

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Board of Medicine TITLE NUMBER: 11

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1A

TITLE OF RULE BEING AMENDED: Licensing, Disciplinary
and Complaint Procedures, Physicians; Podiatrists

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

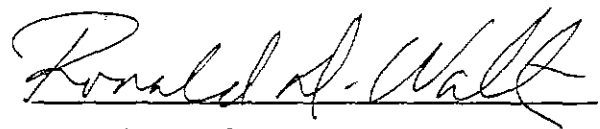
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 159

SECTION 64-9-16(1), PASSED ON March 12, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 1, 1994



Authorized Signature

10.80



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PROMULGATION HISTORY SB 159

July 13, 1993	Rule Filed for public comment and filed as an Emergency Rule
August 13, 1993	Comment period ended
August 16, 1993	Refiled as an agency approved rule with the Secretary of State and the Legislative Rule Making and Review Committee and as an Emergency Rule
October 9, 1993	Legislative Rule Making and Review Committee modified the rule
October 20, 1993	Modified rule filed
April 1, 1994	Notice of final filing filed

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

TITLE: Licensing, Disciplinary and Complaint Procedures:
Physicians; Podiatrists.

§11-1A-1. General.

- 1.1. Scope. -- West Virginia Code §30-3-7(1)(a) authorizes the Board of Medicine to promulgate rules which are necessary to perform the duties and responsibilities of the Board.
- 1.2. Authority. -- West Virginia Code §30-3-7(a)(1).
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§11-1A-2. Application And Enforcement.

This legislative rule implements the West Virginia Medical Practice Act, West Virginia Code §30-3-1 et seq.

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

- (a) ACGME -- The Accreditation Council of Graduate Medical Education.
- (b) Adjudicatory hearing. -- A formal administrative hearing before the Board or designated hearing examiner, conducted to determine the truth and validity of complaints filed against a licensee. An adjudicatory hearing may result in disciplinary action including, but not limited to, suspension or revocation of a licensee's license, reprimand, censure or other limitation, including probation, on a licensee's practice.
- (c) Affiliate. -- A member of a group of two (2) or more fully accredited health care institutions legally united by an agreement of affiliation, conceived to enhance the potential of all

participants in the provision of health care and medical education

- (d) AMA. -- The American Medical Association.
- (e) APMA. -- The American Podiatric Medical Association.
- (f) Board. -- The West Virginia Board of Medicine, established in West Virginia Code §30-3-5.
- (g) Crimes involving moral turpitude. -- Those crimes which have dishonesty as a fundamental and necessary element; including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud or misrepresentation.
- (h) Department. -- The West Virginia Department of Health.
- (i) ECFMG. -- The Educational Commission for Foreign Medical Graduates.
- (j) FLEX. -- The Federation of State Medical Boards Licensing 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 Medicine Examiners.
- (n) Number. -- Words in these regulations importing the singular include the plural, and words in these regulations importing the plural include the singular.
- (o) Order to show cause. -- A paper served by the Board upon a registrant ordering the person to appear before the Board for an adjudicatory proceeding.
- (p) PMLexis. -- Podiatric Medical Licensing Examination for States

- (q) 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 may continue to practice subject to limitations imposed by the Board, including the requirements that the licensee appear before the Board, or an officer or agent thereof, at such times and places as are designated by the Board. A licensee may be placed on probation without a previous or concurrent suspension or revocation of his or her license.
- (r) SPEX. -- Special Purpose Examination of the Federation of State Medical Boards.
- (s) USMLE -- United States Medical Licensing Examination, the successor to the FLEX and NBME.
- (t) West Virginia Medical Practice Act - West Virginia Code §30-3-1 et seq.

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

- 4.1. An application for a license to practice medicine and surgery shall be completed on a form provided by the Board. The application shall be completed in full with all required supporting documents received by the Board not later than fifteen (15) days prior to the Board's consideration of such application.
- 4.2. An application for a license to practice medicine and surgery shall include the following:
 - (a) A photograph taken within the previous twelve (12) months which substantially resembles the applicant;
 - (b) Evidence of graduation from a medical school approved by the LCME or by the Board;
 - (c) A sworn and notarized statement on a form provided by the Board from another physician

stating that the applicant is of good moral character;

- (d) Evidence of completion of one (1) year of postgraduate clinical training approved by the ACGME;
- (e) A nonrefundable cashier's check or money order payable to the Board in an amount established by the Board under Board regulations 11 CSR 4; and
- (f) Any other documents as may be required by the Board under sections 8.1 of this rule.

4.3. An applicant for a license to practice medicine and surgery is required to obtain a passing score on the FLEX. For those applicants who did not take the two (2) component FLEX program, a passing score shall consist of a weighted average score of seventy-five percent (75%) or better obtained in one sitting. For those applicants taking the two (2) component FLEX program, a passing score shall consist of seventy-five (75) or better on component one of the FLEX and seventy-five (75) or better on component two of the FLEX. A weighted average score of the two (2) component FLEX program shall not be used 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, is required to retake only the component upon which the applicant did not obtain a passing score to be eligible for licensure. An applicant must obtain a passing score of seventy-five (75) or better on both components before the elapse of seven (7) consecutive years. Failure to obtain a passing score on both components before the elapse of seven (7) consecutive years shall render the applicant ineligible for licensure.

4.4. The Board (or a majority of them) shall accept the certificate of the NBME, in lieu of a passing score on the FLEX. The Board (or a majority of them) may also accept successful passage of a State Board Examination in lieu of the certificate of the NBME or a passing score on the FLEX. An

applicant relying on the certificate of the NBME shall request certification of scores from the NBME on forms provided by the Board.

