WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #3

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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 §30-3-7 (a)(1)

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: 10

TITLE OF RULE BEING PROPOSED: Definition of Surgery to Include the Use of Lasers, Ionizing Radiation, Pulsed Light and Radiofrequency Devices

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: Definition of Surgery

Type of Rule: [X] 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: Definition of Surgery

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

/Brett C. Knittle

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

Due to technological developments in surgery over the past twenty-five years, particularly with the increasing use of lasers, ionizing radiation and pulsed light and radiofrequency devices, it is necessary and in the interests of public safety and welfare to clarify that "surgery" in the Medical Practice Act (West Virginia Code §30-3-4(3) includes the use of lasers, ionizing radiation, pulsed light and radiofrequency devices. It is also essential to regulate their use and ensure that physicians are appropriately supervising this surgery, if performed by other individuals.

The proposed rule exempts from all of its provisions hospitals, free clinics, and licensed P.A.'s supervised by a physician, acting pursuant to a job description approved by the Board of Medicine. Also exempted from all of the proposed rule's provisions are advanced practice nurses, advanced nurse practitioners and certified nurse midwives, acting pursuant to a collaborative agreement with a physician. Osteopathic physicians are not affected by the proposed rule because the Board of Osteopathy has jurisdiction over Osteopaths in West Virginia, not the Board of Medicine.

The proposed rule focuses on other types of individuals who are using laser and similar equipment and requires supervision by a physician and explains what type of supervision is required depending on the nature of the surgery being performed. This is in response to spas and practices operating in West Virginia with no requirements for real supervision by a physician or an examination by a physician before undergoing this type of surgery or written protocols. This proposed rule regulates where there is no regulation, and where it is needed to ensure that, when utilizing these techniques, qualified persons are performing surgery on West Virginia citizens. West Virginia is preceded by thirty four other state boards which have acted in this area.

The proposed rule defines ablative, deep ablative and non ablative surgery, appropriate professional standards, appropriate education and training, credentials, direct supervision, personal supervision, supervising physician, and surgery, all in order that its requirements are clear.

SERIES 10

Definition of Surgery to Include the Use of Lasers, Ionizing Radiation, Pulsed Light and Radiofrequency Devices

11-10-1. General

1.1. Scope.- W. Va. Code 30-3-4(3) defines the practice of medicine and surgery as the diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition. W. Va. Code 30-3-7(a)(1) permits the Board of Medicine to adopts such regulations as are necessary to carry out the purposes of the article, which W. Va. Code 30-3-2 states in pertinent part is to provide for the licensure and professional discipline of physicians and podiatrists and to provide a professional environment that encourages the delivery of quality medical services within the state. Due to technological developments in surgery over the last twenty-five years, it is necessary for the health and welfare of the citizens of the state and in the public interest to clarify that the use of lasers, ionizing radiation, pulsed light and radio-frequency devices constitute surgery.

1.2. Authority.- W.Va. Code 30-3-7(a)(1).

1.3. Filing date.-

1.4. Effective date.-

11-10-2. Definitions.

2.1. For purposes of this rule, the following definitions apply:

a. "ablative treatment" means surgery that is expected to excise, burn, destroy or vaporize the skin below the stratum corneum.

b. "appropriate professional standards" means comprehensive surgical training and experience, including the management of complications, and the acquisition of certification in the appropriate surgical specialties by a member board of the American Board of Medical Specialties (ABMS) and credentials in the use of lasers, pulsed light and radiofrequency devices, ionizing radiation, or other similar techniques.

c. "appropriately educated and trained" means training that pertains to the physics and safety of light based medical devices and to performing any act or procedure that may alter, transpose or damage live human skin, including fundamentals of laser operation; bio-effects of laser radiation on the eye and skin; significance of specular and diffuse reflections; non-beam hazards of lasers; non-ionizing radiation hazards; laser and laser systems classifications; and control measures. A training program for each device must be attended, and maintenance of competency to perform non-ablative procedures through documented training and experience regarding the appropriate standard of care in the field of non-ablative procedures and the use of specific device(s).

d. "credentials" means a minimum of sixteen hours of basic training devoted to the principles of lasers, pulsed light devices and thermal, radiofrequency and other non-ablative devices, their instrumentation, physiological effects and safety requirements, including clinical applications of various wavelengths and hands-on

