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## NOTICE

### FINAL RULE FILED

Legislative Rule: Licensing, Disciplinary and Complaint Procedures; Podiatry; Physician Assistants, Chapter 30-3, Series I (1984)

The attached Board of Medicine legislative rule Licensing, Disciplinary and Complaint Procedures; Podiatry; Physician Assistants is hereby filed with the Secretary of State in compliance with the provisions of Chapter 29A, Article 3, Section 13 of the West Virginia Code of 1931, as amended.

This rule was authorized by Senate Bill 425, Section 64-2-30(3)(7), passed March 10, 1984, effective from passage.

*obsolete*  
*valid May 8, 1984*  
*to June 6, 1985*  
*when amended by emergency rule filed June 7, 1985*

*L. Clark Hansbarger, M.D.*  
L. Clark Hansbarger, M.D.  
Secretary

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE *May 8, 1984*  
Administrative Law Division

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WEST VIRGINIA BOARD OF MEDICINE  
PROMULGATION HISTORY ABSTRACT

RULE TITLE: Licensing, Disciplinary and Complaint Procedures; Podiatry;  
Physician Assistants, Chapter 30-3, Series I (1984)

RULE TYPE: Legislative

APPROVED FOR PUBLIC HEARING BY BOARD OF MEDICINE: November 1, 1982

FILED NOTICE FOR PUBLIC HEARING: December 30, 1982

PUBLIC HEARING HELD: January 31, 1983

APPROVED BY BOARD OF MEDICINE: March 14, 1983

FILED WITH SECRETARY OF STATE: April 19, 1983, as emergency rule and re-filed  
November 30, 1983.

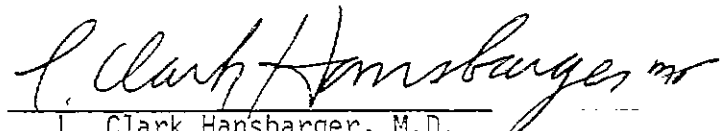
FILED WITH LEGISLATIVE RULE MAKING REVIEW COMMITTEE: April 19, 1983

ACTION BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE: Approved with amendment  
November 15, 1983. Amendment filed with Secretary of State November 30, 1983.

LEGISLATIVE ACTION: Authorized in Senate Bill 425, 64-2-30(3)(7). Passed  
March 10, 1984; in effect from passage.

FINAL RULE FILED WITH SECRETARY OF STATE: May 8, 1984

EFFECTIVE DATE: May 8, 1984

  
L. Clark Hansbarger, M.D.  
Secretary

WEST VIRGINIA LEGISLATIVE RULES  
WEST VIRGINIA BOARD OF MEDICINE

Licensing, Disciplinary, and Complaint Procedures;  
Podiatry; Physician Assistants

Chapter 30-3  
Series I  
(1984)

WEST VIRGINIA LEGISLATIVE RULES  
WEST VIRGINIA BOARD OF MEDICINE

Licensing, Disciplinary, and Complaint Procedures;  
Podiatry; Physician Assistants

Chapter 30-3  
Series I  
(1984)

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WEST VIRGINIA LEGISLATIVE RULES  
WEST VIRGINIA BOARD OF MEDICINE

Licensing, Disciplinary, and Complaint Procedures;  
Podiatry; Physician Assistants

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WEST VIRGINIA LEGISLATIVE RULES  
WEST VIRGINIA BOARD OF MEDICINE

Chapter 30-3  
Series I  
(1984)

Subject: Licensing, Disciplinary, and Complaint Procedures; Podiatry;  
Physician Assistants

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Section 1. General

- 1.1. Scope - West Virginia Code 30-3-7(a)(1) authorizes the Board of Medicine to promulgate rules which are necessary to perform the duties and responsibilities of the Board, and West Virginia Code 30-3-16(b) requires the Board of Medicine to adopt rules governing the extent of which physician assistants may function in this State.
- 1.2. Authority - These legislative rules are issued under the authority of and are related to West Virginia Code 30-3-7(a)(1) and West Virginia Code 30-3-16(b).
- 1.3. Filing Date - These legislative rules were promulgated on the 14th day of March, 1983, and were filed the 8th day of May, 1984, in the office of the Secretary of State.
- 1.4. Effective Date - These legislative rules became effective on the 8th day of May, 1984.
- 1.5. Supersession of Existing Rules - These legislative rules supersede Refiling of Existing Rules and Regulations Relating to the West Virginia Board of Medicine, Chapter 30-3, Series I (1982).

