

**WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In This Box

2008 MAY 20 AM 9:08

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Board of Medicine TITLE NUMBER: 11

RULE TYPE: Legislative CITE AUTHORITY: WV Code §30-3-10(e) and (f)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Establishment and Regulation of Restricted License Issued to an Applicant in
Extraordinary Circumstances

DATE OF PUBLIC HEARING: _____ TIME: _____

LOCATION OF PUBLIC HEARING: _____

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

DATE WRITTEN COMMENT PERIOD ENDS: June 27, 2008 TIME: 4:30 P.M.

WRITTEN COMMENTS MAY BE MAILED TO:

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Robert C. Knittle, Executive Director
WV BOM
101 Dee Drive Suite 103
Charleston, WV 25311

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature



R. Curtis Arnold, DPM
South Charleston

Michael L. Ferrebee, MD
Morgantown

Angelo N. Georges, MD
Wheeling

Doris M. Griffin, MBA
Martinsburg

M. Khalid Hasan, MD
Beckley

Beth Hays, MA
Bluefield

Carlos C. Jimenez, MD
Glen Dale

Vettivelu Maheswaran, MD
Charles Town

Bill May, DPM
Huntington

Joe E. Miller, LtCol USMC (Ret), MA
Hurricane

Badshah J. Wazir, MD
South Charleston

Kenneth Dean Wright, PA-C
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State of West Virginia
West Virginia Board of Medicine
101 Dee Drive, Suite 103
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Telephone 304.558.2921
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**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE
THE PROPOSED RULE AND SUMMARY OF CONTENT
OF PROPOSED RULE**

In 2008, during the Regular Legislative Session, Senate Bill 317 was passed, which updated the licensing requirements in the Medical Practice Act for physicians and podiatrists. The bill, as passed, included an amendment allowing restricted licensure for certain physicians and podiatrists in extraordinary circumstances who do not meet the standard requirements for licensure. The amendment requires the Board to propose rules that establish and regulate the restricted license issued in extraordinary circumstances.

The proposed rule defines "extraordinary circumstances" and "restricted license", and repeats and elaborates upon the statutory provisions under girding the provisions here. The proposed rule does not allow for an applicant to be issued a restricted license in extraordinary circumstances if the applicant has been the subject of disciplinary action or has been convicted of various crimes. The proposed rule provides that a licensee is subject to all the provisions of the Medical Practice Act and rules, and specifies that whatever restrictions are imposed by the Board may be altered if appropriate, necessary, and in the public interest.

PRESIDENT
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Point Pleasant

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Charleston

EXECUTIVE DIRECTOR
Robert C. Knittle
Charleston

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Deborah Lewis Rodecker
Charleston

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Charleston

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Establishment and Regulation of Restricted License Issued to an Applicant in Extraordinary Circumstances

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Medicine

Address: 101 Dee Drive Suite 103
Charleston WV 25311

Phone Number: 304-558-2921 Email: deborahrodecker@wvdhhr.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact on costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Establishment and Regulation of Restricted License issued to an applicant in Extra

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: May 20, 2008

Signature of Agency Head or Authorized Representative

J. J. Knittle

TITLE II

2008 MAY 20 AM 9:08

LEGISLATIVE RULE

WEST VIRGINIA BOARD OF MEDICINE STATE

SERIES 2

ESTABLISHMENT AND REGULATION OF RESTRICTED LICENSE
ISSUED TO AN APPLICANT IN EXTRAORDINARY CIRCUMSTANCES

11-2-1. General.

- 1.1. Scope.- W. Va. Code §30-3-10(e) provides for the issuance of a restricted license by the Board to an applicant in extraordinary circumstances under certain specific conditions and W. Va. Code §30-3-10(f) requires that rules be promulgated that establish and regulate the restricted license issued to an applicant in extraordinary circumstances.
- 1.2. Authority.- W.Va. Code §30-3-10(f).
- 1.3. Filing date.-
- 1.4. Effective date.

11-2-2. Definitions.

- 2.1. For purposes of this rule, the following definitions apply:
 - a. "extraordinary circumstances" means circumstances wherein the academic appointments, length of time practicing medicine and surgery, scholarly publications, professional accomplishments and awards, and conceded eminence and authority in the applicant's specialty all are of such a remarkable and superior nature that from an objective perspective they override the applicant's failure to satisfy standard requirements for licensure.
 - b. "restricted license" means a license which contains restrictions, limitations, or conditions which may include but are not limited to any or all of the following:
 1. practice location;
 2. practice setting;
 3. specialty area of practice;
 4. practice procedures;
 5. hours and length of practice;
 6. type of patients;
 7. sitting for and successful completion of examination(s);
 8. evaluations and treatment;

9. education;
10. monitoring and supervision.

11-2-3. Issuance of License in Extraordinary Circumstances.

3.1. An applicant for issuance of a restricted license in extraordinary circumstances is subject to all the requirements of the provisions of W.Va. Code §30-3-10 and Board rules 11CSR4 pertaining to fees, and 11CSR 1A pertaining to licensure, except insofar as the applicant is unable to satisfy the standard requirements. In such case, the Board, in its discretion, may require additional information to be submitted as part of the application. The Board shall require a personal appearance by the applicant before Board members, and the Board, in its discretion, may issue a restricted license in extraordinary circumstances, provided that the extraordinary circumstances are specified in writing and that written findings are made that:

- a. based on the applicant's exceptional education, training and practice credentials, the applicant's practice in the state would be beneficial to the public welfare;
- b. the applicant's education, training and practice credentials are substantially equivalent to the requirements of licensure established in W.Va. Code §30-3-10; and
- c. the applicant received all of his/her post-graduate medical training outside of the United States and its territories.

3.2. The burden of satisfying the Board as to whatever additional information is required by the Board, and of the extraordinary circumstances and that the Board is justified in making such written findings is on the applicant.

3.3. The applicant is not eligible for a temporary license pursuant to W. Va. Code §30-3-11.

3.4. The applicant is not eligible for a restricted license in extraordinary circumstances if he/she has been the subject of disciplinary action by any other state or jurisdiction, the uniformed services of the United States or other jurisdiction, or the applicant's peers in a local, regional, state, national, or other professional medical association or staff of a hospital.

3.5. The applicant is not eligible for a restricted license in extraordinary circumstances if he/she has been convicted of or entered a plea of guilty to, or pled nolo contendere, to a felony, or placed on deferred adjudication, community supervision, or deferred disposition for a felony, a misdemeanor connected with the practice of medicine or with moral turpitude.

3.6. The restricted license issued in extraordinary circumstances must be approved by a vote of three fourths of the members of the Board.

3.7. Orders denying applications for a restricted license in extraordinary circumstances are not appealable.

3.8. The Board shall report to the President of the Senate and the Speaker of the House of Delegates all decisions made regarding requests for a restricted license under extraordinary circumstances.

11-2-4. Regulation of Restricted License in Extraordinary Circumstances.

4.1. In addition to adhering to the requirements of the restricted license issued, the licensee is subject to all the provisions of the West Virginia Medical Practice Act, W.Va. Code §30-3-1 et seq. and all implementing rules.

11-2-5. Change in Restricted License.

5.1. At the option of the Board or the holder of a restricted license issued pursuant to this rule, changes in restrictions may be authorized by the Board if the Board deems them to be appropriate, necessary and in the public interest.

11-2-6. Conversion of Restricted License to Standard License.

6.1. The Board may convert the restricted license to a standard license upon application of the licensee with a restricted license who later meets the requirements for a standard license.