SERIES 10

Definition of Surgery to Include the use of Lasers, Ionizing Radiation, Pulsed Light and Radiofrequency Devices

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d. "credentials" means a minimum of sixteen hours of basic training devoted to the principles of lasers, pulsed light devices and thermal, radiofrequency and other non-ablative devices, their instrumentation, physiological effects and safety requirements, including clinical applications of various wavelengths and hands-on

practical sessions with devices and their appropriate surgical or therapeutic delivery systems.

e. "deep ablative treatment" means treatment below the dermo-epidermal junction.

f. "dermis" means that layer of skin which provides nutrient delivery and waste disposal via diffusion through the dermo-epidermal junction.

g."dermo-epidermal junction" means the undulating basement membrane that adheres the epidermis to the dermis.

h. "direct supervision" means the opportunity and ability of the physician to exercise continuous control and direction over the services of non-physician practitioners and requires the physician to be physically present on the premises, within the office suite, and immediately available at all times the non-physician practitioner may be on duty.

i. "epidermis" means the layer of skin which is sustained and supported by the dermis.

j. "non-ablative treatment" means a surgery by any laser or intense pulsed light treatment or other energy source, chemical or modality that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin, including treatments related to laser hair removal.

k. "personal supervision" means the physician must be in attendance in the room throughout the performance of the procedure by a non-physician practitioner.

l. "stratum corneum" means the outermost layer of the epidermis.

m. "supervising physician" means a physician who holds a full and unrestricted medical license in West Virginia and meets appropriate professional standards.

n. "surgery" includes deep ablative, ablative and non-ablative treatments. Surgery includes the use of lasers, ionizing radiation, pulsed light and radiofrequency devices. Surgery includes alteration of the tissue by any mechanical, thermal, light based, electromagnetic, or chemical means.

11-10-3. Supervision of non-physician licensed practitioners for deep ablative surgery.

3.1. A supervising physician may delegate the performance of deep ablative surgery to a practitioner, who is appropriately educated and trained, and licensed by the State of West Virginia, provided the surgery is performed under the personal supervision of the supervising physician and provided further the ablative treatments performed fall within the statutory and/or regulatory scope of the practitioner's profession.

3.2. The physician is responsible for assuring that the practitioner is licensed by the State of West Virginia, is practicing within the scope of his/her licensure, and only with the use of written protocols

3.3. The supervising physician is responsible for the examination of the patient and for authorizing the treatment plan, and the same is to be recorded in the patient's medical record prior to any initial deep ablative treatment.

11-10-4. Supervision of non-physician licensed practitioners for ablative surgery.

4.1 A supervising physician may delegate the performance of ablative surgery to a practitioner, who is appropriately educated and trained, and licensed by the State of West Virginia, provided the surgery is performed under the direct supervision of the supervising physician and provided further the ablative surgery performed falls within the statutory and/or regulatory scope of the practitioner's profession.

4.2 The physician is responsible for assuring that the practitioner is licensed by the State of West Virginia, is practicing within the scope of his/her licensure, and only with the use of written protocols.

4.3 The supervising physician is responsible for the examination of the patient and for authorizing the treatment plan, and the same is to be recorded in the patient's medical record prior to any ablative treatment.

11-10-5. Supervision of non-physician licensed practitioners for non-ablative surgery.

5.1 A supervising physician may delegate the performance of non-ablative surgery or procedures to non-physician practitioners, appropriately educated and trained, and licensed by the State of West Virginia, provided the treatments are performed under the direct supervision by the physician

5.2 The physician is responsible for assuring that the practitioner is appropriately educated and trained, licensed in the State of West Virginia, is practicing within the scope of his/her licensure, and only with the use of written protocols.

5.3 The supervising physician is responsible for the examination of the patient and for authorizing the treatment plan, and the same is to be recorded in the patient's medical record prior to any initial non-ablative treatment.

11-10-6. Utilization of non-physician licensed practitioners as assistants during the performance of surgery utilizing lasers, pulsed light and radiofrequency devices, chemicals, or ionizing radiation.

6.1. When a physician utilizes a non-physician practitioner during the performance of a deep ablative, ablative or non-ablative surgery involving lasers, pulsed light devices, radiofrequency devices, chemicals, or ionizing radiation, the assistant must be properly licensed to practice his or her profession and have been appropriately educated and trained for assisting the physician in such surgery.