Section 2. Application and Enforcement -- These legislative rules implement the West Virginia Medical Practice Act, West Virginia Code 30-3-1, et seq.

Section 3. Definitions Applicable to All Board of Medicine Regulations

- a. ACGME - The Accreditation Council on 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 any other limitation, including probation, on a registrant's practice.
- c. Affiliate - A member of a group of two 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 Chapter 30, Article 3, Section 5, 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 Council for Foreign Medical Graduates.
- j. FLEX - The Federation of Licensing Boards Examination.
- k. Gender of Pronouns - The use of the word "he" in these regulations shall include the feminine gender.
- l. LCME - The Liaison Committee on Medical Education.
- m. NBME - The National Board of Medical 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 requirement 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 license.

Section 4. Qualification for a License to Practice Medicine and Surgery

- 4.1. An applicant for a license to practice medicine and surgery by examination shall have graduated from a medical school approved by the LCME, shall be of good moral character, and shall have completed one (1) year of post-graduate clinical training approved by the ACGME.
- 4.2. An applicant to practice medicine and surgery shall obtain a weighted average score of seventy-five percent (75%) or better on the FLEX.

- 4.3. 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 non-refundable fee, as established by the Board, together with an application provided by the Board: Provided, that an initial license shall expire on June 30 of the ensuing odd-numbered year.
- 4.4. 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 physician may convert such inactive license to an active license upon request to the Board that accounts for the period of inactivity to the satisfaction of the Board. An inactive license may be obtained upon receipt of a non-refundable fee, as established by the Board, and submission of an application on forms provided by the Board, on an annual basis.
- 4.5. All applicants for a license to practice medicine and surgery or a temporary permit to practice medicine and surgery shall demonstrate their ability to communicate in the English language to the satisfaction of the Board.

- 4.6. The Board may grant an Educational Training Permit to practice medicine and surgery, under the supervision of a licensed physician, in a training program approved by the ACGME. Supervision of such permit holder shall be the same as that required for a temporary permit holder as hereinafter stated.

Section 5. Application Required for Licensure to Practice Medicine and Surgery by Examination

- 5.1. 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 prior to the Board's consideration of such application.
- 5.2. An application for a license to practice medicine and surgery by examination must be received by the Board not later than ninety (90) days prior to the meeting of the Board at which such application will be reviewed.
- 5.3. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting at which his application will be considered. Any applicant may be required to appear before the Board at the meeting at which his application is to be considered. Such interview 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.

- 5.4. An application to take the FLEX shall include a photocopy of the applicant's medical school diploma, a photograph taken within the previous twelve (12) months which substantially resembles the applicant's appearance at the time the examination is given, a photocopy of the ECFMG certificate, where applicable, a photocopy of the post-graduate training certificate, and a cashier's check or money order made payable to the Board in an amount as established by the Board, which fee shall be non-refundable.
- 5.5. The FLEX is administered each June and December by the Board in Charleston, West Virginia. Application for examination shall be submitted on a form provided by the Board at least ninety (90) days prior to the examination.
- 5.6. An applicant shall submit to his interviewer for review an original medical school diploma; an original certificate attesting to the completion of the required minimum of one (1) year post-graduate clinical training; the ECFMG certificate, where applicable; a sworn and notarized statement on a form provided by the Board, stating the applicant is of good moral character and is physically and mentally capable

of engaging in the practice of medicine and surgery. The applicant shall also submit to his interviewer one (1) complete set of photocopies of such documents.

- 5.7. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.
- 5.8. Procedures for each examination shall be provided to each approved applicant at least fifteen (15) days prior to such examination.
- 5.9. Applicants for a license to practice medicine and surgery by examination 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 study plan shall specify activities in each area of deficiency in which a score of less than seventy-five percent (75%) was attained. Such plan shall be verified by a tutor or 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.

- 5.10. A license to practice medicine and surgery may be renewed upon payment of a non-refundable fee in an amount established by the Board.

Section 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, who received his licensure by endorsement of an American specialty board certification or the NBME, shall provide proof of licensure or Board certification in such jurisdiction.
- 6.2. An applicant shall submit a completed application on forms provided by the Board, together with proof of graduation from a school of medicine 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 post-graduate clinical training in a program approved by the ACGME.
- 6.4. An applicant for a license to practice medicine and surgery who is a graduate of a foreign medical school shall also provide evidence of successful passage of the ECFMG.
- 6.5. An applicant for a license to practice medicine and surgery by endorsement of a diplomate certificate issued by an

American specialty board must produce evidence of graduation from a medical school approved by the LCME or by the Board and evidence of receipt of a current diplomate certificate from an American specialty board approved by the AMA or by the Board.

