



State of West Virginia

WEST VIRGINIA BOARD OF MEDICINE
100 Dee Drive, Suite 104, Charleston 25311
(304) 348-2921

M. Jamil Ahmed, MD
Beckley

Mrs. Cleone Blankenship
Mateoka

Rev. Richard Bowyer
Fairmont

Robert C. Gow, MD
Elkins

Mrs. Frances S. Grove
Martinsburg

Ira F. Hartman, II, MD
Buckhannon

Tom Harward, PA-C
Bellington

F. J. Holroyd, MD
Princeton

Bill P. May, DPM
Huntington

Leonard Simmons, DPM
Clarksburg

Joseph Skaggs, MD
Charleston

A. A. Yurko, Jr. MD
Weirton

April 28, 1986

The Honorable Ken Hechler
Secretary of State
West Virginia State Capitol
Charleston, West Virginia 25305

REC'D
SECRETARY OF STATE
APR 29 11:22
FILED

NOTICE OF FINAL FILING - LEGISLATIVE RULES

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

The attached legislative rules are hereby final filed with the Secretary of State by the West Virginia Board of Medicine as authorized by Senate Bill 434, Section 64-2-30(3)(7)(b).

S. Eileen Catterson MD
S. EILEEN CATTERSON, M.D.
President, Board of Medicine

David K. Heydinger, M.D.
DAVID K. HEYDINGER, M.D.
Secretary, Board of Medicine

PRESIDENT
S. Eileen Catterson, MD
Rhodell

VICE PRESIDENT
H. S. Weeks, Jr., MD
Wheeling

SECRETARY
David K. Heydinger, MD
Charleston

EXECUTIVE DIRECTOR
Ronald D. Walton
Charleston



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

March 11, 1986

IMPORTANT NOTICE

TO: Ron Walton

FROM: RICH O. HARTMAN, DIRECTOR

RE: LEGISLATIVE RULE Licensing, Disciplinary and Complaint
Procedures, etc.

THE 1986 LEGISLATURE HAS AUTHORIZED YOUR AGENCY TO FINAL FILE AND ADOPT THE ABOVE LEGISLATIVE RULE. THIS AUTHORIZATION IS IN S.B. 434 SECTION 64-2-30(3)(7)(b) PASSED ON March 8, 1986, EFFECTIVE FROM PASSAGE. YOU HAVE 60 DAYS FROM THAT DATE TO FINAL FILE THE ABOVE RULE WITH THIS OFFICE. NO RULE WILL BE ACCEPTED AFTER THAT DATE. YOU MAY ESTABLISH ANY EFFECTIVE DATE FOR YOUR RULE RANGING FROM THE SAME DATE YOU FINAL FILE TO 90 DAYS FROM THE DATE YOU FINAL FILE. REMEMBER TO RE-TYPE YOUR RULE IN ITS ENTIRETY FOLLOWING THE PROPER FORMAT. PLEASE CALL IF YOU HAVE ANY QUESTIONS.

WEST VIRGINIA LEGISLATIVE RULES
WEST VIRGINIA BOARD OF MEDICINE

Chapter 30-3
Series I
(1984)

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

THIS DATE 5-8-84
Administrative Law Division

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

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).

REC JAN 17 PM 2 21

FILED

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 4

Section 4. Qualification and Application 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.~~ 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.

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.~~ An application for a license to practice medicine and surgery 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.

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

a. a photograph taken within the previous twelve (12) months which substantially resembles the applicant;

b. evidence of graduation from a medical school approved by the LCME or by the Board;

c. a sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character, and that the applicant is physically and mentally capable of engaging in the practice of medicine;

d. evidence of completion of one (1) year of post-graduate clinical training approved by the ACGME;

e. a nonrefundable cashier's check or money order payable to the Board in an amount established by the Board; and,

f. any other documents as may be required by the Board.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 4

4.4. An applicant for a license to practice medicine and surgery shall be required to obtain a passing score on the FLEX. For those applicants who did not take the two (2) component FLEX program, a passing score shall consist of a weighted average score of seventy-five percent (75%) or better. For those applicants taking the two (2) component FLEX program, a passing score shall consist of seventy-five (75) or better on Component One of the FLEX, and seventy-five (75) or better on Component Two of the FLEX. A weighted average score of the two (2) component FLEX program shall not be utilized by the Board in the determination of a passing score. Any applicant who passes either Component One or Component Two of the FLEX, but not both, shall be required to re-take only the Component upon which the applicant did not obtain a passing score to be eligible for licensure. An applicant must obtain a passing score of seventy-five (75) or better on both Components before the elapse of seven (7) consecutive years. Failure to obtain a passing score on both Components before the elapse of seven (7) consecutive years shall render the applicant ineligible for licensure.