11-10-7. Written protocols.

7.1. Written protocols for the purpose of this section means physician's order, standing delegation order, standing medical order, or other written order that is maintained on site. A written protocol must provide, at a minimum, the following:

a. A statement identifying the physician authorized to utilize the specific device and responsible for the delegation of the performance of the specified surgery;

b. A statement of the activities, decision criteria, and plan the non-physician practitioner shall follow when performing delegated procedures;
c. Selection criteria to screen patients for the appropriateness of non-ablative treatments;
d. Identification of devices and settings to be used for patients who meet selection criteria;
e. Methods by which the specified device is to be operated;
f. A description of appropriate care and follow-up for common complications, serious injury, or emergencies as a result of the non-ablative treatment; and
g. Documentation of decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made shall be recorded in the patient's chart pre-operatively.
h. Documentation of a post-operative note shall be recorded within 24 hours after each treatment in the patient's medical record.

11-10-8. Equipment Safety and Registration.

8.1. Equipment used for the purposes stated in this rule must be inspected, calibrated and certified as safe to use according to the manufacturer's specifications and any use or operation of equipment named herein shall be in compliance with applicable federal law.

11-10-9. Responsibility of Supervising Physician.

9.1. The supervising physician maintains full responsibility to patients and the Board of Medicine for the manner and results of all treatment rendered.

11-10-10. Applicability of Rule.

10.1. This rule does not apply to:

a. hospitals, as defined in West Virginia Code 16-29B-3(e);
b. clinics organized in whole or in part for the delivery of health services to needy and indigent patients without charge; and
c. advanced practice nurses, advanced nurse practitioners, or certified nurse midwives, acting pursuant to a collaborative agreement with a licensed physician, and licensed physician assistants acting pursuant to job descriptions approved by the Board of Medicine, supervised by a supervising physician(s).

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 30, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, West Virginia 25311

LEGISLATIVE RULE TITLE: ~~Definition of Surgery to Include the Use of Lasers, Ionizing~~ Radiation, Pulsed Light and Radiofrequency Devices

1. Authorizing statute(s) citation ~~West Virginia Code §30-3-7(a)(1)~~

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

   May 20, 2008

   b. What other notice, including advertising, did you give of the hearing?

   Notice of Comment period and proposed rule posted on website. Letters attached to Executive Director, West Virginia Board of Examiners for Registered Professional Nurses; Director, West Virginia Board of Barbers and Cosmetologists; President, WVAPA; President WVPMA; President, WVMA; Rachel White

   c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

   June 27, 2008

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached X No comments received _____

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

July 30, 2008

f. **Name, title, address and <u>phone/fax/e-mail numbers</u>** 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
email: bobknittle@wvdhhr.org

g. **<u>IF DIFFERENT</u> 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)

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.

~~N/A~~

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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

May 21, 2008

HAND DELIVERED

Laura Skidmore Rhodes, MSN, RN
Executive Director
West Virginia Board of Examiners
for Registered Professional Nurses
101 Dee Drive, Suite 102
Charleston, West Virginia 25311-1620

Re: Proposed rule, 11 CSR 10, Definition of Surgery

Dear Ms. Rhodes:

Enclosed please find a copy of the Board of Medicine's proposed rule, 11 CSR 10, Definition of Surgery. The proposed rule is also available on the Board's website, www.wvdhhr.org/wvbom. Written comments will be accepted until June 27, 2008, at 4:30 p.m.

Thank you for your time and attention.

Sincerely,

Robert C. Knittle

lab
enclosure

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

May 21, 2008

Larry Absten, Director
West Virginia Board of Barbers and Cosmetologists
1716 Pennsylvania Avenue, Suite 7
Charleston, WV 25302

Re: Proposed rule, 11 CSR 10, Definition of Surgery

Dear Mr. Absten:

Enclosed please find a copy of the Board's proposed rule on the definition of surgery. It is available also on the Board of Medicine's website, www.wvdhhr.org/wvbom. The proposed rule was filed yesterday with the Secretary of State and Legislative Rule Making Review Committee. Written comments will be accepted until June 27, 2008 at 4:30.

Thank you for your time and attention.