Section 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 must be received by the Board not later than thirty (30) days prior to the meeting of the Board at which such application will be reviewed.
- 7.2. An application shall be completed on forms provided by the Board. All parts of the application shall be completed prior to review by the Board.
- 7.3. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting at which his application will be considered. The Board may require an applicant to be present at the meeting during which his application will be reviewed. The purpose of such interview or required attendance is to verify the existence and the identity of all required documents and to enable the Board to clarify any information contained in the application.

- 7.4. 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 post-graduate clinical training;
  - d. A certified copy of the scores attained by the applicant on the FLEX, including a weighted average score of not less than seventy-five percent (75%);
  - e. A sworn and notarized statement on a form provided by the Board stating that the applicant is of good moral character and physically and mentally capable of engaging in the practice of medicine and surgery; and
  - f. A statement that the physician is in good standing in each jurisdiction in which he is licensed to practice and that he has no medical disciplinary actions pending.
- 7.5. An applicant shall also provide photocopies of all documents presented to the Board. Such photocopies shall be attached to the application and made a part thereof. Such photocopies shall become the property of the Board.

- 7.6. An applicant for licensure by endorsement shall present his original specialty board certification and show further evidence that he is currently certified in his specialty. A photocopy of the certificate shall also be submitted with the application and made a part thereof. Such photocopy shall become the property of the Board.
- 7.7. An applicant for licensure by endorsement of the NBME issued within the previous eight (8) years shall request certification scores from the NBME on forms supplied by the Board.
- 7.8. An applicant for licensure by reciprocal endorsement shall pay by cashier's check or money order payable to the Board a non-refundable fee in an amount established by the Board.
- 7.9. An applicant for licensure by reciprocal endorsement may request a temporary license to practice until the next regular meeting of the Board, by meeting the qualifications of the Board and by paying an additional non-refundable fee in an amount established by the Board and by appearing before a member of the Board for a personal interview.
- 7.10. An applicant must demonstrate to the satisfaction of the Board that the applicant has the requisite qualifications of a physician initially licensed in this State.

Section 8. Issuance of a Temporary Permit to Practice Medicine and Surgery in the State of West Virginia

- 8.1. A temporary permit to practice medicine and surgery as defined herein is not a license. A permit allows the holder to practice medicine and surgery without a license so long as such practice is under the supervision of a fully licensed physician.
- 8.2. A temporary permit is valid for a period of one (1) year beginning July 1 and ending June 30 of each year, unless issued for a shorter period of time by the Board.
- 8.3. The Board may limit the temporary practice of medicine and surgery to specific geographic locations.
- 8.4. Temporary permits to practice medicine and surgery may be revoked when, in the judgment of the Board, the conditions of the permit have been violated.

Section 9. Temporary Permit to Practice Medicine and Surgery; Qualifications

- 9.1. An applicant for a temporary permit to practice medicine and surgery shall be a graduate of a medical school recognized by the Board as acceptable at the time the applicant graduated.
- 9.2. An applicant for a temporary permit to practice medicine and surgery shall be a legal resident of West Virginia for a period of six (6) months next preceding the submission of an

application for such temporary permit, if such applicant is also an applicant for licensure by examination.

9.3. An applicant for a temporary permit to practice medicine and surgery must be certified by the ECFMG if he is a graduate of a medical school outside the United States, Canada, or the Commonwealth of Puerto Rico.

9.4. An applicant who has not attained a score of seventy-five percent (75%) on the FLEX on two (2) or more occasions shall not be eligible for a temporary permit.

Section 10. Temporary Permit to Practice Medicine and Surgery;

Application Required

10.1. An applicant for a temporary permit to practice medicine and surgery in West Virginia shall submit an application on a form prescribed and furnished by the Board, at least thirty (30) days in advance of the date on which the expected practice will begin, together with the following documents:

- a. A photocopy of the applicant's original medical school diploma;
- b. A photocopy of the applicant's original ECFMG certificate;
- c. A small photograph which bears a reasonable resemblance to the applicant at the time of the application;
- d. A letter from a physician fully licensed to practice

- medicine and surgery in West Virginia who has agreed to supervise the applicant;
- e. A letter of employment from a physician, hospital, clinic or other health care facility proposing to employ the applicant;
  - f. A letter from a party, other than those above-mentioned, indicating a need for such services;
  - g. A non-refundable fee in an amount established by the Board; and
  - h. A photocopy of a document attesting to the successful completion of the required minimum of one (1) academic year post-graduate clinical training.