4.5. The Board (or a majority of them) may accept either the certificate of the NBME issued within the previous eight (8) years, or a diplomate certificate from an American specialty board, in lieu of a passing score on the FLEX. The Board is not required, however, to accept either of these documents in lieu of the FLEX. If accepted, the holder of a diplomate certificate from an American specialty board may be licensed only so long as that holder maintains such diplomate certificate in good standing with the applicable American specialty board. In addition, any license awarded to the holder of a diplomate certificate from an American specialty board shall be limited in his practice to that specific specialty. An applicant relying upon the certificate from an American specialty board shall submit a photocopy of it with his application. An applicant relying on the certificate of the NBME shall request certification of scores from the NBME on forms provided by the Board.

~~4.5. 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.~~ All applicants for a license to practice medicine and surgery shall demonstrate their ability to communicate in the English language to the satisfaction of the Board.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 4

4.7. An applicant for a license to practice medicine and surgery who is a graduate of a school of medicine located outside the United States, the Commonwealth of Puerto Rico, or Canada, shall also provide evidence of certification by the ECFMG.

4.8. 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. The purpose of such interview or required attendance at a Board meeting is to verify the existence and the identity of all required documents and information and to enable the Board to clarify information contained in the application. The Board may require production of original documents at such interview or required attendance at a Board meeting.

4.9. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.

4-3 4.10. A license to practice medicine and surgery in this State shall be valid for a term of two (2) years and shall be renewed upon the receipt of a nonrefundable fee, as established by the Board, together with an application provided by the Board: Provided, that an initial license shall expire on June 30 of the ensuing odd-numbered year.

4-4 4.11. The Board may renew, on an inactive basis, the license of a physician who is currently licensed to practice medicine and surgery, but who is not actually practicing medicine and surgery in this State. A physician holding an inactive license shall not practice medicine and surgery in this State, but such 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 nonrefundable fee, as established by the Board, and submission of an application on forms provided by the Board. ~~on an annual basis.~~ An inactive license shall be valid for a term of two (2) years, and shall be renewable.

Section 5. Application Required for Licensure to Practice
Medicine and Surgery by Examination Application
Required for Examination - Federation of
Licensing Boards Examination (FLEX)

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. The FLEX shall be administered each June and December by the Board in Charleston, West Virginia.~~

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. An application for the FLEX shall be completed on a form provided by the Board. The application shall be completed in full prior to the examination.~~

5.3. ~~An 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. An application for the FLEX must be received by the Board not later than ninety (90) days prior to the date of examination.~~

5.4. ~~An application to take the FLEX shall include 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. An application to take the FLEX shall include the following:~~

a. evidence of graduation from a medical school approved by the LCME or by the Board;

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 5

b. two (2) photographs taken within the previous twelve (12) months which substantially resemble the applicant's appearance at the time the examination is to be given;

c. a sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character, and is physically and mentally capable of engaging in the practice of medicine;

d. evidence of certification by the ECFMG, where applicable;

e. a nonrefundable cashier's check or money order payable to the Board in an amount as established by the Board; and

f. any other documents as may be required by the Board.

If available, evidence of completion of one (1) year of post-graduate clinical training approved by the ACGME shall also be included. While the completion of one (1) year of post-graduate clinical training approved by the ACGME shall be required for licensure purposes, it is not required for the purpose of taking the FLEX.

~~5.7. 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. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.~~

~~5.8. 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. Procedures for each examination shall be provided to each approved applicant at least fifteen (15) days prior to such examination.~~

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 5

~~5.9.~~ 5.7. ~~A license to practice medicine and surgery may be renewed upon payment of a non-refundable fee in an amount established by the Board.~~ 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. In the case where an applicant has failed either component of the two (2) component FLEX on two (2) or more occasions, the study plan shall specify activities in each area of deficiency in the component or components upon which a score of less than seventy-five percent (75) (75%) was attained. ~~Such~~ The applicant's plan of study 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.

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 under licensure requirements substantially similar to those existing in this State, and proof that he has the requisite qualifications to provide the same standard of care as a physician initially licensed in this State. These requirements and qualifications are specifically enumerated in this Section below.

6.2. ~~An applicant 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.~~ An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide evidence of graduation from a medical school approved by the LCME or by the Board.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 6

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 by reciprocal endorsement who is a graduate of a foreign medical school shall also provide evidence of successful passage of certification by 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.~~ An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide proof of passage of the FLEX, which scores must meet the requirements established in Section 4.4 of these regulations. The Board (or a majority of them) may accept in lieu of the FLEX the certificate of the NBME issued within the previous eight (8) years, or a diplomate certificate from an American specialty board. Any license privileges awarded by reciprocal endorsement based upon a diplomate certificate of an American specialty board in lieu of the FLEX shall be upon such conditions as those outlined in Section 4.5 herein.