Sincerely,

Robert C. Knittle

lab
enclosure

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

May 21, 2008

Kristopher Musick, P.A.-C
President, WVAPA
3547 Virginia Avenue
Hurricane, WV 25526

Re: Enclosed proposed amendments to 11 CSR 1B, 11 CSR 10

Dear Mr. Musick,

Yesterday, the Board of Medicine filed with the Secretary of State and the Legislative Rule Making Review Committee, the enclosed proposed amendments to the rule governing Physician Assistants and a proposed new rule defining surgery. The rules are on the Board's website, at www.wvdhhr.org/wvbom, and there is a comment period open until June 27, 2008, at 4:30 p.m.

Please don't hesitate to let us hear from you.

Sincerely,

Robert C. Knittle

lab
enclosure

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

May 21, 2008

Rusty Lee Cain, D.P.M.
President, West Virginia Podiatric Medical Association
Doctors Foot Center
1228 Country Club Road
Fairmont, WV 26554

Re: Proposed new rules, 11 CSR 2 and 11 CSR 10

Dear Dr. Cain,

Enclosed for your information are copies of the above referenced proposed new rules. There is a comment period open until June 27, 2008, at 4:30 p.m. The proposed rules are also on the Board's website, www.wvdhhr.org/wvbom. 11 CSR 2 is mandated by the provisions of S.B. 317, which will go into effect June 4, 2008. 11 CSR 10 defines surgery. The thoughts of the West Virginia Podiatric Medical Association are welcomed.

I am also sending copies of the rule to the next President of the WVPMA, Dr. Rauch.

Sincerely,

Robert C. Knittle

lab
enclosures
pc: Richard L. Rauch, D.P.M., w/enclosures

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

May 21, 2008

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, 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

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

May 22, 2008

Ms. Rachel White
Route 3, Box 272-A4
Philippi, West Virginia 26416

Re: Proposed rule, 11 CSR 10, Definition of Surgery

Dear Ms. White:

Six years ago, you appeared before the Board of Medicine and raised issues with the Board regarding electrology and electrolysis and accordingly, I wanted you to know of the above proposed rule of the Board of Medicine pertaining to the definition of surgery. We believe you would be interested.

The proposed rule has been filed this week with the Secretary of State and the Legislative Rule Making Review Committee, and if you have written comments, they should be filed by June 27, 2008, at 4:30. The proposed rule is available on the Board's website as well, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab
enclosure

From: "Choudhry, Samreen" <schoud5@uic.edu>
To: <bobknittle@wvdhhr.org>
Date: 6/27/2008 11:23:41 AM
Subject: Comments on "Definition of Surgery"

Hi Mr. Knittle,

I really like the proposed document on the definition of surgery. I feel like this is a step in the right direction specifically for patient safety. Perhaps though you can address other professions such as cosmetologists, medical assistants, electrologists, etc. who may also deal with performing certain non-ablative procedures as well as use lasers for certain procedures without supervision. I personally feel that these professions should be either limited to perform certain invasive procedures or be required to be supervised by a physician.

Regards,
Samreen

--
Samreen Choudhry
MD Candidate, 2011
College of Medicine
University of Illinois at Chicago

West Virginia
Academy Of
Ophthalmology

May 29, 2008

Robert Knittle, Executive Director
WV Board of Medicine
101 Dee Drive
Charleston, WV 25311

Dear Mr. Knittle:

The West Virginia Academy of Ophthalmology has reviewed the proposed Legislative Rule, WVBOM, Series 10, Definition of Surgery. We suggest the following amendment to the Series 10 Rule:

11-10-9. Applicability of Rules.

Add language to cover the WV Board of Optometry such as "or to optometrists or the Board of Optometry
or
"any other board".

Thank you for your consideration.

Sincerely yours,

Nancy

Nancy S. Tonkin
Executive Director

West Virginia
Academy of Ophthalmology
2110 Kanawha Boulevard, East / Suite 220
Charleston, West Virginia 25311
304.343.5842 / 304.344.4139 Fax
www.wveyemd.org

Robert E. Bowen, M.D.

