

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2008 JUL 18 AM 9:31

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Board of Medicine TITLE NUMBER: 11

CITE AUTHORITY: West Virginia Code §30-3-10 (f)

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO x

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

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

*[Handwritten Signature]*



**R. Curtis Arnold, DPM**  
South Charleston

**Michael L. Ferrebee, MD**  
Morgantown

**Angelo N. Georges, MD**  
Wheeling

**Doris M. Griffin, MBA**  
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## *State of West Virginia*

**West Virginia Board of Medicine**

**101 Dee Drive, Suite 103**

**Charleston, WV 25311**

**Telephone 304.558.2921**

**Fax 304.558.2084**

### 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**

**John A. Wade, Jr., MD**  
Point Pleasant

**VICE PRESIDENT**

**J. David Lynch, Jr., MD**  
Morgantown

**SECRETARY**

**Catherine Slemp, MD, MPH**  
Charleston

**EXECUTIVE DIRECTOR**

**Robert C. Knittle**  
Charleston

**COUNSEL**

**Deborah Lewis Rodecker**  
Charleston

**DISCIPLINARY COUNSEL**

**John K. McHugh**  
Charleston

TITLE II

LEGISLATIVE RULE

FILED

2008 JUL 18 AM 9:31

WEST VIRGINIA BOARD OF MEDICINE OFFICE WEST VIRGINIA  
SECRETARY OF 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 where the physician has achieved a high level of academic or professional recognition for excellence in research, teaching, or the practice of medicine, as evidenced by objective factors, including academic appointments, length of time in a profession, scholarly publications and presentations, professional accomplishments, and awards. Consideration of need for the specialty shall be included.
  - 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 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: Provided, that a hospital's temporary suspension for failure to maintain records on a timely basis, failure to attend staff or section meetings, or voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics shall not be considered to be disciplinary action for purposes of this section.

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 a vote of three fourths of the members of 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.



- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 18, 2008

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Robert C. Knittle, Executive Director  
West Virginia Board of Medicine  
101 Dee Drive, Suite 103  
Charleston, WV 25311  
304.558.2921, ext.227 Fax: 304.558.2084

---

e-mail: bobknittle@wvdhhr.org

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

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b. Date of hearing or comment period:

NA \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA \_\_\_\_\_

d. Attach findings and determinations and reasons:

Attached NA \_\_\_\_\_



R. Curtis Arnold, DPM  
South Charleston

Michael L. Ferrebee, MD  
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**State of West Virginia**  
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May 21, 2008

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Badshah J. Wazir, M  
South Charlest

Kenneth Dean Wright, PA-  
Huntingt

R. Austin Wallace, M.D.  
President, West Virginia Medical Association  
Eye & Ear Clinic Physicians, Inc.  
1306 Kanawha Boulevard, East  
Charleston, WV 25301

Re: Proposed new rules, 11CSR 2, 11CSR 10, and proposed amendments  
to 11CSR 1B

Dear Dr. Wallace:

On May 20, 2008, the Board of Medicine filed the above proposals with the Secretary of State and the Legislative Rule Making Review Committee. 11 CSR 2 is a new proposed rule mandated by the passage of S.B. 317 during the 2008 regular Legislative Session. 11 CSR 10 is a new proposed rule defining surgery, and 11 CSR 1B proposes needed amendments to the Physician Assistant rule. These are all available on the Board's website, [www.wvdhhr.org/wvbom](http://www.wvdhhr.org/wvbom), and written comments may be made until June 27, 2008, at 4:30 p.m. I have also enclosed copies of each with this letter.

The Board looks forward to the comments of the West Virginia Medical Association with regard to these proposals. Thank you for your time and attention.