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

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

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 shall be completed on forms provided by the Board. All parts of the application shall be completed in full prior to review by the Board.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 7

~~7.1:~~ 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.~~ 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.

7.3. 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 appear be present before the Board at the meeting during which his application ~~will be~~ is to be considered. The purpose of such interview or required attendance at a Board meeting is to verify the existence and the identity of all required documents and information and to enable the Board to clarify any information contained in the application. The Board may require production of original documents at such interview or required attendance at a Board meeting.

7.4. 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%)~~ which scores must meet the requirements established in Section 4.4 of these regulations;
- e. a sworn and notarized statement on a form provided by the Board stating that the applicant is of good moral character, and is physically and mentally capable of engaging in the practice of medicine and surgery; ~~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; and

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 7

g. such other documents as may be required by the Board.

~~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.~~ An applicant for a license to practice medicine and surgery by reciprocal endorsement shall also provide photocopies of all documents presented to the Board. Such photocopies shall be attached to the application and made a part thereof. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.

~~7-8. 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.~~ An applicant for licensure a license to practice medicine and surgery by reciprocal endorsement shall pay by cashier's check or money order payable to the Board a nonrefundable fee in an amount established by the Board.

~~7-9. 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.~~ An applicant for licensure a license to practice medicine and surgery by reciprocal endorsement whose application is complete may request a temporary license to practice until the next regular meeting of the Board, by meeting the qualifications of the Board, by paying an additional 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. 7.8. An applicant must demonstrate for a license to practice medicine and surgery by reciprocal endorsement has the burden of demonstrating to the satisfaction of the Board that the applicant has the requisite qualifications of a physician initially licensed in this State.~~

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.~~ submit evidence that he is a graduate of a medical school approved by the LCME or by the Board.

9.2. An applicant for a temporary permit to practice medicine and surgery shall be submit evidence that he is 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~~ shall submit evidence that he is 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.~~ An applicant who has not met the requirements of Section 4.4 of these regulations on two (2) or more occasions shall not be eligible for a temporary permit.

9.5. An applicant for a temporary permit must be able to demonstrate to the satisfaction of the Board the ability to communicate in the English language.

9.6. An applicant for a temporary permit shall submit evidence that he is of good moral character and that he is physically and mentally capable of engaging in the practice of medicine.

9.7. The issuance of a temporary permit shall not be interpreted or construed as the Board's approval of the applicant for licensure. Each person who seeks licensure must meet all regular licensure requirements established by law in order to be licensed.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 10

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~~ provided by the Board, which form must be completed and submitted 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;~~ evidence of graduation from a medical school approved by the LCME or by the Board;

b. ~~A photocopy of the applicant's original ECFMG certificate;~~ evidence of certification by the ECFMG, where applicable;

c. ~~A small photograph which bears a reasonable resemblance to the applicant at the time of the application;~~ a photograph taken within the previous (12) months which substantially resembles the applicant;

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 nonrefundable 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.~~ a sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character, and is physically and mentally capable of engaging in the practice of medicine and surgery; and

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 10

i. such other documents as may be required by the Board.

10.2. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.

~~10-2-~~ 10.3. An applicant for a temporary permit 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 at a Board meeting 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. The Board may require production of original documents at such interview or required attendance at a Board meeting.

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.

12.3. A physician who meets each of the following requirements shall be allowed (1) point toward his score on the FLEX for every full calendar year he has held a temporary permit in this State, up to a maximum of five (5) points for five (5) full years of practice:

a. The physician must have received the degree of doctor of medicine or its equivalent from a school of medicine approved by the Board and located outside of the United States, the Commonwealth of Puerto Rico, and Canada;

b. The physician must have held a valid temporary permit on April 13, 1985; and

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 12

c. The physician must have taken the FLEX after the first day of June, one thousand nine hundred eighty-two, and no later than the thirteenth day of June, one thousand nine hundred eighty-five.

Any physician who cannot satisfy each of the above requirements shall be ineligible for the allowance of points based upon full years of practice. In allowing points for full years of practice, periods of practice in West Virginia constituting less than a full calendar year shall not be credited in any fashion. Physicians who satisfy each of the above requirements, and who take the two (2) component FLEX program, shall be allowed one (1) point toward his score on each component of the FLEX for every full year he has held a temporary permit in this State, up to a maximum of five (5) points on each component of the FLEX for five (5) full years of practice.