- 4.5. The Board (or a majority of them) shall accept a passing score of seventy-five (75) percent or better on Step three (3) of the USMLE, in lieu of a passing score on the FLEX, the NBME certificate, or successful passage of a State Board examination. To be eligible for USMLE Step three (3), an applicant shall have successfully completed and obtained passing scores of seventy-five (75) or better on both USMLE Steps one (1) and two (2). To be eligible for licensure an applicant must successfully complete and obtain passing scores on USMLE Steps one (1), two (2) and three (3) before the elapse of seven (7) consecutive years. Each USMLE Step must be passed individually in order to successfully complete the USMLE examination. Failure to successfully complete and obtain passing scores on USMLE Steps one (1), two (2) and three (3) before the elapse of seven (7) consecutive years renders the applicant ineligible for licensure, except that the Board, in its discretion, may allow no more than one additional year for the successful completion of USMLE Steps one (1), two (2) and three (3), for any medical student enrolled in any dual M.D., Ph.D. program, provided that such medical student has successfully completed each of the previous USMLE steps.
- 4.6. The USMLE examination is designed to supersede and replace the FLEX examination and the National Board of Medical Examiners' examination sequence ("NBME") over a period of years, and some medical students and physicians may have successfully completed part of the FLEX or NBME examination sequence. In order to facilitate a smooth transition to USMLE and to avoid undue burden on applicants for licensure, it is necessary to designate those combinations of examinations which the Board will consider comparable to the existing examinations and which shall render an applicant eligible for licensure during the period of replacement of examinations. Those combinations

and the passing score for each examination component are as follows:

- a. NBME Part I (passing score = 75%) or USMLE Step 1 (passing score = 75%)
plus
NBME Part II (passing score = 75%) or USMLE Step 2 (passing score = 75%)
plus
NBME Part III (passing score = 75%) or USMLE Step 3 (passing score = 75%);
- b. FLEX Component 1 (Passing score = 75%)
plus
USMLE Step 3 (passing score = 75%)

or
- c. NBME Part I (passing score = 75%) or USMLE Step 1 (passing score = 75%)
plus
NBME Part II (passing score = 75%) or USMLE Step 2 (passing score = 75%)
plus
FLEX Component 2 (passing score = 75%)

In order to meet the examination requirement of this subsection for licensure, the examination combinations set forth in subdivisions a., b., and c., of this subsection, must be successfully completed before the elapse of seven (7) consecutive years. Failure to successfully complete the examination combinations set forth in subdivisions a., b., and c., of this section, before the elapse of seven (7) consecutive years, renders the applicant ineligible for licensure, except that the Board, in its discretion, may allow no more than one additional year for the successful completion of the examination combinations set forth in subdivision a., b., and c., of this subsection, for any medical student enrolled in any dual M.D., Ph.D. program, provided that such medical student has successfully completed each of the previous steps.

- 4.7. All applicants for a license to practice medicine and surgery shall demonstrate their

ability to communicate in the English language to the satisfaction of the Board.

- 4.8. 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 current certification by the ECFMG or of receipt of a passing score on the examination of the ECFMG within the last ten (10) years, and proof of successful completion of a total of three (3) years of postgraduate clinical training in a program approved by the ACGME.
- 4.9. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting at which his or her application will be considered. Any applicant may be required to appear before the Board at the meeting at which his or her application is to be considered. The purpose of the 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 the interview or required attendance at a Board meeting.
- 4.10. The application, together with all photocopied documents submitted therewith, becomes the property of the Board and shall not be returned.
- 4.11. The burden of satisfying the Board of the applicant's qualifications for licensure is upon the applicant.
- 4.12. Subject to the provision in and implementation of section 10.1 of this rule pertaining to one-half of the licensees renewing for a one year period in nineteen hundred and ninety one, a license to practice medicine and surgery in this state is 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 expires on the thirtieth day of

June of the ensuing year established by the Board for renewal.

- 4.13. 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 the inactive license may be converted by the Board to an active license, upon request of the physician to the Board, provided that the period of inactivity is accounted for to the satisfaction of the Board. An inactive license may be obtained upon receipt of a nonrefundable fee, as established by the Board under Board regulations 11 CSR 4 and submission of an application on forms provided by the Board. Subject to the provision in and implementation of section 10.1 of this rule pertaining to one-half of the licensees renewing for a one year period in nineteen hundred and ninety one, an inactive license is valid for a term of two (2) years, and is renewable.

§11.1A.5. Application Required For Examination - Federation Of State Medical Boards Licensing Examination (FLEX); USMLE Step three (3).

- 5.1. The FLEX or USMLE Step three (3) shall be administered by the Board twice annually at such times as may be specified by the Board in Charleston, West Virginia.
- 5.2. An application for the FLEX or USMLE Step three (3) shall be completed on a form provided by the Board. The application shall be completed in full prior to the examination.
- 5.3. An application for the FLEX or USMLE Step three (3) 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 or USMLE Step three (3) shall include the following:

- (a) Evidence of graduation from a medical school approved by the LCME or by the Board;
 - (b) Two (2) photographs taken within the previous twelve (12) months which substantially resemble the applicant's appearance at the time 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;
 - (d) Evidence of current certification by or receipt of a passing score within the last ten (10) years on the examination of the ECFMG, where applicable;
 - (e) A nonrefundable cashier's check or money order payable to the Board in an amount as established by the Board under Board regulations 11 CSR 4; and
 - (f) Any other documents as may be required by the Board.
- 5.5. The application, together with all photocopied documents submitted therewith, becomes the property of the Board and shall not be returned.
- 5.6. Procedures for each examination shall be provided to each approved applicant at least fifteen (15) days prior to such examination.
- 5.7. Applicants to take the FLEX who have taken and who have failed the FLEX in West Virginia on two (2) or more occasions must prepare and submit to the Board a detailed plan of study designed to improve the applicant's competence to practice medicine and surgery before the applicant shall be permitted to take the examination again. The applicant's plan of study shall be verified by proof of enrollment in a course of study, or other such information as would be accepted by a reasonable person as demonstration of a concerted effort by the applicant to adequately prepare the

applicant to pass the examination. The Board shall approve all plans of study.