Sincerely,

  
Robert C. Knittle

lab  
enclosures  
pc: The Honorable Evan H. Jenkins, w/enclosures

PRESIDENT  
John A. Wade, Jr., MD  
Point Pleasant

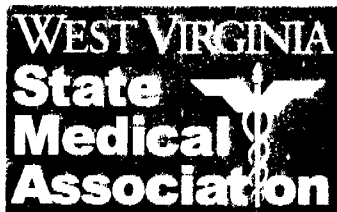
VICE PRESIDENT  
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Morgantown

SECRETARY  
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EXECUTIVE DIRECTOR  
Robert C. Knittle  
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COUNSEL  
Deborah Lewis Rodecker  
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John K. McHugh  
Charleston



June 27, 2008

Robert C. Knittle  
Executive Director  
WV Board of Medicine  
101 Dee Drive, Suite 103  
Charleston, WV 25311

**RE: Proposed rule title 11, series 2: Establishment and Regulation of Restricted License Issued to an Applicant in Extraordinary Circumstances**

Dear Mr. Knittle,

Per your request for comment on the proposed rule establishing a restricted medical license in extraordinary circumstances, I am submitting the following comments on behalf of the West Virginia State Medical Association (WVSMA).

The WVSMA agrees generally with the proposed rule as written. However, we do recommend a few modifications which we believe could help to clarify the language and intent of the rule.

In section 11-2-2, 2.1.a on page 1, the definition of "extraordinary circumstances" contains language which is not clearly written. The term "conceded eminence and authority" is vague in the context of this definition. This term however is defined in some other states' licensure codes and rules regarding similar temporary and/or limited licenses. For example, the following language is taken from the state of Texas:

***RULE §172.13 Conceded Eminence***

*(a) The board may issue a license to an applicant pursuant to the authority of Section 155.006, Tex. Occ. Code, by virtue of the applicant's conceded eminence and authority in the applicant's specialty.*

*(b) "Conceded eminence and authority in the applicant's specialty," as used in this section, shall mean that the physician has achieved a high level of academic or professional recognition for excellence in research, teaching, or the practice of medicine, as evidenced by objective factors, including academic appointments, length of time in a profession, scholarly publications and presentations, professional accomplishments, and awards.*

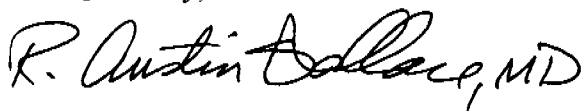
The definition above includes, in general, all the components of your definition of "extraordinary circumstances" but articulates how "conceded eminence" is objectively measured. The WVSMA recommends that the definition of "extraordinary circumstances" be rewritten to incorporate similar language as included in the definition from the Texas rule above or to replace the language "and conceded eminence and authority" with other more clear and precise verbiage.

In section 11-2-3, 3.1.c on page 2, the proposed rule states that "all" of a doctor's post-graduate medical training must be outside the United States and its territories. The language in the law does not incorporate the term "all". The WVSMA recommends that the rule reflect the language in the law.

In section 11-2-3, 3.4 on page 2, the proposed rule continues to set high standards for licensure in "extraordinary circumstances" by disallowing an applicant licensure if they have been disciplined by various entities. The WVSMA would like to raise the question as to exactly what disciplinary actions by such "associations" and "hospital staff" would be considered relevant to disallow an applicant a medical license. The rule reads as if *any* disciplinary action would be included. We are aware of the statutory requirements under § 30-3-14 for reporting disciplinary actions by hospitals and professional societies and ask that the Board make this rule clearer by including that specific language in this document.

We thank you for the opportunity to provide input to the Board regarding this proposed rule and hope that you find our comments helpful as you finalize the document.

Respectfully,

A handwritten signature in black ink that reads "R. Austin Wallace, MD". The signature is written in a cursive style with a large, prominent initial "R".