The application, together with all related documents, shall become the property of the Board.

- 10.2. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting at which his application will be considered. The Board may require an applicant to be present at the meeting during which his application will be reviewed. The purpose of such interview or required attendance is to verify the existence and the identity of all required documents and to enable the Board to clarify any information contained in the application.

Section 11. Temporary Permit to Practice Medicine and Surgery; Conditions of Practice

- 11.1. Physicians granted a temporary permit to practice medicine and surgery shall abide by all applicable rules and regulations and laws of the State of West Virginia governing the practice of medicine and surgery in this State.
- 11.2. Physicians granted a temporary permit to practice medicine and surgery shall practice only in the locations specified by the Board.
- 11.3. Physicians granted a temporary permit to practice medicine and surgery in West Virginia shall limit their practice and procedures to the type of practice and procedures employed by the sponsoring physician. The sponsoring physician shall have a currently valid license to practice medicine and surgery in West Virginia.
- 11.4. A physician fully licensed to practice medicine and surgery may not sponsor more than two (2) physician temporary permit holders at any one time.
- 11.5. The sponsoring physician may assign the supervision of the permit holder to another fully licensed physician for short periods of time during sickness, vacations or other absences of less than thirty (30) days: Provided, that the temporary sponsor, the permit holder, and the regular sponsor all agree

to the temporary assignment, and that the sponsoring physician notify the Board thereof in writing.

- 11.6. Physicians who are temporary permit holders shall practice only under the supervision and control of a fully licensed physician sponsor. Such supervision and control shall not require the personal presence of the supervising physician at the place or places where such practice is performed: Provided, that the physician temporary permit holder's normal place of employment shall be on the premises of the supervising physician. The supervising physician may send the temporary permit holder away from the premises of the supervising physician to perform such duties as may be directed by the supervising physician.
- 11.7. There shall be no separate place of employment for the physician temporary permit holder other than those premises established and maintained for the practice of the supervising physician.
- 11.8. Applicants for a renewed temporary permit shall present evidence in the form of a letter from the sponsoring physician attesting to the fact that the conditions which prevailed at the time of the original application for a temporary permit still exist.

- 11.9. Applications for the renewal of the temporary permit shall be received by the Board on or before the first day of June each year.
- 11.10. A non-refundable fee in an amount established by the Board shall accompany each application for a temporary permit, and a non-refundable fee in an amount established by the Board shall accompany each application for a renewed permit.
- 11.11. A physician who has been issued a temporary permit to practice medicine and surgery may apply to the Board for a new temporary permit if the permit holder wishes to change the conditions of practice as specified in the original application and as further specified in the permit. The application for a new temporary permit shall be considered a transfer, and the application shall be accompanied by letters from the new sponsor, if a change of sponsorship is requested, and from the employing organization, if a different organization arrangement is proposed. The required documents shall be completed by all parties as in the original application and must be received, together with the application and a non-refundable fee in an amount established by the Board, at least ten (10) days prior to the proposed transfer.
- 11.12. The applicant for a new temporary permit to practice medicine and surgery shall notify the existing sponsor and the

existing employing organization of the proposed change. The applicant shall further provide evidence of such notification which has been signed by the existing employing organization, indicating receipt of such notification.

Section 12. Temporary Permit to Practice Medicine and Surgery;  
Examination Required

- 12.1. Every physician who holds a temporary permit to practice medicine and surgery in West Virginia shall take the FLEX at least once a year during such time as the temporary permit is valid.
- 12.2. Failure to take the FLEX at least once a year shall result in the denial of a temporary permit to practice medicine and surgery.

Section 13. Application Forms and Processing

- 13.1. 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 had a license, even if such 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 is a member;
  - f. The applicant's medical school;
  - g. A list of all training programs, including post-graduate;
  - 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 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.
- 13.2. 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.
- 13.3. It shall be the applicant's responsibility to mail necessary forms to selective institutions for response to the Board.
- 13.4. Completion of verification forms shall be mailed directly

from selective institutions to the Board and not from the applicant.

13.5. 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.

13.6. The Board reserves the right to require applicants who have not sat for or passed a written examination for licensure in the past ten (10) years to take an oral competency examination in their field of practice prior to issuing a license.