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

- 6.1. An applicant for a license to practice medicine and surgery by reciprocal endorsement from another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico, shall provide proof of licensure in such jurisdiction under licensure requirements substantially similar to those existing in this State, and proof that he or she has the requisite qualifications to provide the same standard of care as a physician initially licensed in this State. These requirements and qualifications are specifically enumerated in this section
- 6.2. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide evidence of graduation from a medical school approved by the LCME or by the Board.
- 6.3. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide proof of successful completion of at least one (1) year of postgraduate clinical training in a program approved by the ACGME.
- 6.4. An applicant for a license to practice medicine and surgery by reciprocal endorsement who is a graduate of a medical school located outside of the United States, Canada, or the Commonwealth of Puerto Rico shall also provide evidence of current certification by the ECFMG or receipt of a passing score on the examination of the ECFMG within the last ten (10) years, and proof of successful completion of a total of three (3) years of postgraduate clinical training in a program approved by the ACGME.
- 6.5. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide proof of passage of the FLEX, which FLEX scores must meet the requirements established in

Section 4.3 of this rule. The Board (or a majority of them) shall accept in lieu of the FLEX the certificate of the NBME in lieu of a passing score on the FLEX. The Board (or a majority of them) may also accept successful passage of a State Board Examination in lieu of the certificate of the NBME or a passing score on the FLEX. The Board may also accept successful passage of Step three (3) of the USMLE or successful passage of combination sequences of examinations, as set forth in Sections 4.5 and 4.6 of this rule.

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

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

- 7.1. An application for a license to practice medicine and surgery by reciprocal endorsement shall be completed on forms provided by the Board. All parts of the application shall be completed in full with all required supporting documents received by the Board not later than fifteen (15) days prior to consideration by the Board.
- 7.2. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting during which his or her application is to be considered and the Board may require an applicant's attendance at a Board meeting. The purpose of the 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 the interview or required attendance at a Board meeting.

7.3. An applicant shall have available for review by a Board member, or by the Board, if the applicant appears at the meeting, the following original documents:

- (a) Medical school diploma;
- (b) ECFMG certificate, if applicable;
- (c) A document attesting to the successful completion of the required minimum postgraduate clinical training;
- (d) 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;
- (e) A statement that the physician is in good standing in each jurisdiction in which he or she is licensed to practice and that he or she has no medical disciplinary actions pending; and
- (f) Such other documents as may be required by the Board.

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

7.5. An applicant for licensure 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 under Board regulations 11 CSR 4.

- 7.6. An applicant for a license to practice medicine and surgery by reciprocal endorsement whose application is complete may request a temporary license to practice until the next regular meeting of the Board, by meeting the qualifications of the Board, by paying an additional nonrefundable fee in an amount established by the Board under Board regulations 11 CSR 4 and by appearing before a member of the Board for a personal interview.
- 7.7. An applicant for a license to practice medicine and surgery by reciprocal endorsement has the burden of demonstrating to the satisfaction of the Board that the applicant has the requisite qualifications of a physician initially licensed in the State.

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

- 8.1. Application forms for licenses shall include, but not be limited to, requirements for the following information:
 - (a) An AMA biographical printout;
 - (b) A Federation of State Medical Boards derogatory information sheet regarding other state Board actions;
 - (c) A list of all states where the physician has held and holds a medical license, even if the medical license is not active;
 - (d) A list of all hospitals where the physician has had privileges in the last five (5) years;
 - (e) A list of all state and county medical societies where the physician is currently practicing, whether or not he or she is a member;
 - (f) The applicant's medical school;

- (g) A list of all training programs, including postgraduate;
 - (h) The state from which the physician is requesting endorsement, with specific reference to that state's examination and grades;
 - (i) A copy of the individual's birth certificate, passport or baptismal, to be used in identifying the applicant and the appropriate spelling of his or her name;
 - (j) A copy of a marriage license, divorce decree or court order, to document any name change; and
 - (k) The place and date of the applicant's birth.
- 8.2. In the event the staff finds derogatory information during the processing of an application, the information shall be presented to the Board for its review and determination as to whether an individual should be scheduled for an interview during a regular Board meeting or if the staff should obtain additional information.
- 8.3. It is the applicant's responsibility to mail necessary forms to selected institutions for response to the Board.
- 8.4. Completed verification forms shall be mailed directly from selected institutions to the Board and not from the applicant.
- 8.5. The Board reserves the right to obtain additional information through oral or written examinations, psychiatric evaluation, physical examination or other tests as may be necessary to determine the competency of the applicant.
- 8.6. The Board reserves the right to require applicants to take the SPEX or an oral competency examination in their field of practice prior to issuing a license, whenever the Board considers it necessary.

S11-1A-9. Examinations.

- 9.1. An applicant for a license who requires a written examination shall be required to take the FLEX, the SPEX, the USMLE Step three (3), or such other examination as the Board may require. The FLEX, SPEX and USMLE Step three (3) will be administered by the Board in accordance with instructions and directions issued by the NBME/FLEX and NBME/SPEX and the USMLE.
- 9.2. The conduct of FLEX, and SPEX and USMLE Step three (3) examinees shall be governed by written guidelines issued by the NBME/FLEX and NBME/SPEX and USMLE.

S11-1A-10. License Renewals; Renewal Application Form.

- 10.1. A licensee shall renew his or her license every two (2) years, as of the first day of July of the year, upon timely submission of a fully completed renewal application form and payment of a nonrefundable renewal fee in an amount established by the Board under Board regulations 11 CSR 4: Provided, that in 1991 the Board may renew one-half the licenses at one-half the biennial renewal fee for a one (1) year period, in order to establish a system of biennial renewal wherein each year one-half the licenses are renewed for a two (2) year period. The Board will mail forms to each known licensee at his or her last known address. It is the responsibility of the licensee to inform the Board of the licensee's correct address and of any change of address. It is the responsibility of the licensee to acquire and submit renewal application forms. Failure of the licensee to receive a renewal form will not constitute justification for any physician to practice on an expired license. An expired license is not considered a valid license.

10.2. Subject to the provision in and implementation of section 10.1 of this rule pertaining to one-half the licensees renewing for a one (1) year period in 1991, the Board's renewal application form shall include, at a minimum, a request for the following information:

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

§11-1A-11. License Exemptions.

