity to have an investigation interview with the physician in question or other involved parties, a report of which shall be placed in the investigative file.
- 15.14. If a respondent fails to answer within the thirty (30) day period or if the committee determines that there is reason to believe that the acts alleged occurred and constitute a violation for which a registrant may be sanctioned by the Board, the committee shall recommend that there be a finding of probable cause to believe there is a violation of the law or these regulations.

- 15.15. The Board shall review the recommendation of the committee and shall require an adjudicatory hearing if it determines that there is probable cause to believe that acts alleged occurred and may constitute a violation of any provision of law or these regulations. The Board may take such informal action as it deems a complaint warrants.
- 15.16. The Board may suspend or refuse to renew a registrant's license pending a hearing if the health, safety or welfare of the public necessitates such summary action. The Board shall provide a hearing on the necessity for the summary action within fifteen (15) days after the suspension.
- 15.17. West Virginia Code subsection (a), section nine, article three, chapter thirty requires the Board to maintain a permanent file on each physician licensed or otherwise lawfully practicing in this State and of all persons applying to be so licensed. This file shall include an individual historical record of each such physician, which shall include all reports and information furnished to the Board pursuant to applicable law. In the event an investigative or complaint file is opened, a record shall be made thereof. The Board shall provide a respondent written notice of the substance of any record placed in his or her historical file, and the respondent will be permitted thirty (30) days in which to file a written statement regarding such record; such statement shall always accompany that part of the record in contention. A physician may examine his or her historical file during regular office hours of the Board or may designate his or her attorney to do so. A request for photocopies of his or her historical file may be made by a physician and it shall be processed by the Board on the basis of staff availability, and the cost of the request shall be paid by the requesting physician. Requests for matters relating to an ongoing investigation shall be handled at the discretion of the Board. All matters in an historical file are strictly confidential, except as exempted by West Virginia Code section nine, article three, chapter thirty. Except for information enumerated in West Virginia Code subsection (f), section nine, article three, chapter thirty, any matter in an historical file which is not involved in a proceeding for a hearing regarding the

physician concerned within (2) years from its placement into such file shall be expunged therefrom. If the investigative or complaint file is closed on the basis that the individual physician concerned is not guilty of any misconduct or wrongdoing, all matters relating to that investigation shall be removed from his or her historical file.

- 15.18. A physician shall respond within thirty (30) days to a written communication from the Board or its designee and shall make available to the Board any relevant and authorized records with respect to an inquiry or complaint about his or her professional conduct. The thirty (30) day period shall commence on the date the Board sends the communication by registered or certified mail with return receipt requested to his or her last known address. Said physician shall maintain a medical record for each patient which is adequate to enable the licensee to provide proper diagnosis and treatment. Said physician must maintain a patient's medical record for a minimum period of three (3) years from the date of the last patient encounter and in a manner which permits the former patient or a successor physician access to them within the terms of these regulations and as set forth in West Virginia Code, article twenty nine, chapter sixteen.

§11-1-16. Practice of Podiatry.

- 16.1. Application to practice podiatry. -- Each person who desires to practice podiatry and is not now authorized to do so shall file with the Board a written application, under oath, on a form prescribed by the Board.
- 16.2. License; use of title.
- (a) If the applicant passes an examination approved by the Board, has paid the required fee, and meets the requirements set forth in West Virginia Code, section ten, article three, chapter thirty, the Board shall issue a license signed by the president and secretary.
 - (b) A license authorizing the practice of podiatry does not permit the holder to use the title of "Physician" or to use the title "Surgeon," unless

the title is qualified by letters or words showing that the holder of the license is a practitioner of podiatry.