2000 Foundation Way
Suite 2400
Martinsburg, WV 25401

T 304 264-9080
M 304 671-8090
F 304 264-9082
RBowen3710@msn.com

June 25, 2008

West Virginia Board of Medicine

Dear Board,

I am grateful for this opportunity to provide input to the Board of Medicine regarding Title 11, Legislative Rule, West Virginia Board of Medicine, Series 10, Definition of Surgery.

I have been using lasers in my practice of medicine both in resection of endobronchial tumors and in cutaneous applications (facial resurfacing, fractional resurfacing, intense pulsed light, and hair reduction) in the state of West Virginia starting in 1983. The evolution of laser technology over this period of time is nothing short of breathtaking. Indeed, this year there are literally several new laser technologies that are introduced every month. I agree with the Board that the regulation of these devices must keep pace with the technology in order to protect our patients. I have personally witnessed unscrupulous salespersons telling prospective clients that "anyone can operate a laser in West Virginia." Even well meaning, skilled practitioners who are naive to laser physics may believe such claims and, even more so, an unsuspecting public.

The proposed legislative rule addresses these concerns very well, provides safeguards for patients and brings West Virginia closer in line to the policies of other states.

I would like to recommend the following changes or clarifications to Title 11:

11-10-2

2.1

a. "ablative treatment" means treatment that is expected to excise, burn, destroy, or vaporize the skin below the **stratum corneum**, and includes any procedure that may damage the eye.

Comment:

There are deep ablative and potentially hazardous procedures that do not reach to the dermal/ epidermal junction.

The "stratum corneum" means the outermost layer of the epidermis and is approximately 6 -12 microns in thickness.

2.1

h. "non-ablative treatment" ... including treatments related to laser hair removal.

Comment:

This contradicts definition 2.1.a. in that the commonly used hair reduction lasers Nd:Yag (1064 nm), Diode (810 nm) and Alexandrite (755 nm) are ALL potentially damaging to the cornea or retina. This leaves only intense pulsed light (IPL) as a light-based device that can be used for hair removal.

If laser hair reduction is intended by the Board to be a non-ablative procedure, the phrase "...and includes any procedure that may damage the eye" should be removed from 11-10-2.1.a. On the other hand, if the Board intends for laser hair reduction to be included as an ablative procedure, then the phrase "including treatments related to laser hair removal" should be removed from 11-2-1.h.

I agree strongly with the provisions in 11-10-3.2 and 11-10-3.3 concerning written protocols and initial review and treatment plans and with the provision for all operators (including physicians) to have "credentials" in laser physics and medicine.

11-10-9

9.1

Comment:

I do not understand the provision regarding rules not applying to duly licensed health care providers. I believe these rules need to apply to all laser practitioners, not only to physicians.

The following are personal opinions for your consideration:

(1) Hair reduction is a procedure that could be delegated to advanced practitioners or RNs, LPNs, etc., with physician supervision as defined by this proposed rule (and therefore would be classified as non-ablative).

(2) Deep ablative procedures -- those treating below the dermal-epidermal junction (e.g., facial resurfacing or fractional resurfacing with CO2, Erbium or Plasma (Portrait)) -- are in my opinion procedures that should be performed only by physicians with appropriate credentials or perhaps with "personal supervision" as defined in 11-10-2.1.i.

Thank you for your consideration. Please feel free to contact me if you have any questions.

Sincerely yours,

Robert E. Bowen, M.D.

American Academy of Dermatology and AAD Association

Physicians Dedicated to Excellence in Dermatology™

1350 I St NW Ste 870
Washington DC 20005-3319

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Robert D. Greenberg, MD, FAAD
Assistant Secretary-Treasurer

Ronald A. Henrichs, CAE
Executive Director & CEO

June 24, 2008

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

Dear Mr. Knittle:

On behalf of the over 16,000 members of the American Academy of Dermatology Association, I am writing to support the West Virginia Board of Medicine's proposed new rule entitled "Definition of Surgery." Patient safety is our top priority, and we believe that any time a surgical procedure is delegated to a non-physician provider, that provider must have appropriate training and oversight. Too often, our members witness the negative consequences of surgical procedures that are performed by non-physician providers with inadequate training and/or inadequate supervision.

Attached with this letter is both our Position Statement on the Practice of Cutaneous Medicine, as well as our Position Statement on the Use of Non-Physician Office Personnel. As you will see, our positions closely mirror the Board of Medicine's proposed rule.