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. a completed 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. an application for an educational training permit shall include proof that the applicant is a graduate of a medical school approved by the LCME or by the Board;

c. an application for an educational training permit shall include a sworn and notarized statement from another physician that the applicant is of good moral character, and that he is physically and mentally capable of engaging in the practice of medicine;

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 14

d. an application for an educational training permit shall include proof that the applicant is certified by the ECFMG if he is a graduate of a medical school outside the United States, Canada, or the Commonwealth of Puerto Rico;

e. an applicant for an educational training permit must be able to demonstrate to the satisfaction of the Board his ability to communicate in the English language;

f. an application for an educational training permit must be accompanied by a nonrefundable fee in an amount established by the Board; and,

g. 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.

14.5. The application, together with all photocopied documents submitted therewith, shall become the property of the Board and shall not be returned.

14.6. The issuance of an educational training permit shall not be interpreted or construed as the Board's approval of a applicant for licensure upon the applicant's completion of the educational training program. Each person who seeks licensure must meet all regular licensure requirements established by law in order to be licensed.

Section 24. Regulations for Physician Assistants

24.1. For purposes of this Section, the following definitions shall be in effect:

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

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 certified by the NCCPA is not required so long as the supervising physician and the physician assistant are or can easily be in contact with each other by radio, telephone, or telecommunication. Supervision requires the availability of the supervising physician. An appropriate degree of supervision includes:

1. The active and continuing overview of the physician assistant's activities to determine that the supervising physician's directions are being implemented;

2. The availability of the supervising physician to the physician assistant for all necessary consultations;

3. Personal and regular (at least weekly) review by the supervising physician of the patient records upon which entries are made by the physician assistant; and

4. Periodic (at least monthly) education and review sessions discussing specific conditions, protocols, procedures and specific patients, held by the supervising physician for the physician assistant under his supervision.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

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

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.~~

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

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,~~ 100 Dee Drive, Suite 104, Charleston, West Virginia ~~25304~~ 25311, thirty (30) days prior to a Board meeting. Meetings are held bimonthly, or as needed, beginning in January. The filing of an application and job description does not entitle a physician assistant to certification. The only legal authority for such approval must be given by the Board.

24.4. Ad Interim Certification

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

b. Type 'B' physician assistant: When any person who meets the qualifications for 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.

24.9. 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~~ Supervision and control of a physician assistant certified by the NCCPA requires the availability of a physician for consultation and direction of the actions of the assistant, but does not necessarily require the personal presence of the supervising physician at the place or places where services are rendered, if the physician assistant certified by the NCCPA is performing (specified) duties at the direction of the supervising physician. In the case of a physician assistant who has not been certified by the NCCPA, the presence of the supervising physician or alternate supervising physician on the premises where the non-certified assistant performs delegated medical tests is required. The physician assistant may function in any setting within which the supervising physician routinely practices, but in no instance shall a separate place of work for the physician assistant be established. The supervising physician shall be a physician permanently licensed in this State.

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 except in the case of certain authorized Type 'A' physician assistants.

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.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

24.13 The certification of a Type 'A' or Type 'B' physician assistant shall be restricted, suspended, or revoked ~~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;

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

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.

9. Prescribing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards;

10. Prescribing a controlled substance under state or federal law, to or for himself, or to or for any member of his immediate family;

11. Prescribing a prescription drug, including any controlled substance under state or federal law, which is not included in the approved job description for that physician assistant, or which is not included in the approved State formulary for physician assistants.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

Section 24.17. Limited Prescriptive Privileges for Physician Assistants

a. A physician assistant may be authorized by the Board to issue written or oral prescriptions for certain medicinal drugs at the direction of his or her supervising physician if all of the following conditions are met:

1. The physician assistant is a certified Type 'A' physician assistant who has performed patient care services for a minimum of two (2) years immediately preceding the submission to the Board of the job description requesting limited prescriptive privileges;

2. The physician assistant has successfully completed an accredited course of instruction in clinical pharmacology approved by the Board of not less than four (4) semester hours;

3. The physician assistant provides primary care outpatient services in a medically underserved area or other area of need, and remains in that area, including any one of the following areas:

(i) areas designated by State or federal authorities as medically underserved;

(ii) areas designated by State or federal authorities as health manpower shortage areas in primary care;

(iii) State government facilities offering out-patient services to underserved populations such as correctional department clinics; or,

(iv) any other area of need specifically recognized and approved by the Board;

4. The physician assistant obtains Board approval of his or her job description which includes the categories of drugs the physician assistant proposes to prescribe at the direction of his or her supervising physician.