- 16.3. License to persons licensed in other states. -- When a podiatrist licensed by the licensing authority of another state, territory or the District of Columbia wishes to move to this State to practice his or her profession, the Board may, in its discretion, issue to him or her a license to practice podiatry, if he or she meets the requirements for entrance set forth in West Virginia Code section ten, article three, chapter thirty and pays a fee as established by the Board. Application shall be made on a form prescribed by the Board. Such application to the Board shall be accompanied by a nonrefundable check or money order in an amount determined by the Board.
- 16.4. Prohibition. -- No person shall practice podiatry without a license from the Board; no person shall advertise or announce himself or herself as a practitioner of podiatry without a license from the Board; no person shall open or conduct an office or other place for such practice without a license from the Board; no person shall conduct an office in the name of some other person who has a license to practice podiatry; and no person shall practice podiatry after a license has been revoked, or if suspended, during the time of such suspension.
- 16.5. Permanent file. -- The Board shall maintain a permanent file, in keeping with the provisions of Section 15.17 of these regulations, on each podiatrist licensed in this State and on all persons applying for such license.
- 16.6. Denial, revocation or suspension of license for violation of statutes.
- (a) The foregoing provisions of these regulations that relate to disciplinary procedures, and the provisions of the contested case hearing procedure, article nine-a, chapter six and article five, chapter twenty-nine-a, Series I (1983), shall be applicable to podiatrists and the practice of podiatry and shall be applied in that context to matters relating to podiatrists.

- (b) This section does not preclude the application to, or limit the operation or effect upon podiatrists of, other sections of West Virginia Code, article three, chapter thirty.

§11-1-17. Regulations For Physician Assistants.

17.1. For purposes of this section, the following definitions shall be in effect:

- (a) NCCPA. --The National Commission on the Certification of Physician Assistants.
- (b) Protocol. -- Written treatment instructions prepared by a supervising physician for use by a physician assistant. Such instructions should be flexible, in accordance with the setting where the physician assistant is employed.
- (c) Satellite operation. -- An office or clinic separate and apart from the office of the supervising physician, established by the physician and manned in part by a physician assistant.
- (d) Supervision. -- The opportunity or ability of the physician to provide or exercise control and direction over the services of physician assistants. Constant physical presence of the supervising physician of a physician assistant certified by the NCCPA is not required so long as the supervising physician and the physician assistant are or can easily be in contact with each other by radio, telephone or telecommunication. Supervision requires the availability of the supervising physician. An appropriate degree of supervision includes:
 - (1) The active and continuing overview of the physician assistant's activities to determine that the supervising physician's directions are being implemented;
 - (2) The availability of the supervising physician to the physician assistant for all necessary consultations;

- (3) Personal and regular (at least weekly) review by the supervising physician of the patient records upon which entries are made by the physician assistant; and
- (4) Periodic (at least monthly) education and review sessions discussing specific conditions, protocols, procedures and specific patients, held by the supervising physician for the physician assistant under his or her supervision.

In the case of a physician assistant who has not been certified by the NCCPA, the presence of the supervising physician or alternate supervising physician is required on the premises where the noncertified physician assistant performs delegated medical tasks.

17.2. Employment of physician assistants by licensed physician or podiatrist; services that may be performed by physician assistants.

- (a) A physician or a podiatrist fully licensed under chapter thirty of the Code of West Virginia may submit a job description to the Board to employ a physician assistant.
- (b) "Type 'A' Physician Assistant" means an assistant to a primary care physician, who is a graduate of an approved program of instruction in primary health care, who has passed the national certification examination and is qualified to perform direct patient care services under the supervision of the primary care physician.
- (c) "Type 'B' Physician Assistant" means an assistant to a physician who is a graduate of an approved program of instruction in a recognized nonprimary care clinical specialty or is a graduate of an approved program of instruction in primary health care and has either received additional postgraduate training in a recognized nonprimary

care clinical specialty or has received additional training from a physician adequate to qualify him or her to perform patient services in the specialty as defined by the supervision physician.

- (d) Type 'A' and 'B' applicants shall be of good moral character.
- (e) The delegation of certain acts to a physician assistant shall be stated on the job description in a manner consistent with sound medical practice and with the protection of the health and safety of the patient in mind. Such services shall be limited to those which are educational, diagnostic, therapeutic or preventive in nature and may, according to the standards set by his or her supervising physician, formulate a provisional diagnosis and treatment plan which may be set by standard protocols of his or her supervising physician and are under his or her direction.