We concur that both ablative and non-ablative treatments constitute the practice of medicine. Non-ablative procedures, although not intended to excise, burn, or vaporize the epidermal surface of the skin, can cause burning and scarring if used improperly. Additionally, patients can have adverse reactions if they are taking medications that make them sensitive to light.

As the proposed rule states, an initial review by the supervising physician is imperative before a surgical procedure is delegated to a non-physician provider. For dermatologic procedures, this is particularly important to ensure that the patient is an appropriate candidate for the procedure, and that they do not have any preexisting skin conditions that could be exacerbated or critically obscured by the procedure. Many laser and light-based devices have the ability to alter the pathology of skin conditions, which could cause a delayed or misdiagnosis. In the instance of melanoma, the deadliest form of skin cancer, a delayed or missed diagnosis could be fatal for the patient. With current statistics showing that one in

five Americans will develop some form of skin cancer during the course of their lifetime, one can understand the importance of this initial physician review with respect to dermatologic surgical procedures.

We applaud the West Virginia Board of Medicine for the proposal of this rule that protects patient safety and requires physicians to be accountable for the procedures they delegate to non-physician providers. We believe that on-site physician supervision protects the patient, the non-physician provider performing the procedure, and the supervising physician ultimately responsible for the outcome of the procedure.

Should you have any questions or if you require any additional information, please contact Robb Bohannon, Assistant Director, State Affairs, in our Academy's Washington office. He can be reached by e-mail at rbohannon@aad.org or by phone at (202) 712-2603.

Thank you for your time and consideration.

Sincerely,

C. William Hanke, MD, FAAD
President

CWH/rtb

Cc: David M. Pariser, MD, FAAD, President-Elect
James S. Taylor, MD, FAAD, Vice President
John E. Hedstrom, JD, Director, Congressional and State Policy
Karen J. Collishaw, Deputy Executive Director, AADA
Ronald A. Henrichs, CAE, Executive Director and CEO
Charles B. Franz, MD, FAAD, President, West Virginia Dermatologic Society
Amy Tolliver, Government Relations Specialist, West Virginia State Medical Association

Position Statement on The Use of Non-Physician Office Personnel

(Approved by the Board of Directors February 22, 2002; Amended by the Board of Directors November 23, 2002; Amended by the Board of Directors July 31, 2004; Amended by the Board of Directors July 23, 2005)

The guiding principle for all dermatologists is to practice ethical medicine with the highest possible standards. Physicians should be properly trained in all procedures and services performed to ensure the highest level of patient care and safety. A physician should be fully qualified by residency training and preceptorship or appropriate course work. Training should include an extensive understanding of cutaneous medicine and surgery. It is the position of the AADA that only active and properly licensed doctors of medicine and osteopathy shall engage in the practice of medicine.

Under appropriate circumstances, a physician may delegate certain procedures and services to appropriately trained non-physician office personnel. Specifically, the physician must directly supervise the non-physician office personnel to protect the best interests and welfare of each patient. Except in exceptional circumstances, the supervising physician shall be present on-site, immediately available, and able to respond promptly to any question or problem that may occur while the procedure or service is being performed. It is the physician's obligation to ensure and document that, with respect to each procedure and service performed, the non-physician office personnel have received the proper training. All new patients and significant new problems in established patients should be seen by dermatologists in a face-to-face manner.

This Position Statement is intended to offer physicians guidelines regarding the delegation of performance of medical procedures and services, but is not intended to establish a legal standard of care. Physicians should use their personal and professional judgment in interpreting these guidelines and applying them to the particular circumstances of their individual practice arrangements.

Position Statement on The Practice of Cutaneous Medicine

(Approved by the Board of Directors February 22, 2002; Amended by the Board of Directors July 23, 2005)

The practice of cutaneous medicine includes, but is not limited to diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes, by any means, methods, devices, or instruments.

The practice of cutaneous medicine includes, but is not limited to, performing any act or procedure that, by its intended or improper use, can alter or cause biologic change or damage living tissue. Living tissue is any layer below the dead cell layer (stratum corneum) of the epidermis. The epidermis, below the stratum corneum, and dermis are living tissue layers.

Such acts or procedures include, for example, the use of all lasers, light sources, microwave energy, electrical impulses, chemical application, particle sanding, the injection or insertion of foreign or natural substances, or soft tissue augmentation.