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

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

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

- (g) Had his or her license to practice medicine or podiatry in any other state, territory, jurisdiction or foreign nation revoked, suspended, restricted or limited, or otherwise acted against, or has been subjected to any other disciplinary action by the licensing authority thereof, or has been denied licensure in any other state, territory, jurisdiction, or foreign nation.
- (h) Been or is unable to practice medicine or podiatry 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 or podiatry with a reasonable degree of skill and safety for patients. In this connection, the Board may consider repeated acts of a physician or podiatrist indicating his or her failure to properly treat a patient and may require the physician or podiatrist to submit to inquiries or examinations, written or oral, by members of the Board, or by other physicians or podiatrists licensed to practice medicine or podiatry in this State, as the Board considers necessary to determine the professional qualifications of the 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 or podiatric practice, or the ethics of the medical or podiatric profession, irrespective of whether or not a patient is injured thereby, or has committed any act contrary to honesty, justice or good morals, whether the same is committed in the course of his or her practice or otherwise and whether committed within or without this State;

- (k) Been convicted of or found guilty of a crime in any jurisdiction which directly relates to the practice of medicine or podiatry or to the ability to practice medicine or podiatry. Any plea of nolo contendere shall be considered conviction for purposes of this rule;
- (l) Advertised, practiced or attempted to practice under a name other than his or her own;
- (m) Failed to report to the Board any person whom the licensee knows is in violation of this rule or of provisions of the West Virginia Medical Practice Act;
- (n) Aided, assisted, procured or advised any unlicensed person to practice medicine or podiatry contrary to this rule or the West Virginia Medical Practice Act;
- (o) Failed to perform any statutory or legal obligation placed upon a licensed physician or podiatrist;
- (p) 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 impeded or obstructed such filing or induced another person to do so. The reports or records shall include only those which are signed in the capacity as a licensed physician or podiatrist.
- (q) Paid or received any commission, bonus, kickback or rebate, or engaged in any split-fee arrangement in any form whatsoever with a physician, podiatrist, 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 subdivision shall not be construed to

prevent a physician or podiatrist from receiving a fee for professional consultation services;

- (r) Exercised influence within a patient-physician or patient-podiatrist relationship for purposes of engaging a patient in sexual activity;
- (s) Made deceptive, untrue or fraudulent representations in the practice of medicine or podiatry or employed a trick or scheme in the practice of medicine or podiatry when the trick or scheme fails to conform to the generally prevailing standards of treatment in the medical or podiatric community;
- (t) Solicited patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or by overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate response from the recipient;
- (u) Failed to keep written records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and test results and treatment rendered, if any;
- (v) Exercised influence on the patient or client in such a manner as to exploit the patient or client for the 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 subdivision, it is 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 or

podiatrist's professional practice, without regard to his or her intent;

- (w) Prescribed, dispensed or administered any medicinal drug appearing on any schedule set forth in chapter 60A of the West Virginia Code by the physician or podiatrist to himself or herself, except one prescribed, dispensed or administered to the physician or podiatrist by another practitioner authorized to prescribe, dispense or administer medicinal drugs;
- (x) Engaged in malpractice or failed to practice medicine or podiatry with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician or podiatrist engaged in the same or a similar specialty as being acceptable under similar conditions and circumstances;
- (y) Performed any procedure or prescribed any therapy which, by the prevailing standards of medical or podiatric practice in the community, would constitute experimentation on a human subject, without first obtaining full, informed and written consent from the patient;
- (z) Practiced or offered to practice medicine and surgery or podiatry beyond the scope permitted by law or accepted and performed professional responsibilities which the licensee knows or has reason to know he or she is not competent to perform;
- (aa) 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 the responsibilities;
- (bb) 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 or podiatry, when the licensee or applicant knows or should know that such action is violative of the law, rule or regulation; or has violated a lawful order of the Board; or has failed to comply with a lawfully issued subpoena of the Board; or has violated an order of any court entered pursuant to any proceedings commenced by the Board;

- (cc) Presigned blank prescription forms;
- (dd) Prescribed any medicinal drug appearing on Schedule II in chapter 60A of the West Virginia Code for office use;
- (ee) Prescribed, ordered, dispensed, administered, supplied, sold or given any drug which is an amphetamine or sympathomimetic amine drug and a compound designated as a Schedule II controlled substance under West Virginia Code Chapter 60A, to or for any person except for;
 - (A) The treatment of narcolepsy; attention deficit disorder, a behavioral syndrome characterized by inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability and impulsivity; or drug-induced brain dysfunction;
 - (B) The differential diagnostic psychiatric evaluation of depression or the treatment of depression or the treatment of depression shown to be refractory to other therapeutic modalities; or
 - (C) The clinical investigation of the effects of such drugs or compounds when an investigative protocol therefore is submitted to, reviewed and approved by the Board before such investigation is begun;

- (ff) Knowingly maintained a professional connection or association with any person who is in violation of the West Virginia Medical Practice Act or the rules of the Board; or has knowingly aided, assisted, procured or advised any person to practice medicine or podiatry contrary to the West Virginia Medical Practice Act or to the Rules 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 podiatry; or has 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 has engaged in the practice of medicine or podiatry as an officer or employee of any corporation other than one organized and existing pursuant to the West Virginia Medical Practice Act, except as a licensed physician or podiatrist, intern or resident of a hospital or teaching institution licensed by this State;
- (gg) Offered, undertaken or agreed to cure or treat disease by a secret method, procedure, treatment or medicine; or has 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.
- (hh) 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;

- (ii) Engaged in advertising that is not in the public interest. Advertising that is not in the public interest includes the following, with the exceptions specifically listed:
 - (A) Advertising that has the effect of intimidating or exerting undue pressure;
 - (B) Advertising that uses testimonials;
 - (C) Advertising which is false, deceptive, misleading, sensational or flamboyant;
 - (D) Advertising which guarantees satisfaction or a cure;
 - (E) Advertising which offers gratuitous services or discounts, the purpose of which is to deceive the public. This subdivision does not apply to advertising which contains an offer to negotiate fees, nor to advertising in conjunction with an established policy or program of free care for patients; and
 - (F) Advertising which makes claims of professional superiority which a licensee is unable to substantiate.