17.3. Submission of application; job description. -- An application completed by the applicant and a job description written and signed by the supervising physician or podiatrist listing in numerical order the duties which will be performed by the assistant must be in the office of the Board of Medicine, 101 Dee Drive, Charleston, West Virginia 25311, thirty (30) days prior to a Board meeting. Meetings are held bimonthly or as needed, beginning in January. The filing of an application and job description does not entitle a physician assistant to certification. The only legal authority for such approval must be given by the Board.

17.4. Ad interim certification.

- (a) Type 'A' physician assistant: When any graduate of an approved program who has not passed the NCCPA examination submits an application to the Board, accompanied by a job description for a Type 'A' physician assistant certificate, the Board shall issue to such applicant a temporary certificate allowing such applicant to function as a Type 'A' physician assistant for a period of one (1) year. Said temporary certificate may be renewed for one (1) additional year upon the

request of the supervising physician. A Type 'A' physician assistant who has not been certified as such by the NCCPA will be restricted to working under the direct supervision of the supervising physician.

- (b) Type 'B' physician assistant: When any person who meets the qualifications for Type 'B' physician assistant as defined by these regulations and who submits an application accompanied by a job description for Type 'B' physician assistant certificate, the Board may certify such applicant as a Type 'B' physician assistant for a period of four (4) months.

Upon expiration of the four (4) month temporary certification, the Board may certify the applicant as a Type 'B' physician assistant. The Type 'B' physician assistant shall be restricted to work under the direct supervision of the supervising physician until he or she has passed either the examination for surgical assistants or the examination for primary care physician assistants administered by the NBME on behalf of the NCCPA

17.5. Requirements for certification.

- (a) Graduation from an educational physician assistant training program approved by the Board. (A photocopy of the graduation certificate must accompany the application.)
- (b) Evidence of certification by the NCCPA of having successfully passed the certifying examination for primary care physician assistants.
- (c) Certification of a Type 'B' physician assistant shall be subject to review and recertification after every three (3) year period following the first certification. Such recertification shall require the supervising physician to report to the Board on the status of the Type 'B' physician assistant. This report shall include a performance evaluation, a summary of experience or continuing medical education and any proposed changes in the job description.

- 17.6. Annual report of physician assistant's performance; annual report of the Board. -- Type 'A' and Type 'B' physician assistants and their supervising physicians or podiatrists, must submit annual signed reports either individually or combined, on the professional conduct, capabilities and performance of those involved. Said report must accompany each application for recertification and must be submitted to the office of the Board by July 1. In addition thereto, the Board shall compile and publish an annual report that includes a list of currently certified physician assistants, their employers and location in the state and list of approved programs in West Virginia, the number of graduates per year of such approved program and the number of physician assistants from other states' approved programs practicing in West Virginia.
- 17.7. Supervision and control of physician assistant. -- The physician assistant, whether employed by a health care facility or the supervising physician, shall perform only under the supervision and control of the supervising physician. Supervision and control of a physician assistant certified by the NCCPA requires the availability of a physician for consultation and direction of the actions of the assistant, but does not necessarily require the personal presence of the supervising physician at the place or places where services are rendered, if the physician assistant certified by the NCCPA is performing (specified) duties at the direction of the supervising physician. In the case of a physician assistant who has not been certified by the NCCPA, the presence of the supervising physician or alternate supervising physician on the premises where the noncertified assistant performs delegated medical tests is required. The physician assistant may function in any setting within which the supervising physician routinely practices, but in no instance shall a separate place of work for the physician assistant be established. The supervising physician shall be a physician permanently licensed in this State.
- 17.8. Limitations on employment and scope of duties of physician assistants.
- (a) A supervising physician shall not employ at any one time more than two (2) physician assistants.

- (b) A physician assistant shall not sign prescriptions except in the case of certain authorized Type 'A' physician assistants.
- (c) A physician assistant shall not perform any services which his or her supervising physician is not qualified to perform.
- (d) A physician assistant may sign orders to be countersigned later by his or her supervising physician: Provided, That they are not in conflict with hospital regulations.
- (e) A physician assistant shall not perform any services which are not included in his job description and approved by the Board.

17.9. Identification of physician assistant. --When functioning as a physician assistant, the physician assistant shall wear a name tag which identifies the physician assistant as a physician assistant and which also specifies the type of classification of such assistant and the name of his or her supervising physician.