Because certain FDA-approved Class I and II devices, by their intended or improper use, can alter or cause biologic change or damage below the stratum corneum their use constitutes the practice of cutaneous medicine, which should be performed only by a physician or an appropriately trained person under the direct supervision of a physician.

This Position Statement is intended to offer physicians guidelines regarding the delegation of performance of medical procedures, but is not intended to establish a legal standard of care. Physicians should use their personal and professional judgment in interpreting these guidelines and applying them to the particular circumstances of their individual practice arrangements.

From: "Aldis, John" <jaldis@cityhospital.org>
To: <bobknittle@wvdhhr.org>
Date: 6/27/2008 5:31:09 PM
Subject: Defniniton of Surgery

Robert Knittle
Executive Director
WV Board of Medicine

Dear Dr. Knittle,
The "Definition of Surgery" which is being proposed to the State Legislature has some curious wording which appears to be intentionally vague and potentially very harmful. In several places the bill equates any treatment (including purely "medical" management) as being a subset of surgery. I am not concerned by what the author of the bill meant to say when writing it; rather, I am concerned by what the author said.

h. "non-ablative treatment" means a form of treatment that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin, including treatments related to laser hair removal.
(Again, this definition includes all medical treatment with the exception of "ablative" treatment.)

I. "surgery" means structural alterations of the humban body by ... and is part of the practice of medicine. Surgery includes ablative and non-ablative treatments. (My underline.)
(Again, the writer has lumped all non-ablative treatment into a definition of "surgery."

1-10-4 Supervision of non-physician health-care providers for non-ablative treatments.
(Again, if you define non-ablative treatments as was done earlier in the document, this includes all forms of medical care.)

I suggest that the wording of this bill be "tightened up" a bit to make it clear that it is dealing with surgery (as the title suggests) and does not deal with other components of medical treatment. If you want a bill to deal with mid-level practitioners providing non-surgical treatments, perhaps somebody can write a separate bill.

I am not objecting to much of the content of the proposed bill; in fact, many of the parts of the bill are very important. However, the wording of the bill is needlessly sloppy and the confusion it causes is unnecessary.

Thank you for your attention to this matter.

John W. Aldis, MD
AAFP

WEST VIRGINIA
HOSPITAL ASSOCIATION

100 Association Drive
Charleston, WV 25311-1571
(304) 344-9744
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Web Page: www.wvha.org

June 27, 2008

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

Mr. Knittle,

The West Virginia Hospital Association on behalf of its 73 member hospitals and health systems would like to take this opportunity to comment on the proposed rule titled "Definition of Surgery".

First and foremost we both appreciate and support the Board of Medicine's efforts to have a rule which defines surgery. There have been many technological developments in surgery over recent years which truly necessitate this rule. Most notable of these developments is the ever increasing use of lasers and pulsed light devices.

There is however one procedure which the rule defines as surgery which we believe would have the opposite effect on public safety and welfare. Having "suturing" listed as a surgical procedure which requires supervision (being physically on site) would cause a hardship for many rural clinics which are operated by hospitals and thus the patients they serve. Suturing of small cuts and incisions by appropriately trained Physician Assistants (PA) and Advanced Nurse Practitioners (APN) has been a common practice for many years and we are unaware of any adverse events that have resulted from this practice. We believe that since both PAs and APNs report directly to a licensed physician, and that since it is the responsibility of that physician to make certain that they are appropriated trained, that it should be left up to that physician whether or not they can suture.

Thank you for the opportunity to comment on this proposed rule.

Respectfully,

Jim Kranz
Vice President, Professional Activities
West Virginia Hospital Association

Dinsmore&Shohl LLP
ATTORNEYS

June 27, 2008

VIA HAND-DELIVERY
Robert C. Knittle, M.S.
Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

RE: Comments to Proposed Legislative Rule
Definition of Surgery, Title 11, Series 10

Dear Mr. Kittle:

These comments to Proposed Rule 11 CSR 10 are submitted on behalf of Refuge Medical Spa ("RMS"), a medical spa established in July 2007 by Steven and Alysia Terry to provide an array of beauty and wellness services in Princeton, West Virginia.