5. The physician assistant continues to maintain national certification as a physician assistant, and in meeting such national certification requirements, completes

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

a minimum of ten (10) hours of continuing education in rational drug therapy in each certification period.

b. Evidence of completion of all conditions for the granting of limited prescriptive privileges shall be included with the physician assistant's annual renewal application and report to the Board.

c. The Board shall approve a formulary classifying pharmacologic categories of all drugs which may be prescribed by a Type 'A' physician assistant. The formulary shall exclude Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, antipsychotics, radiopharmaceuticals, general anesthetics, and radiographic contrast materials. In addition, no parenteral preparation may be included in the formulary except Insulin and Epinephrine. The formulary may be revised annually, and shall include the following designated Sections:

1. Section A - a choice of drugs commonly used in primary care outpatient settings to be prescribable by physician assistants who have completed an additional accredited course of study in clinical pharmacology approved by the Board of not less than four (4) semester hours;

2. Section B - additional drugs used less commonly in primary care outpatient settings to be prescribable by physician assistants who have satisfied the requirements set forth under Section A. In addition, Section B drugs may be prescribed by physician assistants only under the following limited situations:

(i) on a direct order from the supervising physician to the physician assistant during consultation at the time of the patient's examination by the physician assistant, and specifically noted in the patient's chart; or

(ii) on a refill prescription for a previously diagnosed and stable patient whose prescription was initiated by the supervising physician.

d. A prescription drug not included in the approved formulary shall not be contained in the job description of any physician assistant.

e. Prescriptions issued by a physician assistant shall be issued consistent with the supervising physician's treatment protocol provided to his or her physician assistant.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

The maximum dosage shall be indicated in the protocol and in no case may exceed the manufacturer's recommended average therapeutic dose for that drug.

f. Each prescription and subsequent refills given by the physician assistant shall be entered on the patient's chart and countersigned by the supervising physician within seven (7) days.

g. The prescription form utilized by a physician assistant approved for limited prescriptive privileges shall be imprinted with the name of the supervising physician, the name of the approved physician assistant, the address of the health care facility, the telephone number of the health care facility, the categories of drugs or drugs within a category which the assistant may prescribe, and the statement, "physician assistant prescription - it is a violation of State law to dispense drugs not imprinted on this prescription". The physician assistant shall write the name of the patient, the patient's address, and the date on each prescription form. The physician assistant shall sign his or her name to each prescription followed by the letters "PA-C". The supervising physician must provide the Board with a copy of the prescription form utilized by his or her physician assistant prior to its use. A copy of this prescription form shall be provided to area pharmacies where the physician assistant may issue a prescription by word of mouth, telephone, or other means of communication in his or her name at the direction of the supervising physician.

h. Physician assistants authorized to issue prescriptions for Schedules III through V controlled substances shall write on the prescription form the Federal Drug Enforcement Administration number issued to that physician assistant. Prescriptions written for Schedule III drugs shall be limited to a forty-eight (48) hour supply and may not authorize a refill. The maximum amount of Schedule IV or Schedule V drugs shall be no more than ninety (90) dosage units or a thirty (30) day supply, whichever is less.

i. Other prescription drugs shall not be prescribed or refillable for a period exceeding six (6) months.

EMERGENCY
Board of Medicine
Legislative Rule 30-3
Series I, Sec. 24

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

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

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Medicine

Subject: Proposed rules and regulations relating to licensing,
disciplinary and complaint procedures; podiatry;
physician assistants.

PERTINENT DATES

Filed for public hearing: June 7, 1985
Public comment period ended: July 29, 1985
Filed following public comment period: November 26, 1985
Filed LRMRC: November 27, 1985
Filed as emergency:
FN: \$0.00

ABSTRACT

The proposed rule amends a current legislative rule relating to licensing and physician assistants.

Section 4 which relates to qualifications for licensure has been substantially amended.

Sections 4.1 and 4.2 have had that language which relates to required medical education deleted. They now require that application for a license to practice medicine and surgery be completed on a form supplied by the Board and that the form must be received no later than thirty days prior to the meeting of the Board at which such application will be reviewed.

Section 4.3 specifies those documents which must accompany an application.

Section 4.4 requires that an applicant for a license to practice medicine and surgery must obtain a passing score on the FLEX and specifies those scores which are considered passing. An applicant must obtain a passing score on both components of the FLEX before the elapse of seven consecutive years in order to be eligible for licensure.

Section 4.5 allows the Board to accept either the certificate of the NBME issued within the previous eight years or a diplomate certificate from an American specialty board in lieu of a passing score on the FLEX. This section also places restrictions on a license issued upon the basis of these certificates. Language relating to the granting of an Educational Training Permit has been deleted.

Section 4.7 requires an applicant for a license to practice medicine and surgery who is a graduate of a school located out of the United States, the Commonwealth of Puerto Rico or Canada to provide evidence of certification by the ECFMG.

Section 4.8 requires the applicant to arrange for a personal interview with a member of the Board prior to the meeting at which the application is to be considered and to appear at the meeting if the Board so requests.