Section 14. Educational Training Permits

14.1. All graduate medical trainees are required to secure an educational training permit. Such a permit grants the graduate medical trainee permission to participate in the training program and restricts him to the confines of the training institution, its affiliates and affiliated community hospitals.

14.2. Specific requirements for an educational training permit are as follows:

- a. An application for an educational training permit must be forwarded to the Board sixty (60) days in advance of July 1, or by another date by special permission.
- b. A graduate of a United States or foreign medical school who does not have a license without restriction in the

United States and who has been accepted into an approved program of graduate medical education in this State must have an initial interview with a member of the Board or the Board's designated representative.

- 14.3. The educational training permit is valid only for twelve (12) consecutive months, but the Board may extend its validity when such action is warranted.
- 14.4. Annual approval for participation in graduate medical education as witnessed by the issuance of educational training permits is made by the Board for all qualified applicants.

Section 15. Examinations

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

Section 16. Fees - The Board shall collect fees as prescribed by law, and where the amount of fees is discretionary, the Board shall set them by resolution.

Section 17. License Renewals; Renewal Application Form

17.1. A license shall be renewed every two (2) years, upon submission of a renewal application form and payment of a non-refundable renewal fee in an amount established by the Board. Forms shall be mailed to each known licensee at his last known address. However, licensees are solely responsible for acquiring and submitting renewal application forms. Failure of the Board to mail a renewal form will not constitute justification for any physician to practice on an expired license.

17.2. The Board's renewal application form will include 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 other jurisdictions in which the applicant is licensed to practice medicine.

Section 18. License Exemptions

- 18.1. In addition to exemptions provided by law, no license shall be required of any duly licensed non-resident physician who participates in a Continuing Medical Education course within this State. Such physicians shall, however, register with the Board.
- 18.2. Duly licensed physicians in another state may transmit medical instructions by radio to personnel in this State in emergency situations.

Section 19. Causes for Denial, Probation, Suspension or Revocation of Licenses and Permits

- 19.1. The Board may deny an application for a license or permit, place a licensee or permit holder on probation, suspend a license or permit, limit or restrict a license or permit, or revoke any license or permit heretofore or hereafter issued by the Board, upon satisfactory proof that the licensee or permit 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 or permit;
- b. Been or is involved in fraud, forgery, deception, collusion or conspiracy in connection with an examination for a license or permit;
  - 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 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 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 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, practiced or attempted to practice under a name other than his 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 a form of 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 this 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 intent;
- x. Prescribed, dispensed or administered any medicinal drug appearing on any schedule set forth in Chapter 60A of the West Virginia Code by the physician to himself, except one 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;
- aa. 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 is not competent to perform;
- bb. 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;
- cc. 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;

- dd. Presigned blank prescription forms;
- ee. Prescribed any medicinal drug appearing on Schedule II in Chapter 60A of the West Virginia Code for office use;
- ff. Prescribed, ordered, dispensed, administered, supplied, sold or given any drug which is an amphetamine or sympathomimetic amine drug or a compound designated as a Schedule II controlled substance, pursuant to Chapter 60A of the West Virginia Code, to or for any person except for:

1. 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;
2. The differential diagnostic psychiatric evaluation of depression or the treatment of depression shown to be refractory to other therapeutic modalities; or
3. 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;

- gg. 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;
- hh. 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;

- ii. 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;
- jj. 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:
1. Advertising that has the effect of intimidating or exerting undue pressure;
  2. Advertising that uses testimonials;
  3. Advertising which is false, deceptive, misleading, sensational or flamboyant;
  4. Advertising which guarantees satisfaction or a cure;
  5. 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

6. Advertising which makes claims of professional superiority which a licensee cannot substantiate.

19.2. Acts declared to constitute dishonorable, unethical or unprofessional conduct: As used in these regulations, "dishonorable, unethical or unprofessional conduct or 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 60A 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 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 can 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 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 holds a certificate or license granted by the Board;
    - (b) Other than that for which he holds a degree or diploma from a school otherwise recognized as accredited by the Board; or
    - (c) Which he professes to be self-taught;

- c. A serious act, or a pattern or acts committed during the course of his 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 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. Failure by a licensee to report a known or observed violation of these regulations and/or the provisions of the Medical Practice Act.
- 19.3. 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 19.1 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 or private reprimand, but a private

reprimand shall not be disclosed to any person except the licensee;

- c. Suspend any license for a definite period, not to exceed five (5) years;
- d. Limit or restrict any license;
- e. Revoke any license; or
- f. Condition the penalty, or withhold formal disposition, upon the physician's submission to the care, counseling or treatment of physicians or other professional persons, and the completion of such care, counseling or treatment, as directed by the Board.