17.10. Supervising physician; responsibilities.

- (a) The supervising physician shall be responsible for observing, directing and evaluating the work, records and practices performed by the physician assistant.
- (b) It shall be the responsibility of the supervising physician to obtain consent in writing from the patient before Type 'A' physician assistants employed in a satellite clinic may render general medical or surgical services, except in emergencies.
- (c) The supervising physician shall notify the Board in writing of any termination of the employment of his or her physician assistant within ten (10) days of said termination.
- (d) The legal responsibility for any physician assistant shall remain that of the supervising physician at all times.

17.11. The certification of Type 'A' or Type 'B' physician assistant shall be restricted, suspended or revoked by the Board when, after due notice and a hearing in accordance with the manner and form prescribed by the contested case hearing procedure, article nine-a, chapter six and article five, chapter twenty-nine-a, Series I (1983), it is found:

- (a) That the assistant has held himself or herself out or permitted another person to represent him or her as a licensed physician or podiatrist;
- (b) That the assistant has in fact performed other than at the direction and under the supervision of a supervising physician or podiatrist licensed by the Board;
- (c) That the assistant has been delegated and performed a task or tasks beyond his or her competence and not in accordance with his or her job description as approved by the Board;
- (d) That the assistant is a habitual user of intoxicants or drugs to such an extent that he or she is unable to safely perform as an assistant to the physician or podiatrist;
- (e) That the assistant has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude;
- (f) That the assistant has been adjudicated a mental incompetent or his mental condition renders him or her unable to safely perform as an assistant to a physician or a podiatrist;
- (g) That the assistant has failed to comply with any of the provisions of these regulations or the West Virginia Medical Practice Act;
- (h) That the assistant is guilty of unprofessional conduct which includes, but is not limited to, the following:
 - (1) Misrepresentation or concealment of material fact in obtaining a certificate or a reinstatement thereof;

- (2) The commission of an offense against any provision of state law related to the practice of physician assistant, or any rule or regulation promulgated thereunder;
- (3) The commission of any act involving moral turpitude, dishonesty or corruption, when such act directly or indirectly affects the health, welfare or safety of citizens of this State. If the act constitutes a crime, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action;
- (4) Conviction of a felony, as defined under the laws of this State or under the laws of any other state, territory or country;
- (5) Misconduct in his or her practice as a physician assistant or performing tasks fraudulently, beyond his or her authorized scope, with incompetence or with negligence on a particular occasion or negligence on repeated occasions;
- (6) Performing tasks as a physician assistant while the ability to do so is impaired by alcohol, drugs, physical disability or mental instability;
- (7) Impersonation of a licensed physician or another certified physician assistant;
- (8) Offering, undertaking or agreeing to cure or treat disease by a secret method, procedure, treatment or medicine; treating or prescribing for any human condition by a method, means or procedure which the physician assistant refuses to divulge upon demand of the Board; or using such methods or treatment processes accepted by a reasonable segment of the medical profession.

- (9) Prescribing a prescription drug, including any controlled substance under state or federal law, other than in good faith and a therapeutic manner in accordance with accepted medical standards;
- (10) Prescribing a controlled substance under state or federal law, to or for himself or herself, or to or for any member of his or immediate family;
- (11) Prescribing a prescription drug, including any controlled substance under state or federal law, which is not included in the approved job description for that physician assistant or which is not included in the approved state formulary for physician assistants.

17.12. Denial of certification of physician assistant. Whenever the Board determines that an applicant has failed to satisfy the Board that he or she should be certified, the Board shall immediately notify such applicant of its decision and indicate in what respect the applicant has failed to satisfy the Board. Such applicant shall be given a formal hearing before the Board upon request of such applicant filed with or mailed by registered mail to the Secretary of the Board at Charleston, West Virginia, within thirty (30) days after receipt of the Board's decision, stating the reasons for such request. The Board shall within twenty (20) days of receipt of such request, notify such applicant of the time and place of a public hearing, which shall be held within a reasonable time. The burden of satisfying the Board of his or her qualifications for certification shall be upon the applicant. Following such hearing, the Board shall determine on the basis of these regulations whether the applicant is qualified to be certified, and this decision of the Board shall be final as to that application.

