

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

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2001 APR 26 P 2:25

OFFICE WEST VIRGINIA  
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Form #6

**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: Licensure, Disciplinary and Complaint Procedures:  
Physicians, Podiatrists

IF NO, SERIES NUMBER OF 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) SB 299

SECTION §64-9-14, PASSED ON April 13, 2001

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: June 1, 2001

  
Authorized Signature

TITLE 11  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF MEDICINE

FILED

SERIES 1A  
LICENSING AND DISCIPLINARY  
PROCEDURES: PHYSICIANS; PODIATRISTS.

2001 APR 26 P 2: 25  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§11-1A-1. General.**

1.1. Scope. -- W. Va. 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. This rule applies to physicians and podiatrists and to their licensing and professional discipline.

1.2. Authority. -- W. Va. 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, W. Va. Code §30-3-1 et seq.

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

3.1. "ACGME" means the Accreditation Council of Graduate Medical Education.

3.2. "AMA" means the American Medical Association.

3.3. "APMA" means the American Podiatric Medical Association.

3.4. "Board" means the West Virginia Board of Medicine, established in W.Va.Code §30-3-5.

3.5. "Department" means the West Virginia Department of Health and Human Resources.

3.6. "ECFMG" means the Educational Commission for Foreign Medical Graduates.

3.7. "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

3.8. "FLEX" means the Federation of State Medical Boards Licensing Examination.

3.9. "LCME" means the Liaison Committee on Medical Education.

3.10. "Legend drug" means a drug that may be dispensed under federal or state law only pursuant to the prescription of an authorized prescriber.

3.11. "LMCC" means a licentiate of the Medical Council of Canada.

3.12. "NBME" means the National Board of Medical Examiners.

3.13. Number. -- Words in this rule importing the singular include the plural, and words in these regulations importing the plural include the singular.

3.14. "PMLexis" means the Podiatric Medical Licensing Examination for States

3.15. "Probation" means imposing 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 the times and places designated by the Board. A licensee may be placed on probation without a previous or concurrent suspension or revocation of his or her license.

3.16. "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

3.17. "USMLE" means the United States Medical Licensing Examination, the successor to the FLEX and NBME.

3.18. "West Virginia Medical Practice Act" means W. Va. 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 the 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 11 CSR 4; and

f. Any other documents as may be required by the Board under section 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 from the first FLEX sitting. 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 or a certificate of the LMCC 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. An applicant must obtain a passing score on the examination sequence before the elapse of seven (7) consecutive years from the first NBME sitting. Failure to obtain a passing score on the examination sequence before the elapse of seven (7) consecutive years shall render the applicant ineligible for licensure.

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 or LMCC certificate, or successful passage of a State Board examination. To be eligible for USMLE Step three (3), an applicant must 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 from the first examination sitting. 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 from the first examination component sitting. 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, (a) shall also provide evidence of a valid ECFMG certificate or of receipt of a passing score on the examination of the ECFMG, Provided, That an applicant who: (i) is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five (5) years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board in any jurisdiction, is not required to have a certificate from the educational commission for foreign medical graduates; and

(b) shall also provide evidence of successful completion of at least three (3) years of postgraduate clinical training (internship or residency) in the United States or Canada, which has been approved by the ACGME, or successful completion of at least one (1) such year and current certification by a member board of the American Board of Medical Specialties.

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, becomes the property of the Board and will not be returned.

4.11. The burden of satisfying the Board of the applicant's qualifications for licensure is upon the applicant.

4.12. 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 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.

**§11-1A-5. Application Required For Examination - Federation Of State Medical Boards Licensing Examination (FLEX); USMLE Step three (3).**

5.1. 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.

5.2. 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.

5.3. 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 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 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, 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.

**§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 (a) shall also provide evidence of a valid ECFMG certificate or of receipt of a passing score on the examination of the ECFMG: Provided, That an applicant who: (i) is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five (5) years; and is not the subject of any pending disciplinary action by a medical licensing board in any jurisdiction, is not required to have a certificate from the educational commission for foreign medical graduates, and (b) shall also provide evidence of successful completion of at least three (3) years of postgraduate clinical training (internship or residency) in the United States or Canada, which has been approved by the ACGME, or successful completion of at least one (1) such year and current certification by a member board of the American Board of Medical Specialties