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 judgment 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.

19.4. 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 should 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 progress. During these appearances by the concerned licensee, the Board may ask the concerned licensee questions so as to observe his 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 would then report to the so appointed medical consultant on a regular basis as determined by the Board, and said medical consultant would 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 may be utilizing, and that he 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 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

9. In those situations where indicated, the Board may impose additional terms of probation upon a licensee who has initially been placed on probation, without the agreement of the concerned licensee, 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.

Section 20. Appeal

20.1. Any applicant for a license or permit who has had his 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, Chapter 6-9A & 29A-5, 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.

- 20.2. Any physician practicing medicine and surgery in this State, who has had his license denied, suspended 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, Chapter 6-9A & 29A-5, 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.

Section 21. 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.

Section 22. Disposition of Communications and Complaints

- 22.1. Any person, medical peer review committee, firm, corporation,

member of the Board or public officer may make a communication 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 communication may be filed in any written form. In addition to describing the alleged violation which prompted the communication, 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 in-patient or out-patient after or during the alleged incident.

22.2. 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 30-3-14(b), shall be processed by the Board in accordance with the provisions of this subchapter of these regulations.

- a. The Board shall prepare copies of the provisions of

Section 19.1 of these regulations and of the provisions of West Virginia Code 30-3-14(c) 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, with a request that the Board be advised of each and every instance where reason exists to believe that a physician is in violation of such provisions of the law or regulations.

- b. The Board will prepare forms for filing such 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 anytime 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 written comment, and his 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 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 22.2 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 or podiatry in this State, or applying to be so licensed, of a felony under the laws of this State, 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 22.2 to every circuit clerk in the State.

- i. Information received by the Board under the provisions of West Virginia Code 30-3-14(b) and this Section 22.2 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.

22.3. 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.

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

- 22.5. 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 problem; or
  - c. That more information will be required in order to adequately review the individual complaint.
- 22.6. A separate investigative folder shall be maintained on each case reviewed, and each folder shall have a case number assigned to it.
- 22.7. After receipt and review of a communication, if the Complaint Committee determines that the communication is completely frivolous or completely lacking in either legal merit or factual basis, it may file the complaint in a separate file kept for that purpose. The Committee shall notify the complainant of its determination and the reasons for it. The Committee shall treat all communications referred to it as complaints and shall conduct, or 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, during the Executive Session of its regular meetings, on the

number, nature, procedure and handling of the complaints received.

- 22.8. A complaint against an individual must allege that he is acting professionally in violation of the law, regulations, or good and accepted medical practice, and may be founded on any violation enumerated in Section 19.1 of these regulations or of any rule or regulation hereinafter promulgated by the Board.
- 22.9. 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 a complaint, it may utilize subpoenas and its investigators as it determines necessary to gather facts and evidence.
- 22.10. 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.

22.11. 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 22.8 herein, it may order that the individual complained of (hereinafter referred to as the "respondent") make a response to the complaint within ten (10) 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.

22.12. 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.

- 22.13. 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 investigational interview with the physician in question or other involved parties, a report of which shall be placed in the investigation file.
- 22.14. If a respondent fails to answer within the ten-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 forward the file involved to the Board.
- 22.15. The Board shall review each file the Committee forwards to it within a reasonable time and shall require an adjudicatory hearing if it determines that there is reason to believe that acts alleged occurred and constitute a violation of any provision of law or these regulations. The Board may take such informal action as it deems a complaint warrants and shall schedule a hearing if it determines that one is required.

- 22.16. The Board may suspend or refuse to renew a registrant's license pending a hearing on the question of revocation if the health, safety, or welfare of the public necessitates such summary action. The Board must provide a hearing on the necessity for the summary action within fifteen (15) days after the suspension.
- 22.17. West Virginia Code 30-3-9(a) 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 laws. In the event an investigative 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 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 historical file during regular office hours of the Board or may designate his attorney to do so. A request for photocopies of his 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 30-3-9. Except for information enumerated in West Virginia Code 30-3-9(f), any matter in an historical file which is not involved in a proceeding for a hearing regarding the physician concerned within two (2) years from its placement into such file shall be expunged therefrom. If the investigative 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 permanent file and historical record.