12.2. Acts declared to constitute dishonorable, unethical or unprofessional conduct: As used in this rule at section 12.1(e), "Dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof" includes, but is not limited to:

- (a) Prescribing or dispensing 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 the sale, use or disposition of the controlled substance(s);
 - (3) For the licensee's personal use, or for the use of his or her immediate family when the licensee knows or has reason to know that an abuse of controlled substance(s) is occurring, or may result from such a practice; or
 - (4) In such amounts that the licensee knows or has reason to know, under the attendant circumstances, that the amounts prescribed or dispensed are excessive under accepted and prevailing medical practice standards;
- (b) Issuing or publishing in any manner whatsoever, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including, but not limited to:
- (1) Any representation in which the licensee claims that he or she is able to cure or treat manifestly incurable diseases, ailments or infirmities by any method, procedure, treatment or medicine which the licensee knows or has reason to know has little or no therapeutic value;
 - (2) Represents or professes or holds himself or herself out as being able and willing to treat diseases, ailments or infirmities under a system or school of practice:
 - (A) Other than that for which he or she holds a certificate or license granted by the Board;
 - (B) Other than that for which he or she holds a degree or diploma from a school otherwise recognized as accredited by the Board; or

- (C) Which he or she professes to be self-taught;
- (c) A serious act, or a pattern of acts committed during the course of his or her medical or podiatric practice which, under the attendant circumstances, would be considered to be gross incompetence, gross ignorance, gross negligence or malpractice, including the performance of any unnecessary service or procedure;
- (d) Conduct which is calculated to bring or has the effect of bringing the medical or podiatric profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical or podiatric practice within the state, and any departure from or failure to conform to the principles of medical ethics of the AMA or the principles of podiatric ethics of the APMA. For the purposes of this subsection, actual injury to a patient need not be established;
- (e) Any charges or fees for any type of service rendered within 72 hours of the initial visit, if the licensee advertises free service, free examination or free treatment;
- (f) The administration of anabolic steroids for other than therapeutic purposes;
- (g) Failing to meet the standard of practice in connection with any supervisory and/or collaborative agreement with any category of health practitioner;
- (h) Violation of the Board rules for dispensing of legend drugs, as set forth in Board regulations 11 CSR 5;
- (i) Charging or collecting an excessive, unconscionable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) The time and effort required;
- (2) The novelty and difficulty of the procedure or treatment;
- (3) The skill required to perform the procedure or treatment properly;
- (4) Any requirements or conditions imposed by the patient or circumstances;
- (5) The nature and length of the professional relationship with the patient;
- (6) The experience, reputation, and ability of the licensee; and
- (7) The nature of the circumstances under which the services are provided.

In any case where it is found that an excessive, unconscionable fee has been charged, in addition to any actions taken under the provisions of section 12.3 of this rule, the Board may require the licensee to reduce or pay back the fee; and

- (j) Failure by a licensee to report a known or observed violation of these regulations, the regulations for dispensing legend drugs as set forth in Board regulations 11 CSR 5, and/or the provisions of the West Virginia Medical Practice Act.

12.3. When the Board finds that any applicant is unqualified to be granted a license or finds that any licensee should be disciplined pursuant to the West Virginia Medical Practice Act or rules of the Board, the Board may take any one or more of the following actions:

- (a) Refuse to grant a license to an applicant;
- (b) Administer a public reprimand;

- (c) Suspend, limit or restrict any license for a definite period, not to exceed five (5) years;
- (d) Require any licensee to participate in a program of education prescribed by the Board;
- (e) Revoke any license;
- (f) Require the licensee to submit to care, counseling or treatment by physicians or other professional persons;
- (g) Assess a civil fine of between \$1,000 and \$10,000 and/or assess cost of the Board's investigation and administrative proceedings against the licensee;
- (h) Require him or her to practice under the direction or supervision of another practitioner or
- (i) Require the licensee to provide a period of free public or charitable service.

In addition to and in conjunction with these actions, the Board may make a finding adverse to the licensee or applicant, but withhold imposition of judgment and penalty, or it may impose the judgement and penalty but suspend enforcement of penalty and place the physician or podiatrist 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 or podiatry issued under the West Virginia Medical Practice Act or any antecedent law, and as a condition thereof, it may impose any disciplinary or corrective measure provided for in this Rule or in the West Virginia Medical Practice Act.

- 12.4. The Board has 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 or podiatry 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 probationary licensee report for interviews on a regular basis. These interviews may be set up on a periodic basis as determined by the Board and the Board members so appointed shall then report back to the Board at its regularly scheduled meeting on the progress of the licensee;
- (2) The Board may cause the probationary licensee to appear before the Board at such intervals as the Board may determine in order that the licensee may report on his or her progress. During these appearances by the probationary licensee, the Board may ask the probationary licensee questions so as to observe his or her behavior and progress;
- (3) The Board may select a physician or podiatrist, as applicable, or request the concerned licensee to select a physician or podiatrist, as applicable, who shall be approved by the Board and the physician or podiatrist shall submit periodic progress reports on the concerned licensee as the Board may direct;
- (4) The Board may appoint a medical consultant whose responsibility is to handle interviews with the probationary licensee. The probationary licensee shall then report to the appointed medical consultant on a regular basis as determined by the Board, and the medical

consultant shall 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 probationary licensee submit periodic blood samples and/or urine drug screen samples;
- (6) The Board may require that a probationary licensee report all medications that he or she may be utilizing and that he or she make reports to the Board, at such intervals as the Board may direct from time to time;
- (7) The Board may require that the probationary licensee authorize his or her personal physician to submit to the Board, for review, the concerned licensee's medical history, both as to past medical history and any and all new medical history as may become available to the personal physician during the period of the probationary term;
- (8) The Board may require that prior to the termination of a probationary term, the probationary licensee appear at a regularly scheduled Board meeting and furnish the Board with information as it may then request, and the Board may utilize subpoenas, subpoenas duces tecum and its investigators as it considers necessary to gather facts and evidence to determine compliance by the concerned licensee with the terms of probation; and
- (9) In those situations where indicated, the Board may impose additional terms of probation upon a licensee who has initially been placed on probation, as long as the entire period of any additional imposed probationary period does not exceed five (5) years from the

initiation date of the originally imposed probationary period.

§11-1A-13. Appeal.

13.1. Any applicant for a license who has had his or her application denied by order of the Board may appeal the order within thirty (30) days of such action, in accordance with the contested case hearing procedure, West Virginia Code §29A-5-1 et seq. and rules of the Board set out at 11 CSR 3: Provided, That the appeal shall not include cases in which the Board issues a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

13.2. Any physician or podiatrist practicing medicine and surgery or podiatry in this State, who has had his or her license denied, suspended, restricted, or revoked by order of the Board, may appeal the order within thirty (30) days of such action in accordance with the contested case hearing procedure, West Virginia Code §29A-5-1 et seq. and rules of the Board set out at 11 CSR 3: Provided, That the appeal shall not include cases in which the Board issues a license, permit or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

§11-1A-14. Disposition of Reports And Complaints.