17.13. Disciplinary procedures. --- The disciplinary process and procedures set forth in the contested case hearing procedure, article nine-a, Series I (1983) also apply

to disciplinary actions instituted against physician assistants with the same provisions regarding the appeal of decisions made to circuit courts.

17.14. Physician assistant utilization.

- (a) The physician assistant shall, under appropriate direction and supervision by a physician, augment the physician's data gathering abilities in order to assist the supervising physician in reaching decisions and instituting care plans for the physician's patients. Type 'A' physician assistant shall have, as a minimum, the knowledge and competency to perform the following functions and may under appropriate supervision perform them; this list is not intended to be specific or all-inclusive:
- (1) Screen patients to determine the need for medical attention.
 - (2) Review patient records to determine health status.
 - (3) Take a patient history.
 - (4) Perform a physical examination.
 - (5) Perform development screening examinations on children.
 - (6) Record pertinent patient data.
 - (7) Make decisions regarding data gathering and appropriate management and treatment of patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition.
 - (8) Prepare patient summaries.
 - (9) Initiate requests for commonly performed initial laboratory studies.

- (10) Collect specimens for and carry out commonly performed blood, urine and stool analyses and cultures.
 - (11) Identify normal and abnormal findings in history physical examination and commonly performed laboratory studies.
 - (12) Initiate appropriate evaluation and emergency management for emergency situations; for example, cardiac arrest, respiratory distress, injuries, burns and hemorrhage.
 - (13) Perform clinical procedures such as:
 - (A) Venipuncture;
 - (B) Electrocardiogram;
 - (C) Care and suturing of minor lacerations;
 - (D) Casting and splinting;
 - (E) Control of external hemorrhage;
 - (F) Application of dressings and bandages;
 - (G) Removal of superficial foreign bodies
 - (H) Cardiopulmonary resuscitation;
 - (I) Audiometry screening;
 - (J) Visual screening; and
 - (K) Carry out aseptic and isolation techniques.
 - (14) Provide counseling and instruction regarding common patient problems.
- (b) The tasks a physician assistant may perform are those which require technical skill, execution of standing orders, routine patient care tasks and such diagnostic and therapeutic procedures as the supervising physician may wish to delegate to the physician assistant after the supervising

physician has satisfied himself as to the ability and competence of the physician assistant. The supervising physician may, with due regard for the safety of the patient and in keeping with sound medical practice, delegate to the physician assistant such medical procedures and other tasks as are usually performed within the normal scope of the supervising physician's practice, subject to the limitations set forth in this section and the West Virginia Medical Practice Act and the training and expertise of the physician assistant.

- (c) A supervising physician shall not permit a physician assistant to independently practice medicine. Supervision must be maintained at all times.
- (d) A physician assistant shall not:
 - (1) Maintain or manage an office separate and apart from the supervising physician's primary office for treating patients, unless the Board has granted the supervising physician specific permission to establish a satellite operation;
 - (2) Independently bill patients for services provided;
 - (3) Independently delegate a task assigned to him or her by his or her supervising physician to another individual;
 - (4) Perform acupuncture in any form; or
 - (5) Pronounce a patient dead in any setting.
- (e) The supervising physician shall monitor and supervise the activities of the physician assistant and require documentation, including organized medical records with symptoms, pertinent physical findings, impressions and treatment plans indicated. The supervising physician shall also provide written protocols for the use of the

physician assistant in the performance of delegated tasks. Such established protocols shall be available for public inspection upon request and may be reviewed by the Board as required.