R. Austin Wallace, MD  
President



The Senate of West Virginia  
Charleston

DAN FOSTER  
701 CRAWFORD RD.  
CHARLESTON 25314

SENATE: (304) 357-7866  
SENATE FAX: (304) 357-7924  
E-MAIL: DANIEL.FOSTER@CAMC.ORG

June 10, 2008

COMMITTEES:  
PENSIONS  
(CHAIR)  
INTERSTATE COOPERATION  
(VICE CHAIR)  
BANKING AND INSURANCE  
GOVERNMENT ORGANIZATION  
HEALTH AND HUMAN RESOURCES  
JUDICIARY  
LABOR

Mr. Robert Knittle  
WV Board of Medicine  
101 Dee Drive, Suite 103  
Charleston, WV 25311

Dear Mr. <sup>Bob</sup> Knittle:

The following is comment related to the legislative rule "Establishment and Regulation of Restricted License issued to an Applicant in Extraordinary Circumstances":

1) under 11-2-2 Definitions.

I would suggest changing 2.1a to the following:

a. "extraordinary circumstances" means circumstances wherein the ~~academic appointments, length of time practicing medicine and surgery, scholarly publications, applicant's training, work experience, research activities or 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.

2) in 11-2-3

I would suggest changing 3.1c to the following:

c. the applicant received ~~all of his/her~~ the post-graduate training in question outside of the United States and its territories.

3) in 11-2-6. Conversion of Restricted License to Standard License.

I would suggest changing 6.1 to the following:

6.1 The Board ~~may~~ shall convert the restricted license to a standard license upon application of the licensee with the restricted license who ~~later meets the requirements for a standard license.~~ has conformed to the requirements of the restricted license and performed in a manner compatible with that of other standard licensees in the state of West Virginia.

Please contact me if you have any questions.

Sincerely,

Dan Foster,  
State Senator



R. Curtis Arnold, DPM  
South Charleston

Michael L. Ferrebee, MD  
Morgantown

Angelo N. Georges, MD  
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# State of West Virginia

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July 15, 2008

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South Charleston

Kenneth Dean Wright, PA-C  
Huntington

R. Austin Wallace, M.D., President  
West Virginia State Medical Association  
4307 MacCorkle Avenue, SE  
P.O. Box 4106  
Charleston, West Virginia 25364

Re: Proposed rule, 11 CSR 2

Dear Dr. Wallace:

Thank you for your comments on the above proposed rule. They were helpful, and I think you will find when the Agency Approved Rule is filed with the Legislature that the changes suggested have been incorporated by the Board of Medicine. We appreciate your assistance with this.

Best wishes to you.

Sincerely,

Robert C. Knittle

lab

**PRESIDENT**  
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Point Pleasant

**VICE PRESIDENT**  
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Morgantown

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South Charleston

**Kenneth Dean Wright, PA-C**  
Huntington

The Honorable Dan Foster, M.D.  
701 Crawford Road  
Charleston, West Virginia 25314

Re: Proposed rule, 11 CSR 2

Dear Senator Foster:

Thank you for your comments on the above referenced Board of Medicine's proposed rule. The Board is aware of your intense interest in this subject and your comments were carefully reviewed. The Board did in fact make changes to the definition of "extraordinary circumstances" and though the changes were not precisely what you requested, when the proposed Agency Approved rule is filed with the Legislature, I think you will find the proposed definition more to your liking.

As to the changes you requested in 3.1c and 6.1., these were not endorsed because they appear to be in contradiction to the statute.

Best wishes to you.

Sincerely,

Robert C. Knittle

lab  
enclosure

**PRESIDENT**  
**John A. Wade, Jr., MD**  
Point Pleasant

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**DISCIPLINARY COUNSEL**  
**John K. McHugh**  
Charleston

## REASONS FOR CHANGES

The Agency Approved Rule differs from the proposed rule as initially filed in that it is more closely aligned with the language of the statutory enabling provision. The definition of “extraordinary circumstances” has been altered to clarify that objective criteria will be employed in determining “extraordinary circumstances”. Need for the particular specialty will also be considered as a factor in determining “extraordinary circumstances”.