Section 4.9 provides that the application and all attached documents becomes the property of the Board.

Sections 4.10 and 4.11 were formerly Sections 4.3 and 4.4. Section 4.11 was amended to allow an inactive license to be valid for a term of two years. Currently, an inactive license must be renewed annually .

Section 5 has been amended by deleting all of the language relating to the application. The majority of the material has been relocated in Section 4 and is discussed above. Section 5 now relates to the FLEX.

Section 5.1 requires the Board to administer the Flex in Charleston in June and December. (Formerly under Section 5.5).

Sections 5.2 and 5.3 requires submission of a completed examination application no later than ninety days prior to the date of examination.

Section 5.4 specifies those documents which must be included with the application. It also states that while completion of one year of post-graduate clinical training is required for licensure purposes it is not required prior to taking the FLEX.

Section 5.7 requires an applicant who has failed either component of the FLEX on two or more occasions to file a study plan specifying activities in that component.

Section 6.1 requires an applicant for licensure under reciprocal endorsement to prove that the licensure requirements under which he received his license are substantially similar to those in this State and to prove that he has the requisite qualifications to provide the same standard of care as a physician initially licensed in this State. Deleted language would merely have required proof of licensure for an applicant who received his licensure by endorsement of an American specialty board or the NBME.

Section 6.5 requires an applicant for reciprocal endorsement to provide proof of passage of the FLEX with scores equal to those required under Section 4.4. It allows the Board to accept a certificate of the NBME or a diplomate certificate from an American specialty board in lieu of the FLEX and imposes the conditions enumerated in Section 4.5 on such license.

Section 6.6 requires an applicant for licensure by reciprocal endorsement to provide a sworn and notarized statement that the applicant is of good moral character and is physically and mentally capable of engaging in the practice of medicine and surgery.

Section 6.7 requires an applicant for licensure by reciprocal endorsement to provide a statement that he is in good standing in each jurisdiction in which he is licensed and that he has no medical disciplinary action pending against him.

Section 9 relates to temporary permits.

Section 9.5 and 9.6 require an applicant for a temporary permit to be able to demonstrate to the satisfaction of the Board that he is able to communicate in the English language, that he is of good moral character and that he is physically and mentally capable of engaging in the practice of medicine.

Section 9.7 specifies that issuance of a temporary permit is not to be construed as Board approval of the applicant for licensure.

Section 10.1 which relates to the application for a temporary permit to practice medicine has been amended to also require the submission of a notarized statement stating that the applicant is of good moral character and is physically and mentally capable of engaging in the practice of medicine and surgery.

Section 10.2 states that all documents submitted become the property of the Board.

Section 12.3 allows a physician who meets certain requirements to be allowed one point toward his score on the FLEX for every full year he has held a temporary permit in this state, up to a maximum of five points for five full years of practice.

Section 14 which relates to educational training permits has been amended to specify additional requirements for a permit.

Section 14.6 provides that the issuance of an educational training permit is not to be interpreted as approval of the applicant for licensure upon the applicant's completion of the educational training program.

Section 24 concerns regulations for physician assistants.

Section 24.1 is a definition section. The definition of "supervision" has been amended to require the presence of a supervising physician or alternate supervising physician is required on the premises where a physician assistant who has not been certified by the NCCPA is performing delegated medical tasks.

Section 24.2 which relates to services that may be performed by physicians assistants has been amended by deleting the provision which prohibited the PA from prescribing or dispersing drugs.

Section 24.4 has been amended to provide for the issuance of a temporary certificate to any graduate of an approved program who has not passed the NCCPA examination.

Section 24.9 relating to supervision and control of physician assistants has been amended to distinguish between the amount of supervision necessary for NCCPA certified physician assistants and non-certified physician assistants.

Section 24.10 has been amended to allow certain authorized Type A physicians to sign prescriptions.

The definition of unprofessional conduct of a PA has also been amended to include: (1) prescribing a prescription drug other than in good faith and in a therapeutic manner in accordance with accepted medical standards; (2) prescribing a controlled substance to or for himself or to or for any member of his immediate family; or (3) prescribing a prescription drug which is not included in the approved job description for that assistant or which is not included in the State formulary for Physician Assistants.

Section 24.17 is entirely new and relates to limited prescriptive privileges for physician assistants. It specified that a PA may be authorized by the Board to issue written or oral prescriptions for certain medicinal drugs at the direction of his supervising physician if certain enumerated conditions are met. They include certification of the PA as Type A; two years of performing patient care services; successful completion of an accredited course of instruction in clinical pharmacology, provision of primary

care out-patient services is in a medically underserved area; Board approval of the job description, including the categories of drugs the PA proposes to prescribe; and national certification is maintained including a minimum of ten hours of continuing education in rational drug therapy in each certification period.