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

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

14.2. Reports submitted by a medical or podiatric 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) may result in the initiation of its own complaint by the Board or its complaint committee.

- (a) The Board shall prepare copies of the provisions of Section 12.1 of this rule and of the provisions of West Virginia Code §30-14-3(c) and mail them to all known medical or podiatric peer review committees in the state, every licensed physician and podiatrist in the state, the chief executive officer of every hospital in the state and every known medical and podiatric professional society in the state.
- (b) The Board may prepare forms for filing required reports and make them available upon request.
- (c) The Board will advise all medical and podiatric peer review committees in the state that it desires any and all information which such committee has, or may any time obtain, which relates to improper practice or performance of a physician or podiatrist. Any information may be submitted by the Board to the physician concerned for his or her

written comment and he or she shall submit a written reply within fifteen (15) days.

- (d) Any individual or any medical or podiatric entity having reason to believe that the conduct of a physician or podiatrist 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 the commencement of and again after the conclusion of any resulting legal action, report in writing to the Board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report within sixty (60) days after the action is taken any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. This subsection does not apply to any temporary suspension for failure to maintain records on a timely basis or for failure to attend staff or section meetings.
- (f) Any professional society in this State comprised primarily of physicians, and any professional society in this state comprised primarily of podiatrists, 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

the member, together with all pertinent information relating to the action.

(g) Every insurer providing professional liability insurance to a physician or podiatrist 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 to every insurer in the state which has sold or may hereafter sell, professional liability insurance to a physician or podiatrist licensed to practice medicine or podiatry in this State.

(h) Within thirty (30) days after the conviction of a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery and podiatry in this State, or applying to be so licensed, of a felony under the laws of this State, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the Board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the 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 to every circuit clerk in the state.

(i) Information received by the Board under the provisions of West Virginia Code §30-3-14(c) and this section 14.2 may be used by the Board or its complaint committee in its determination as to whether to deny an application for a license or to initiate disciplinary action against a physician or podiatrist 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 applicant physician or podiatrist.

14.3. All communications with the Board charging a physician or podiatrist 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.

14.4. A complaint log shall be maintained which records the receipt of each complaint, its nature and its disposition.

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

(a) That the matter will be reviewed by the Board;

(b) That the complaint is outside of the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or

(c) That more information will be required in order to adequately review the individual complaint.

14.6. A separate investigative or complaint folder shall be maintained on each case reviewed, and each folder shall have a case number assigned to it.

- 14.7. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of Section 14.5 (b) of this rule, the complaint committee of the Board established by the Board under Board rule 11 CSR 3 shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and validity of the allegations set forth in the complaint. The complaint committee shall provide reports to the Board on the number, nature, procedure and handling of the complaints received.
- 14.8. A complaint against an individual must allege that in his or her professional capacity he or she is acting in violation of the law, rules or good and accepted medical practice and may be founded on any violation enumerated in West Virginia Code §30-3-14(c) or Sections 12.1 or 12.2 of this rule or of any rule hereinafter promulgated by the Board.
- 14.9. 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 or its complaint committee initiates its own complaint, it may utilize subpoenas, subpoenas duces tecum and its investigators as it determines necessary to gather facts and evidence.
- 14.10. To facilitate disposition of a complaint, 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 complaint committee shall give fifteen (15) days' notice of the conference, which notice shall include a statement of the issues to be informally discussed. Statements made at a conference may not be introduced at any hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for

failure to attend a conference pursuant to a request.

- 14.11. If the complaint committee determines that a complaint complies substantially with section 14.8 of this rule and that it relates to matters set forth in West Virginia Code §30-3-14(c) or sections 12.1 or 12.2 of this rule, it may request that the individual complained of (hereinafter referred to as the "Respondent") respond to the complaint within thirty (30) days. The complaint committee shall attach a copy of the complaint to the order for response or shall describe the acts alleged in the complaint. A respondent may answer either personally or through his or her attorney, but the answer must address the substantive allegations set forth in the complaint or order.
- 14.12. Upon receipt of the respondent's answer or at any point in the course of investigation or inquiry into a complaint, the complaint 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 licensee may be sanctioned by the Board. In that event, the complaint committee shall dismiss the complaint. The complaint committee shall retain a file of all complaints and shall review this file periodically.
- 14.13. At any point in its investigation of a complaint, the complaint committee may assign the matter to one of its medical consultants for review. The report of the medical consultant shall contain a statement of the allegations, the facts, analysis of the complaint and care provided, a brief description of the records reviewed and a recommendation and finding. The medical consultant shall, upon request, be afforded an opportunity to have an investigation interview with the physician or podiatrist in question or other involved parties, a report of which shall be placed in the investigative file.

- 14.14. If the complaint committee determines that there is reason to believe that the acts alleged occurred and constitute a violation for which a licensee may be sanctioned by the Board, the complaint committee shall find probable cause to believe there is a violation of the law or this rule.
- 14.15. An adjudicatory hearing is required if it is determined that there is probable cause to believe that acts alleged occurred and may constitute a violation of any provision of law or this rule. The complaint committee may take such informal action as it determines a complaint warrants.
- 14.16. The Board may suspend or refuse to renew a license pending a hearing if the health, safety or welfare of the public necessitates such summary action. The Board shall provide a hearing on the necessity for the summary action within fifteen (15) days after the suspension. The Board shall render its decision within five (5) days of the conclusion of a hearing under this section.
- 14.17. West Virginia Code §30-3-9(a) requires the Board to maintain a permanent file on each physician or podiatrist licensed or otherwise lawfully practicing in this State and of all persons applying to be licensed. This file shall include an individual historical record of each physician and podiatrist, which shall include all reports and information furnished to the Board pursuant to applicable law. In the event an investigative or complaint file is opened, a record shall be made of the file. The Board shall provide a licensee written notice of the substance of any record placed in his or her historical file, and the licensee will be permitted thirty (30) days in which to file a written statement regarding the record; the statement shall always accompany that part of the record in contention. A physician or podiatrist may examine his or her historical file during regular office hours of the Board or may designate his or her attorney to do so. A request for photocopies of his or her historical file may be made by a physician or podiatrist 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 or podiatrist. 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), the Board shall expunge any matter in an historical file which is not involved in a proceeding for a hearing regarding the physician or podiatrist concerned within (2) years from its placement into the file. If the investigative or complaint file is closed on the basis that the individual physician or podiatrist concerned is not guilty of any misconduct or wrongdoing, the Board shall remove all matters relating to that investigation from his or her historical file.