6.5. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide proof of passage of the FLEX. The FLEX scores must meet the requirements established in Subsection 4.3 of this rule. The Board (or a majority of them) shall accept in lieu of the FLEX, the certificate of the NBME or the LMCC 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, has had no medical disciplinary action taken against him or her 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 will 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 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 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 list of all states where the physician has held and holds a medical license, even if the medical license is not active;
- c. A list of all hospitals where the physician has had privileges in the last five (5) years;
- d. The applicant's medical school;
- e. A list of all training programs, including postgraduate;
- f. The state from which the physician is requesting endorsement, with specific reference to that state's examination and grades;
- g. 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;
- h. A copy of a marriage license, divorce decree or court order, to document any name change; and
- i. 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 Board members for review and a determination as to whether an individual should be scheduled for an interview 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 must 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 the Federation of State Medical Boards and/or 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.

#### **§11-1A-9. License Renewals; Renewal Application Form.**

9.1. 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 11 CSR 4. 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 a valid license.

9.2. 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 ;
- c. A statement concerning any disciplinary action taken against the applicant in the last two (2) years;
- d. 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;
- e. A statement describing an applicant's present ability to possess or dispense controlled substances;
- f. A statement of all other jurisdictions in which the applicant is licensed to practice medicine;
- g. The number of malpractice settlements made or judgements against the applicant in the last two (2) years;
- h. Any treatment received for chemical substance or alcohol dependency in the last two (2) years; and

i. Any limitation of hospital privileges in the last two (2) years.

#### **§11-1A-10. Practice of Podiatry.**

10.1. 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.

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

a. If the applicant passes a Board approved examination which consists of 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 W. Va. 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 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 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.

10.3. 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 licensure set forth in W. Va. Code §30-

3-10 and pays a fee as established by the Board under 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.

10.4. 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.

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

a. The provisions of this rule that relate to disciplinary procedures, reports and complaints, and the provisions of the contested case hearing and appeal procedures, W. Va. 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-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 W. Va. Code §60A-1-1 et. seq. 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 W. Va. Code §60A-1-1 et. seq. 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 W. Va. Code § 60A-1-1 et. seq. 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.

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.

jj. Failure to maintain a medical record for each patient which is adequate to enable the physician or podiatrist to provide proper diagnosis and treatment, and/or to keep such patient medical records for a minimum 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 W. Va. Code §16-29-1 et seq.

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 W. Va. Code §60A-1-1 et. seq.:

A. 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;

B. With the intent to evade any law with respect to the sale, use or disposition of the controlled substance(s);

C. 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

D. 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:

A. 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;

B. 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 current principles of medical ethics of the AMA available from the AMA in Chicago, Illinois, or the principles of podiatric ethics of the APMA available from the APMA in Bethesda, Maryland. 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 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:

A. The time and effort required;

B. The novelty and difficulty of the procedure or treatment;

C. The skill required to perform the procedure or treatment properly;

D. Any requirements or conditions imposed by the patient or circumstances;

E. The nature and length of the professional relationship with the patient;

F. The experience, reputation, and ability of the licensee; and

G. 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 this rule, the rule for dispensing legend drugs as set forth in 11 CSR 5, and/or the provisions of the West Virginia Medical Practice Act.

k. A practice of providing treatment recommendations relating to issuing prescriptions, via electronic or other means, for persons without establishing an on-going physician-patient relationship wherein the physician has obtained information adequate to support the prescription: Provided, That this definition does not apply:

- 1) in a documented emergency; or
- 2) in an on-call or cross coverage situation; or
- 3) where patient care is rendered in consultation with another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including use of any prescribed medications.

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. 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:

A. 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 report back to the Board at its regularly scheduled meeting on the progress of the licensee;

B. 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;

C. The Board may select a physician or podiatrist, as applicable, or request the subject licensee to select a physician or podiatrist, as applicable, for Board approval. The physician or podiatrist shall submit periodic progress reports on the concerned licensee as the Board may direct;

D. The Board may appoint a medical consultant whose responsibility is to handle interviews with the probationary licensee. The probationary licensee shall 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;

E. 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;

F. 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;

G. The Board may require that the probationary licensee authorize his or her personal physician to submit to the Board, for review, the subject 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;

H. 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 subject licensee with the terms of probation; and

I. 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. Required Reports from Hospitals, Professional Societies, Insurers, Courts.**

13.1. 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.

13.2. 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.

13.3. 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.

13.4. 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.

#### **§11-1A-14. Appeal.**

14.1. 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, W. Va. 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.

14.2. 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, W. Va. 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.