The Board is required to approve a formulary classifying pharmacologic categories of all drugs which may be prescribed. Those drugs which must be excluded are set forth in the rule and those sections which must be included are listed.

Prescriptions must be issued consistent with the supervising physicians treatment protocol. They must be entered on the patient's chart and countersigned by the supervising physician within seven days.

This section also specifies what information must appear on the prescription form.

AUTHORITY

Statutory authority: W. Va. Code, §30-3-7(a)(1) and §30-3-16(b).

W. Va. Code, §30-3-7(a)(1) provides as follows:

(a) The board, in accordance with the provisions of this article, shall administer and supervise examinations and determine qualifications of applicants for licenses to practice medicine and surgery and to practice podiatry, shall issue licenses to qualified applicants and shall regulate the professional conduct and discipline of such individuals. In carrying out the functions, the board may:

(1) Adopt such regulations as are necessary to carry out the purposes of this article;

W. Va. Code, §30-3-16(b) provides, in part, as follows:

(b) The board shall promulgate rules and regulations governing the extent to which physician assistants may function in this State. Such regulations shall provide that the physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of a physician permanently licensed in this State, but such supervision and

control does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant's normal place of employment is on the premises of the supervising physician. The supervising physician may send the physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the physician assistant shall not be established. In promulgating such rules and regulations, the board shall allow the physician assistant to perform those procedures and examinations and in the case of certain authorized Type A physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (1) of this section those categories of drugs submitted to it in the job description required by subsection (i) of this section.

(1) ... The board shall promulgate rules and regulations governing the eligibility and extent to which such a Type A physician assistant may prescribe at the direction of the supervising physician. The regulations shall provide for a state formulary classifying pharmacologic categories of drugs which may be prescribed by such a Type A physician assistant. ... The regulations shall provide that all pharmacological categories of drugs to be prescribed by a Type A physician assistant shall be listed in each job description submitted to the board as required in subsection (i) of this section. The regulations shall provide the maximum dosage a Type A physician assistant may prescribe. The regulation shall also provide that to be eligible for such prescription privileges, a Type A physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board. The regulations shall also provide that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant, and in meeting such national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period.

ANAYLSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No. Under the above-cited code provisions, the Board

has both the general and the specific authority to promulgate rules of this type. In fact, under W. Va. Code, §30-3-7 and 16, the Board is mandated to promulgate rules and regulations governing the extent to which physician assistants may function in this State, and also the eligibility and extent to which a Type A physician assistant may prescribe drugs at the direction of the supervising physician.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes. W. Va. Code, §30-3-16 shows that the Legislature intended that the Board of Medicine flesh out the law regarding the permissible functions of a physician assistant. The rule is necessary to provide the additional standards which the Board is directed to develop under the section 16 and conforms to those requirements listed in section 16.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH THE OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Possibly. W. Va. Code, §30-3-16(e) and (f) requires that in certain instances a physician assistant will be "restricted to work under the direct supervision of the supervising physician. Section 24.9 of the proposed rule requires that "in the case of a physician assistant who has not been certified by the NCBPA, the presence of the supervising physician on the premises where the non-certified assistant performs delegated medical tests is required." In counsel's experience, direct supervision means that the supervisor is present on the spot where the person he is supervising is performing designated tasks, not merely on the premises.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes. - as stated above in II.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Counsel has several suggestions to discuss with representatives of the Board to make the proposed rule clearly and more understandable.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

W. Va. Code, §29A-3-11-(a) (2) and (3) requires submission of a brief summary of the content of the legislative rule and description of any rule the agency proposes to amend or repeal and a statement of the circumstances which require the rule.

1 Bill 19

H. B. 1764

2 Delegate Casey

3 (By _____)

4 (Introduced February 5, 1986; referred to the

5 Committee on Health and Welfare with the direction

6 that it later be referred to the Committee on the
7 Judiciary.]

8
9
10 A BILL to amend and reenact section thirty(three)(seven), article
11 two, chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, and to further
13 amend said article two by adding thereto a new section,
14 designated section thirty(three)(sixteen), relating to
15 authorizing the West Virginia Board of Medicine to promulgate
16 legislative rules relating to licensing, disciplinary and
17 complaint procedures; podiatry; physicians assistants.

18 Be it enacted by the Legislative of West Virginia:

19 That section thirty(three)(seven), article two, chapter sixty-
20 four of the code of West Virginia, one thousand nine hundred
21 thirty-one, as amended, be amended and reenacted, and that said
22 article two be further amended by adding thereto a new section,
23 designated section thirty(three)(sixteen), to read as follows:

24 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
25 LEGISLATIVE RULES.

26 §64-2-30(3)(7). Board of medicine.