22.18. 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 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 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. Said physician shall provide a patient or, upon a patient's request, another physician or another specifically authorized person, with the following: A summary which includes all relevant data contained in that portion of the patient's medical record which is in said physician's possession, or a copy of the portion of the patient's entire medical record which is in said physician's possession. It is within said physician's discretion to determine whether to make available a summary or a copy of the entire medical record. Said physician may charge a reasonable fee for the expense of providing this material; however, he may not require prior payment of the charges for the medical services to which such material relates, as a condition for making it available. This regulation does not apply if, in the reasonable exercise of his professional judgment, said physician believes the provision of such material would adversely affect the patient's health. However, in such a case, said physician must make the

material available to another responsible person designated by the patient.

Section 23. Practice of Podiatry

23.1. The practice of podiatry consists of the examination, diagnosis, treatment, prevention and care of conditions and functions of the human foot by medical, surgical and other scientific knowledge and methods; and medical and surgical treatment of warts and other dermatological lesions of the hand which similarly occur in the foot. When a podiatrist uses other than local anesthesia, in surgical treatment of the foot, such anesthesia must be administered by or under the direction of an anesthesiologist or certified nurse anesthetist authorized under the State of West Virginia to administer anesthesia. A medical evaluation shall be made by a physician of every patient prior to the administration of other than local anesthesia.

23.2. 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 and furnish satisfactory proof that he is more than eighteen (18) years of age and of good moral character.

23.3. Application Requirements for Preliminary Examination

- a. At the time an applicant files his application with the Board, he shall file evidence of preliminary education, showing that he has satisfactorily completed at least two (2) years of collegiate work in an approved college of arts and sciences.
- b. When the entrance examiner finds the preliminary education of the applicant sufficient, he shall issue a certificate of preliminary examination, upon the payment of a fee, as established by the Board. Such certificate shall be attested to by the Secretary. The applicant shall present a diploma from a college of podiatry in good standing, as defined by the Board, at the time the diploma was issued. The applicant shall present an affidavit that he is the person named in the diploma or license and is the lawful possessor thereof, stating his age, residence, the school at which he obtained his education in podiatry, the time spent in the study of podiatry and such other facts as the Board may require.

- 23.4. Admittance to Examination - If the Board finds that the applicant to practice podiatry has obtained the credentials necessary for admission to the examination, that his diploma is genuine and in good standing and granted by an approved

college of podiatry, as determined by the Board, and that all other provisions of West Virginia Code 30-3-10 have been complied with, the Board shall admit such applicant to an examination.

23.5. Examinations - The examinations of applicants for licenses to practice podiatry shall be conducted by the Board. An applicant who holds the degree of Doctor of Podiatric Medicine shall be examined in subjects pertinent to current podiatric educational standards.

23.6. License; Use of Title

- a. If the applicant passes the examination and has paid the required fee, the Board shall issue a license signed by the President and Secretary. An affirmative vote of not less than five (5) members of the Board is required for the issuance of a license.
- 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.

23.7. 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 profession, the Board may, in its discretion, issue to him a license to practice podiatry, if he meets the requirements for entrance set forth in West Virginia Code 30-3-10 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 non-refundable check or money order in an amount determined by the Board.

- 23.8. Advertising Regulations - No podiatrist shall advertise or publish false, fraudulent or misleading statements of his superior skill or knowledge or the superior nature of his methods of treatment or practice; or advertise by means of a large display, glaring light sign, or sign containing as part thereof the representation of a human foot or any part thereof; or advertise free podiatry service or free examination; or advertise to guarantee any podiatry service or to perform any operation painlessly; or be guilty of grossly immoral conduct tending to deceive or defraud the public or which disqualifies him to practice with safety to the public.

- 23.9. Denial, Revocation or Suspension of License for Certain Conduct  
The Board may refuse to grant a license to a person guilty of fraud in passing an examination, or may at any time revoke or

suspend a license of a person guilty of a felony, gross immorality, or grossly unprofessional or dishonest conduct, or to an individual addicted to alcohol or drugs so as to render him unfit to practice podiatry.

a. "Grossly unprofessional or dishonest conduct," as used in this section, includes, but is not limited to:

1. Employing any solicitor for the purpose of securing patients or subsidizing any nursing home;
2. Having a professional connection with, or lending one's name to, an illegal practitioner of medicine or podiatry; and
3. Dividing any fees or charges, or agreeing or arranging to share fees or charges made by any podiatrist with any other podiatrist or with any other person.

23.10. Prohibition - No person shall practice podiatry without a license from the Board; no person shall advertise or announce himself 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.