- (f) If the supervising physician absents himself or herself in such a manner or to such an extent that he or she is unavailable to aid the physician assistant when required, the supervising physician shall not delegate patient care to his or her physician assistant unless he or she has made appropriate arrangements for substitute supervision.
- (g) The supervising physician may provide the names of two (2) physicians who are willing to assume the supervising responsibilities in his or her absence. The supervising physician shall be notified by the Board whether any of his or her delegated substitutes are unacceptable to the Board. It is the responsibility of the supervising physician to ensure that supervision is maintained in his or her absence.
- (h) No physician assistant shall be permitted to be utilized in an office or clinic separate and apart from the supervising physician's primary place for meeting patients unless the supervising physician has obtained specific approval from the Board. A supervising physician may supervise only two (2) satellite operations. The criteria for granting such approval is that the supervising physician demonstrate the following to the satisfaction of the Board:
 - (1) That the physician assistant will be utilized in a designated manpower shortage area or an area of medical need as defined by the Board.
 - (2) That there is adequate provision for direct communication between the physician assistant and the supervising physician and that the distance between the main office and the satellite operation is not so great as to prohibit or impede appropriate emergency services.

- (3) That provision is made for the supervising physician to see each regular patient periodically; for example, every third visit.
 - (4) That the supervising physician visit the remote office at least weekly and demonstrate that he or she spends enough time on site to provide supervision and personally review the records of each patient seen by the physician assistant in this setting.
- (i) Appropriate records of supervisory contact must be maintained and available for Board review if required. Failure to maintain the standards required for such an operation may result in the loss of the privilege to maintain a satellite operation.
 - (j) Designated representatives of the Board will be authorized to make on-site visits to the offices of supervising physicians and medical care facilities utilizing physician assistant to review the following:
 - (1) The supervision of physician assistants;
 - (2) The maintenance of and compliance with, protocols;
 - (3) Utilization in conformity with the provisions of this section;
 - (4) Identification of physician assistants; and
 - (5) Compliance with certification and registration requirements.
 - (k) The Board reserves the right to review physician assistant utilization without prior notice to either the physician assistant or the supervising physician. It will be considered a violation of this section for a supervising physician to refuse to undergo such a review by the Board
 - (l) The provisions of this section shall not be construed to require medical care facilities to accept physician assistants or to use them within

their premises. It is appropriate for the physician assistant to provide services to the hospitalized patients of his or her supervising physician under the supervision of the physician, if the medical care facility permits it.

- (m) Physician assistants employed directly by medical care facilities shall perform services only under the supervision of a clearly identified supervising physician, and such physician shall supervise no more than two (2) physician assistants.
- (n) So long as the facility permits, a physician assistant may:
 - (1) Assess and record the patient's progress within the parameters of an established protocol or regimen and report the patient's progress to the supervising physician; and
 - (2) Make entries in medical records and patient charts so long as an appropriate mechanism is established for authentication by the supervising physician through countersignature.
- (o) A physician assistant may provide medical care or services in an emergency department so long as he or she has training in emergency medicine, functions under specific protocols which govern his or her performance and is under the supervision of a physician with whom he or she has ready contact and who is willing to assume full responsibility for the physician assistant's performance.
- (p) No physician assistant shall render nonemergency outpatient medical services until the patient has been informed that the individual providing care is a physician assistant.
- (q) It shall be the supervising physician's responsibility to be alert to patient complaints concerning the type or quality of services provided by the physician assistant.

- (r) In the supervising physician's office and any satellite operation, a notice plainly visible to all patients shall be posted in a prominent place explaining the meaning of the term "Physician Assistant". The physician assistant's certificate must be prominently displayed in the office and any satellite operation in which he or she may function. Duplicate certificates may be obtained from the Board if required.
- (s) The physician assistant is required to notify the Board of changes in his or her employment within thirty (30) days. The physician assistant must provide the Board with his or her new address and telephone number of residence, address and telephone number of employment and name of supervising physician.
- (t) The supervising physician is required to notify the Board of any changes in his or her supervision of a physician assistant within ten (10) days.