1764

1 (a) The legislative rules filed in the state register on the
2 twelfth day of May, one thousand nine hundred eighty-three,
3 relating to the board of medicine (licensing, disciplinary and
4 complaint procedures; podiatry; physicians assistants) are
5 authorized with the modifications set forth below:

6 "§ 24.12

7 (b) It shall be the responsibility of the supervising
8 physician to obtain consent in writing from the patient before
9 Type A physician assistants employed in a satellite clinic may
10 render general medical or surgical services, except in
11 emergencies.

12 § 24.16.

13 (p) No physician assistant shall render nonemergency
14 outpatient medical services until the patient has been informed
15 that the individual providing care is a physician assistant."

16 (b) The legislative rules filed in the state register on the
17 twenty-sixth day of November, one thousand nine hundred eighty-
18 five, modified by the board of medicine to meet the objections of
19 the legislative rule-making review committee and refiled in the
20 state register on the seventeenth day of January, one thousand
21 nine hundred eighty-six, relating to the board of medicine
22 (licensing, disciplinary and complaint procedures; podiatry;
23 physicians assistants) are authorized. These rules were proposed
24 by the board of medicine pursuant to sections seven and sixteen,
25 article three, chapter thirty of this code.

26 §64-2-30(3)(16). Board of medicine.

1 The rules authorized by the Legislature in subsection (b),
2 section thirty(three)(seven) of this article were also proposed
3 by the board of medicine pursuant to section sixteen, article
4 three, chapter thirty of this code.

5
6 NOTE: The purpose of this bill is to authorize the board of
7 medicine to promulgate legislative rules relating to licensing,
8 disciplinary and complaint procedures; podiatry; physicians
9 assistants.

10
11 Strike-throughs indicate language that would be stricken from
12 the present law, and underscoring indicates new language that
13 would be added.
14

1 Bill 19

SENATE BILL NO. 447

2 (By Senator R. Williams

3
4 [Introduced February 3, 1986
5 referred to the Committee on Health and Human Resources;
6 then to the Committee on the Judiciary
7

8
9
10 A BILL to amend and reenact section thirty(three)(seven), article
11 two, chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, and to further
13 amend said article two by adding thereto a new section,
14 designated section thirty(three)(sixteen), relating to
15 authorizing the West Virginia Board of Medicine to promulgate
16 legislative rules relating to licensing, disciplinary and
17 complaint procedures; podiatry; physicians assistants.

18 Be it enacted by the Legislative of West Virginia:

19 That section thirty(three)(seven), article two, chapter sixty-
20 four of the code of West Virginia, one thousand nine hundred
21 thirty-one, as amended, be amended and reenacted, and that said
22 article two be further amended by adding thereto a new section,
23 designated section thirty(three)(sixteen), to read as follows:

24 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
25 LEGISLATIVE RULES.

26 §64-2-30(3)(7). Board of medicine.

447 R/W
2/3/86

1 (a) The legislative rules filed in the state register on the
2 twelfth day of May, one thousand nine hundred eighty-three,
3 relating to the board of medicine (licensing, disciplinary and
4 complaint procedures; podiatry; physicians assistants) are
5 authorized with the modifications set forth below:

6 "§ 24.12

7 (b) It shall be the responsibility of the supervising
8 physician to obtain consent in writing from the patient before
9 Type A physician assistants employed in a satellite clinic may
10 render general medical or surgical services, except in
11 emergencies.

12 § 24.16.

13 (p) No physician assistant shall render nonemergency
14 outpatient medical services until the patient has been informed
15 that the individual providing care is a physician assistant."

16 (b) The legislative rules filed in the state register on the
17 twenty-sixth day of November, one thousand nine hundred eighty-
18 five, modified by the board of medicine to meet the objections of
19 the legislative rule-making review committee and refiled in the
20 state register on the seventeenth day of January, one thousand
21 nine hundred eighty-six, relating to the board of medicine
22 (licensing, disciplinary and complaint procedures; podiatry;
23 physicians assistants) are authorized. These rules were proposed
24 by the board of medicine pursuant to sections seven and sixteen,
25 article three, chapter thirty of this code.

26 §64-2-30(3)(16). Board of medicine.

1 The rules authorized by the Legislature in subsection (b),
2 section thirty(three)(seven) of this article were also proposed
3 by the board of medicine pursuant to section sixteen, article
4 three, chapter thirty of this code.

5
6 NOTE: The purpose of this bill is to authorize the board of
7 medicine to promulgate legislative rules relating to licensing,
8 disciplinary and complaint procedures; podiatry; physicians
9 assistants.

10
11 Strike-throughs indicate language that would be stricken from
12 the present law, and underscoring indicates new language that
13 would be added.
14