23.11. Permanent File - The Board shall maintain a permanent file, in keeping with the provisions of Section 22.17 of these regulations, on each podiatrist licensed in this State and on all persons applying for such license.

23.12. Denial, Revocation or Suspension of Certificate for Violation of Statutes

- a. The license of a podiatrist may be refused, revoked or suspended for violations of West Virginia Code 30-3-14. The Board, by a vote of not less than five (5) members, may revoke or suspend a license.
- b. The foregoing provisions of these regulations that relate to disciplinary procedures, and the provisions of the Contested Case Hearing Procedure, Chapter 6-9A & 29A-5, 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.
- c. This section does not preclude the application to, or limit the operation or effect upon podiatrists of, other sections of West Virginia Code 30-3.

Section 24. Regulations for Physician Assistants

24.1. 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 Board certified physician assistant 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 supervision.

24.2. 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 30 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 non-primary care clinical specialty or is a graduate of an approved program of instruction in primary health care and has either received additional post-graduate training in a recognized non-primary care clinical specialty or has received additional training from a physician adequate to qualify him to perform patient services in that specialty as defined by the supervising 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 supervising physician, formulate a provisional diagnosis and treatment plan which may be set by standard protocols of his supervising physician and are under his direction, but in no case shall they include the prescribing or dispensing of drugs.

24.3. 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, 3412 Chesterfield Avenue, Charleston, West Virginia 25304, 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.

24.4. Ad Interim Certification

- a. Type 'A' physician assistant: When any graduate of an approved program 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 a Type 'B' physician assistant as

defined by these regulations, and who submits an application accompanied by a job description for a 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-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 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.

24.5. Fees - In accordance with West Virginia Code 30-3-16(k), a non-refundable cashier's check or money order in the amount of fifty dollars (\$50.00) must accompany each application, and certification must be renewed annually at a fee of five dollars (\$5.00).

24.6. 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-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.

24.7. Certification of Assistant to Ophthalmologist Not Required or Permitted - Certification of an assistant to a physician practicing the specialty of ophthalmology shall neither be required nor permitted.

24.8. 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 a list of approved

programs in West Virginia, the number of graduates per year of such approved programs, and the number of physician assistants from other states' approved programs practicing in West Virginia.

- 24.9. Supervision and Control of Physician Assistants - 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. Such supervision and control 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 is performing (specified) duties at the direction of the supervising physician. 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.

- 24.10. 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.
- c. A physician assistant shall not perform any services which his supervising physician is not qualified to perform.
- d. A physician assistant may sign orders to be countersigned later by his supervising physician, provided 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.

24.11. 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 supervising physician.

24.12. 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 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.

24.13. The certification of a Type 'A' or Type 'B' physician assistant shall be restricted or terminated by the Board when, after due notice and a hearing in accordance with the manner and form prescribed by the Contested Case Hearing Procedure, Chapter 6-9A & 29A-5, Series I (1983), it is found:

- a. That the assistant has held himself out or permitted another person to represent him 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 competence and not in accordance with his 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 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 unable to safely perform as an assistant to a physician or 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 assistants, 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 practice as a physician assistant or performing tasks fraudulently, beyond his 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 treatments which are not in accordance with treatment processes

accepted by a reasonable segment of the medical profession.

- 24.14. Denial of Certification of Physician - Whenever the Board determines that an applicant has failed to satisfy the Board that he should be certified, the Board shall immediately notify such applicant of its decision and indicate in what respect the applicant has so 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 ten (10) 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 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.

- 24.15. Disciplinary Procedures - The disciplinary process and procedures set forth in the Contested Case Hearing Procedure,

Chapter 6-9A & 29A-5, 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.

24.16. 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 assistants 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, 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) Cardio-pulmonary 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, delegated 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 by his 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 in such a manner or to such an extent that he is unavailable to aid the physician assistant when required, the supervising

physician shall not delegate patient care to his physician assistant unless he 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 absence. The supervising physician shall be notified by the Board whether any of his delegated substitutes are unacceptable to the Board. It is the responsibility of the supervising physician to insure that supervision is maintained in his 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 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 assistants 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 assistant; 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 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 has training in emergency medicine, functions under specific protocols which govern his performance and is under the supervision of a physician with whom he has ready contact and who is willing to assume full responsibility for the physician assistant's performance.
- p. No physician assistant shall render non-emergency out-patient 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 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 employment within thirty (30) days. The physician assistant must provide the Board with his 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 supervision of a physician assistant within ten (10) days.