17.15. Limited prescriptive privileges for physician assistants.

- (a) A physician assistant may be authorized by the Board to issue written or oral prescriptions for certain medicinal drugs at the direction of his or her supervising physician if all of the following conditions are met:
 - (1) The physician assistant is a certified Type 'A' physician assistant who has performed patient care services for a minimum of two (2) years immediately preceding the submission to the Board of the job description requesting limited prescriptive privileges;
 - (2) The physician assistant has successfully completed an accredited course of instruction in clinical pharmacology approved by the Board of not less than four (4) semester hours;
 - (3) The physician assistant provides primary care outpatient services in a medically

underserved area or other area of need, and remains in that area, including any one of the following areas:

- (A) Areas designated by state or federal authorities as medically underserved;
 - (B) Areas designated by state or federal authorities as health manpower shortage areas in primary care;
 - (C) State government facilities offering outpatient services to underserved populations such as correctional department clinics; or
 - (D) Any other area of need specifically recognized and approved by the Board;
- (4) The physician assistant obtains Board approval of his or her job description which includes the categories of drugs the physician assistant proposes to prescribe at the direction of his or her supervising physician.
- (5) The physician assistant continues to maintain national certification as a physician assistant, and in meeting such national certification requirements, completes a minimum of ten (10) hours of continuing education in rational drug therapy in each certification period.
- (b) Evidence of completion of all conditions for the granting of limited prescriptive privileges shall be included with the physician assistant's annual renewal application and report to the Board.
- (c) The Board shall approve a formulary classifying pharmacologic categories of all drugs which may be prescribed by a Type 'A' physician assistant. The formulary shall exclude Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, antipsychotics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. In addition, no parenteral preparation may be included in the

formulary except Insulin and Epinephrine. The formulary may be revised annually, and shall include the following designated sections:

- (1) Section a. -- A choice of drugs commonly used in primary care outpatient settings to be prescribable by physician assistants who have completed an additional accredited course of study in clinical pharmacology approved by the Board of not less than four (4) semester hours;
- (2) Section b. -- Additional drugs used less commonly in primary care outpatient settings to be prescribable by physician assistants who have satisfied the requirements set forth under Section a above. In addition, Section b drugs may be prescribed by physician assistants only under the following limited situations.
 - (A) On a direct order from the supervising physician to the physician assistant during consultation at the time of the patient's examination by the physician assistant, and specifically noted in the patient's chart; or
 - (B) On a refill prescription for a previously diagnosed and stable patient whose prescription was initiated by the supervising physician.
- (d) A prescription drug not included in the approved formulary shall not be contained in the job description of any physician assistant.
- (e) Prescriptions issued by a physician assistant shall be issued consistent with the supervising physician's treatment protocol provided to his or her physician assistant. The maximum dosage shall be indicated in the protocol and in no case may exceed the manufacturer's recommended average therapeutic dose for that drug.
- (f) Each prescription and subsequent refills given by the physician assistant shall be entered on the

patient's chart and countersigned by the supervising physician within seven (7) days.

- (g) The prescription form utilized by a physician assistant approved for limited prescriptive privileges shall be imprinted with the name of the supervising physician, the name of the approved physician assistant, the address of the health care facility, the telephone number of the health care facility, the categories of drugs or drugs within a category which the assistant may prescribe and the statement, "Physician Assistant Prescription - it is a violation of state law to dispense drugs not imprinted on this prescription." The physician assistant shall write the name of the patient, the patient's address and the date on each prescription form. The physician assistant shall sign his or her name to each prescription followed by the letters "PA-C." The supervising physician must provide the Board with a copy of the prescription form utilized by his or her physician assistant prior to its use. A copy of this prescription form shall be provided to area pharmacies where the physician assistant may issue a prescription by word of mouth, telephone or other means of communication in his or her name at the direction of the supervising physician.
- (h) Physician assistants authorized to issue prescriptions for Schedules III through V controlled substances shall write on the prescription form the Federal Drug Enforcement Administration number issued to that physician assistant. Prescriptions written for Schedule III drugs shall be limited to a forty-eight (48) hour supply and may not authorize a refill. The maximum amount of Schedule IV or Schedule V drugs shall be no more than ninety (90) dosage units or a thirty (30) day supply, whichever is less.
- (i) Other prescription drugs shall not be prescribed or refillable for a period exceeding six (6) months.

- (j) The Board of Medicine shall provide the Board of Pharmacy with a list of physician assistants with limited prescriptive privileges and shall update the list within ten (10) days after additions or deletions are made.

- (k) Nothing in these regulations shall be construed to permit a Type 'A' physician assistant to independently prescribe or dispense drugs.