- 14.18. A physician or podiatrist shall respond within thirty (30) days to a written communication from the Board, the complaint committee or other designee and shall make available to the Board any relevant and authorized records with respect to an inquiry or complaint about his or her professional conduct. The thirty (30) day period commences on the date the communication is sent by registered or certified mail with return receipt requested to his or her last known address. The physician or podiatrist shall maintain a medical record for each patient which is adequate to enable the physician or podiatrist to provide proper diagnosis and treatment. The physician or podiatrist 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 or podiatrist access to them within the terms of this rule and as set forth in West Virginia Code §16-29-1 et seq.

§11-1A-15. Practice of Podiatry.

- 15.1. Application to practice podiatry. -- Each person who desires to practice podiatry and is not now authorized to do so shall file with the Board a

written application, under oath, on a form prescribed by the Board.

15.2. Examination; license; use of title; renewal; inactive license.

- (a) If the applicant passes an examination approved by the Board, which approved examination is in three parts, Part I and Part II of the Examination of the National Board of Podiatric Medical Examiners, followed by the PMLexis, has paid the required fee, and meets the requirements for licensure set forth in West Virginia Code §30-3-10, the Board shall issue a license signed by the president and secretary.
- (b) The burden of satisfying the Board of the applicant's qualifications is upon the applicant.
- (c) A passing score on the PMLexis is a score above the nationally recommended cut score for the specific PMLexis taken by the applicant: Provided, the nationally recommended cut score is criterion referenced according to the method known as the Angoff method.
- (d) 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.
- (e) A license to practice podiatry in this state is valid for a term of two (2) years and shall be renewed every two (2) years, as of the first day of July of the year, upon the receipt of a nonrefundable fee as established by the Board under Board rule 11 CSR 4, together with a timely submitted fully completed renewal application form provided by the Board: Provided, That an initial license expires on the thirtieth day of the ensuing odd-numbered year. Forms shall be

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

- (f) The Board may renew, on an inactive basis, the license of a podiatrist who is currently licensed to practice podiatry, but who is not actually practicing podiatry in this state. A podiatrist holding an inactive license shall not practice podiatry in this state, but the inactive license may be converted by the Board to an active license, upon request of the podiatrist to the Board, provided that the period of inactivity is accounted for to the satisfaction of the Board. An inactive license may be obtained upon receipt of a nonrefundable fee, as established by the Board under Board rule 11 CSR 4, and submission of an application on forms provided by the Board. An inactive license is valid for a term of two (2) years, and is renewable.

- 15.3. License to persons licensed in other states. -- When a podiatrist licensed by the licensing authority of another state, territory or the District of Columbia wishes to move to this State to practice his or her profession, the Board may, in its discretion, issue to him or her a license to practice podiatry, if he or she meets the requirements for entrance set forth in West Virginia Code §30-3-10 and pays a fee as established by the Board under Board rule 11 CSR 4. Application shall be made on a form prescribed by the Board. The application to the Board shall be accompanied by a nonrefundable check or money order in an amount established by the Board under Board rule 11 CSR 4.

15.4. Prohibition. -- No person shall practice podiatry without a license from the Board; no person shall advertise or announce himself or herself as a practitioner of podiatry without a license from the Board; no person shall open or conduct an office or other place for such practice without a license from the Board; no person shall conduct an office in the name of some other person who has a license to practice podiatry; and no person shall practice podiatry after a license has been revoked, or if suspended, during the time of the suspension.

15.5. Denial, revocation, limitation, or suspension of license for violation of statutes; application of rule.

(a) The provisions of this rule that relate to disciplinary, reporting, complaint and investigative procedures, and the provisions of the contested case hearing and appeal procedures, West Virginia Code §29A-5-1 et seq. and rules of the Board 11 CSR 3, are applicable to podiatrists and the practice of podiatry and shall be applied in that context to matters relating to podiatrists.

§11-1A-16. Severability.

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

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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(Plus all the volunteer
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March 15, 1994

Ronald D. Walton
Medicine
101 Dee Drive
Charleston, WV 25311
SB 159

SB 159 authorizing, Title 11, Series 1A, Licensing, Disciplinary & Complaint Procedures, Physicians; Podiatrists, passed the Legislature on March 12, 1994. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 159, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 159** section 64-9-16(l). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

SENATE BILL NO. 196

(By Senators Manchin, Anderson, Grubb, Macnaughtan
and Minard)

[Introduced January 31, 1994; referred to the
Committee on

HEALTH AND HUMAN RESOURCES;

Judiciary

A BILL to amend and reenact section sixteen, article nine,
chapter sixty-four of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to authorizing
the board of medicine to promulgate legislative rules
relating to licensing, disciplinary and complaint procedures
for physicians and podiatrists.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article nine, chapter sixty-four of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted, to read as follows:

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
TO PROMULGATE LEGISLATIVE RULES.**

§64-9-16. Board of medicine.

(a) The legislative rules filed in the state register on the
twelfth day of May, one thousand nine hundred eighty-three,

1 relating to the board of medicine (licensing, disciplinary and
2 complaint procedures; podiatry; physicians assistants), are
3 authorized with the modifications set forth below:

4 "§24.12.

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

10 §24.16.

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

14 (b) The legislative rules filed in the state register on the
15 twenty-sixth day of November, one thousand nine hundred
16 eighty-five, modified by the board of medicine to meet the
17 objections of the legislative rule-making review committee and
18 refiled in the state register on the seventeenth day of January,
19 one thousand nine hundred eighty-six, relating to the board of
20 medicine (licensing, disciplinary and complaint procedures;
21 podiatry; physicians assistants), are authorized.

22 (c) The legislative rules filed in the state register on the
23 eighth day of March, one thousand nine hundred eighty-five,
24 modified by the West Virginia board of medicine to meet the
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the eighteenth day of December,
2 one thousand nine hundred eighty-five, relating to the West
3 Virginia board of medicine (rules governing the approval of
4 medical schools not accredited by the liaison committee on
5 medical education), are authorized.

