

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

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2011 MAY 18 AM 9:10

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Board of Medicine TITLE NUMBER: II

RULE TYPE: Legislative CITE AUTHORITY: WV Code §31B-13-1304

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7

TITLE OF RULE BEING AMENDED: Formation and Approval of Professional Limited Liability Companies

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 24, 2011 AT 4:30 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Robert C. Knittle, Executive Director

West Virginia Board of Medicine

101 Dee Drive, Suite 103

Charleston, West Virginia 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



# State of West Virginia *Board of Medicine*

**REV. O. RICHARD BOWYER**  
PRESIDENT

**CATHERINE SLEMP, MD, MPH**  
SECRETARY

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**MICHAEL L. FERREBEE, MD**  
VICE PRESIDENT

**ROBERT C. KNITTLE**  
EXECUTIVE DIRECTOR

## **STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED RULE AND SUMMARY OF CONTENT OF PROPOSED RULE**

Amendments have been made to West Virginia Code §31B-13-1301 et seq. since the first enactment of the statute in 1996. The current West Virginia Board of Medicine Rule 11 CSR 7, enacted in 1997, does not conform to several amendments made to the statute since its initial enactment in 1996. It is essential that 11 CSR 7 be amended to take into consideration the statutory amendments. A significant definition is added to conform to changes in the statute: "Same or compatible professional services means services rendered by physicians, osteopathic physicians, and podiatrists". In addition, there are "clean up" changes which should be made to the rule such as citing sections properly and deleting other, now outmoded language.

TITLE 11  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF MEDICINE

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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 7  
FORMATION AND APPROVAL OF PROFESSIONAL  
LIMITED LIABILITY COMPANIES

**§11-7-1. General.**

1.1. Scope. -- This legislative rule addresses procedures for the formation and approval of professional limited liability companies for physicians, ~~and podiatrists, and others~~ legally authorized to render the same or compatible professional services under W. Va. Code §31B-13-1301 et seq.

1.2. Authority. -- W. Va. Code §31B-13-1304.

1.3. Filing Date. -- ~~May 5, 1997.~~

1.4. Effective Date. -- ~~June 1, 1997.~~

**§11-7-2. Definitions.**

2.1. "Board" means the West Virginia Board of Medicine, as provided for in W. Va. Code §30-3-5-1 et seq.

2.2. "Professional limited liability company" means a limited liability company organized under the provisions of the W. Va. Code, Chapter 31B, for the purpose of rendering a professional service.

2.23. Same or compatible professional services means services rendered by physicians, osteopathic physicians, and podiatrists.

**§11-7-3. Procedures for Formation and Approval of Professional Limited Liability Companies for Physicians and Podiatrists; Fees.**

3.1. Physicians licensed to practice medicine and surgery in an active status in this State may join together with those rendering the same or compatible services who desire to render medical professional services as a limited liability company. They shall comply with the provisions of W. Va. Code §31B-13-1301 et seq. ~~No A professional limited liability company shall may not have as a member anyone other than a person~~

who is not ~~duly licensed or otherwise~~ legally authorized to render the professional services for which the professional limited liability company was organized.

3.2. Podiatrists licensed to practice podiatry in an active status in this State who desire to render ~~pediatric~~ professional services as a limited liability company shall comply with the provisions of W. Va. Code §31B-13-1301 et seq. Podiatrists may join together with those rendering the same or compatible services to render professional services as a limited liability company. ~~No~~ A professional limited liability company shall ~~may not~~ have as a member ~~anyone other than~~ a person who is not ~~duly licensed or otherwise~~ legally authorized to render the professional services for which the professional limited liability company was organized.

3.3. The name of a professional limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C.", "PLLC", "Professional LLC" or "Professional L.L.C."

3.4. ~~Every~~ A professional limited liability company shall file with the Board at the time of formation, the names of its ~~two~~ one or more member(s), and written documentation that the professional limited liability company carries at least one million dollars of professional liability insurance, together with an initial filing fee of \$100. Thereafter, every professional limited liability company on an annual basis on or before the first day of July, shall file with the Board the names of its ~~two or more~~ member(s), and written documentation that the professional limited liability company carries at least one million dollars of professional limited liability insurance, together with an annual renewal fee of \$100.

3.4.a. The requirement under W. Va. Code §31B-13-1305 that a professional limited liability company carry one million dollars of professional liability insurance is satisfied if the professional limited liability company provides one million dollars of funds specifically designated and segregated for the satisfaction of judgements against the company members or any of its professional or nonprofessional managers or employees arising out of the performance of professional services to patients or clients of the company, by:

(1) Deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or

(2) A bank letter of credit or insurance company bond.

~~3.5. Every limited liability company formed prior to the effective date of this rule whose members are physicians or podiatrists licensed under the provisions of W.Va. Code § 30-3-1 et seq. shall reform the company and re file articles of organization pursuant to the provisions of W.Va. Code § 31B-13-1 et seq. and provisions of this rule.~~

~~3.6.~~ 3.5 Every professional limited liability company shall file with the Board a copy of the annual report required to be filed with the secretary of state under W. Va. Code

§31B-2-211. The copy of the annual report, and a copy of any corrected annual report filed with the secretary of state, shall be filed with the Board on or before the first day of July on an annual basis.

~~3.7.~~ 3.6. The Board shall approve every professional limited liability company in compliance with all the provisions of this rule, and every professional limited liability company remaining in compliance with this rule shall remain approved by the Board.

~~3.8.~~ 3.7. If ~~any~~ a person ceases to be a member of any a professional limited liability company, ~~that person shall so notify~~ he or she shall notify the Board in writing within twenty days from ~~that departure.~~ the day that the person ceases to be a member of the professional limited liability company. ~~The fact that a~~ A person ceases ~~ceasing~~ to be a member of a professional limited liability company shall does not affect the approval of the professional limited liability company by the Board, provided that the Board determines that the professional limited liability company remains in compliance with all the provisions of this rule.

#### **§11-7-4. Notification of Non-compliance, Cessation of Rendering Professional Services.**

4.1. If the Board determines that a professional limited liability company is not in compliance with all the provisions of this rule and should cease rendering professional services in the State, the Board shall notify the professional limited liability company in writing of its noncompliance and shall order the professional limited liability company to stop rendering professional services. Upon receipt of the written notice, the professional limited liability company shall cease rendering professional services. ~~in this State.~~

#### **§11-7-5. Physician-Patient and Podiatrist-Patient Relationship.**

5.1. The provisions of this rule shall not be construed to alter or affect the physician-patient or podiatrist-patient relationship.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Formation and Approval of Professional Limited Liability Companies

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: Robert.C.Knittle@wv.gov

**Fiscal Note Summary**

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

There are neither additional costs associated with this proposed Rule nor anticipated increases in revenues to the Board. This proposed Rule is therefore budget neutral.

**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			
Personal Services			
Current Expenses		N.A.	
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title:

Formation and Approval of Professional Limited Liability Companies

**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: 5/17/11

Signature of Agency Head or Authorized Representative

*[Handwritten Signature]*