6 (d) The legislative rules filed in the state register on the
7 third day of June, one thousand nine hundred eighty-seven,
8 relating to the board of medicine (fees for services rendered by
9 the board of medicine), are authorized.

10 (e) The legislative rules filed in the state register on the
11 sixteenth day of September, one thousand nine hundred
12 eighty-eight, modified by the board of medicine to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the twenty-fourth day of
15 February, one thousand nine hundred eighty-nine, relating to the
16 board of medicine (dispensing of legend drugs by physicians and
17 podiatrists), are authorized with the following amendments:

18 Section 2.6 to read as follows: "Dispense means to deliver a
19 legend drug to an ultimate user or research subject by or
20 pursuant to the lawful order of a physician or podiatrist,
21 including the prescribing, packaging, labeling, administering or
22 compounding necessary to prepare the drug for that delivery."

23 And,

24 Section 3.3 to read as follows: "Physicians or podiatrists
25 who are not registered with the Board as dispensing physicians

1 may not dispense legend drugs. However, the following activities
2 by a physician or podiatrist shall be exempt from the
3 requirements of sections 3 through 8 applicable to dispensing
4 physicians:

5 a. Legend drugs administered to the patient, which are not
6 controlled substances when an appropriate record is made in the
7 patient's chart;

8 b. Professional samples distributed free of charge by a
9 physician or podiatrist or certified physician assistant under
10 his or her supervision to the patient when an appropriate record
11 is made in the patient's chart; or

12 c. Legend drugs which are not controlled substances provided
13 by free clinics or under West Virginia state authorized programs,
14 including the Medicaid, family planning, maternal and child
15 health, and early and periodic screening and diagnosis and
16 treatment programs: Provided, That all labeling provisions of
17 section 8 shall be applicable except the requirements of section
18 8.3 (a)."

19 (f) The legislative rules filed in the state register on the
20 tenth day of August, one thousand nine hundred ninety, modified
21 by the board of medicine to meet the objections of the
22 legislative rule-making review committee and refiled in the state
23 register on the first day of October, one thousand nine hundred
24 ninety, relating to the board of medicine (fees for services
25 rendered by the board of medicine), are authorized.

1 (g) The legislative rules filed in the state register on the
2 tenth day of August, one thousand nine hundred ninety, modified
3 by the board of medicine to meet the objections of the
4 legislative rule-making review committee and refiled in the state
5 register on the eleventh day of January, one thousand nine
6 hundred ninety-one, relating to the board of medicine (licensing
7 and disciplinary and complaint procedures: physicians;
8 podiatrists), are authorized.

9 (h) The legislative rules filed in the state register on the
10 tenth day of August, one thousand nine hundred ninety, modified
11 by the board of medicine to meet the objections of the
12 legislative rule-making review committee and refiled in the state
13 register on the eleventh day of January, one thousand nine
14 hundred ninety-one, relating to the board of medicine
15 (certification, disciplinary and complaint procedures: physician
16 assistants), are authorized.

17 (i) The legislative rules filed in the state register on the
18 tenth day of July, one thousand nine hundred ninety-one, modified
19 by the board of medicine to meet the objections of the
20 legislative rule-making review committee and refiled in the state
21 register on the third day of September, one thousand nine hundred
22 ninety-one, relating to the board of medicine (continuing
23 education for physicians and podiatrists), are authorized.

24 (j) The legislative rules filed in the state register on the
25 twenty-fifth day of March, one thousand nine hundred ninety-two,

1 modified by the board of medicine to meet the objections of the
2 legislative rule-making review committee and refiled in the state
3 register on the nineteenth day of May, one thousand nine hundred
4 ninety-two, relating to the board of medicine (licensing,
5 disciplinary and complaint procedures: physicians, podiatrists),
6 are authorized.

7 (k) The legislative rules filed in the state register on the
8 seventeenth day of September, one thousand nine hundred
9 ninety-two, modified by the board of medicine to meet the
10 objections of the legislative rule-making review committee and
11 refiled in the state register on the sixteenth day of November,
12 one thousand nine hundred ninety-two, relating to the board of
13 medicine (certification, disciplinary and complaint procedures,
14 continuing education, physician assistants), are authorized, with
15 the following amendment:

16 On page six, section 11-1B-2, subsection 2.8 (c), after the
17 words "in writing" and the comma, by striking out the words
18 "prior to" and inserting in lieu thereof the words "within ten
19 days of".

20 (l) The legislative rules filed in the state register on the
21 sixteenth day of August, one thousand nine hundred ninety-three,
22 modified by the board of medicine to meet the objections of the
23 legislative rule-making review committee and refiled in the state
24 register on the twentieth day of October, one thousand nine
25 hundred ninety-three, relating to the board of medicine

1 (licensing, disciplinary and complaint procedures, physicians;
2 podiatrists), are authorized.

3

4 NOTE: The purpose of this bill is to authorize the Board of
5 Medicine to promulgate legislative rules relating to licensing,
6 disciplinary and complaint procedures for physicians and
7 podiatrists.

8

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

5157

1 H. B. 4278

2 (By Delegates Gallagher, Douglas, Compton,
3 Huntwork, Burk and Faircloth)

4 (Introduced January 31, 1994; referred to the
5 Committee on Government Organization then the
6 Judiciary)

7
8
9
10 A BILL to amend and reenact section sixteen, article nine,
11 chapter sixty-four of the code of West Virginia, one thousand
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13 the board of medicine to promulgate legislative rules
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17 That section sixteen, article nine, chapter sixty-four of the
18 code of West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended and reenacted, to read as follows:

20 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS**
21 **TO PROMULGATE LEGISLATIVE RULES.**

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24 twelfth day of May, one thousand nine hundred eighty-three,

4278

1 relating to the board of medicine (licensing, disciplinary and
2 complaint procedures; podiatry; physicians assistants), are
3 authorized with the modifications set forth below:

4 "§24.12.

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

10 "§24.16.

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

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KEN HECHLER
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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Charleston, WV 25305-0770

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

APR 20 7 28 AM '94

FILED

TO: Deborah Rodecker

AGENCY: Medicine

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: April 8, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1A TITLE: 11 Medicine

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Deborah Lewis Rodecker

TITLE OF PERSON SIGNING: Counsel

DATE: 4-19-94

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.