RMS is concerned that the Proposed Rule imposes unnecessary restrictions on the provision of non-ablative treatments by non-physician health care providers. Specifically, RMS offers laser treatments including hair removal, photo facial treatment, skin rejuvenation and wrinkle reduction, and acne laser treatments. Importantly, these are not invasive procedures.

Nevertheless, Proposed Section 4.1 would permit the delegation of the performance of non-ablative treatments to "advance nurse practitioners, registered professional nurses, physician assistants, and aestheticians" but unnecessarily would require that treatments "are performed under supervision by the physician." Proposed Section 4.3 also provides that "[t]he supervising physician is responsible for the initial review of the patient and for authorizing the treatment plan, and the same is to be recorded in the patient's medical record prior to any initial non-ablative treatment."

Proposed subsection (h) defines "non-ablative treatment" as "a treatment that is not expected or intended to excise, burn, or vaporize the epidermal surface of the skin, including treatments related to laser hair removal." This definition clearly recognizes that these are not invasive procedures.

At RMS, these procedures are performed by Alysia Terry, an aesthetician licensed by the West Virginia Board of Barbers and Cosmetologists as well as the appropriate licensing agencies in California, Florida, New York and Texas. After working for three years in traditional spa

environments, Ms. Terry joined a Texas dermatologist's practice, working with two other aestheticians on staff. She undertook an intensive six-month training program relating to laser hair removal, skin rejuvenation, laser treatments and chemical peels. Since that time, she has worked for three dermatologists and two plastic surgeons in Texas, Florida, New York, and West Virginia. Over the last ten years, she achieved additional certification from five laser companies and has achieved the title of Master Aesthetician as a result of her training and experience.

In Ms. Terry's experience, it is uncommon for physicians to attend the laser trainings in full, partially because physicians generally do not operate non-ablative lasers. Generally, licensed, certified aestheticians perform these laser treatments since their training focuses specifically on the skin. Further, based on Ms. Terry's experience in large metropolitan areas, aestheticians most commonly perform laser procedures.

Ms. Terry has been a licensed, certified Master Aesthetician for fifteen years. It is common for physicians to delegate these services to a properly trained aesthetician, as it is not a prudent use of physicians' time to perform the non-invasive, non-ablative procedures. At RMS, Ms. Terry operates both the Cyneron Elos Radiofrequency Laser and McQue Variable Pulsed Light Laser and clearly possesses sufficient credentials and experience to operate them safely.

When Ms. Terry and her husband returned to West Virginia in 2007, she worked on-site with Dr. Randy Brodnik, a member of the medical staff of Bluefield Regional Medical Center, for eight months at a site adjacent to the hospital, prior to moving into RMS' newly renovated location in Princeton. Although no longer "on site", Dr. Brodnik continues his relationship with Ms. Terry as RMS' Medical Director. Importantly, although Dr. Brodnik neither provides ongoing supervision of Ms. Terry's laser treatments nor conducts an initial review of patients on a regular or routine basis, he has exercised his medical judgment that Ms. Terry has the requisite training and experience to safely perform non-ablative procedures.

Nevertheless, if adopted in its current form, this rule would severely disrupt the operations of RMS, undermine the substantial economic investment that RMS, Dr. Brodnik, and Mr. and Ms. Terry have made in RMS, and curtail the future development of these spas by others.

Additionally, any concern the Board may have that aestheticians conducting these procedures are unqualified is without merit. First, pursuant to 3 CSR 1.10.1, the West Virginia Board of Barbers and Cosmetologists requires 600 hours of training prior to licensing an aesthetician. More importantly, though, manufacturers of laser equipment provide training specific to their equipment and, in fact, require the manufacturers' training certification prior to use of the equipment. For example, RMS operates a Syneron Galaxy DC Laser. Prior to using it, Syneron requires the users of its equipment to participate in two full days -- or sixteen additional hours -- of training on its laser technology. Such training included but was not limited to on-site instruction, review of rules and regulations, demonstrations, and direction of licensed individuals.

Physicians who use lasers must undergo the exact same training to perform these procedures with this equipment, and the proposed definition of "appropriately educated and trained" contemplates training programs for each device. Thus, physicians are not necessarily more or less trained in the use of this laser technology, and the non-invasive treatment is no safer or less painful because a licensed medical doctor, rather than a certified aesthetician, is handling the equipment.

Indeed, it is because they are non-ablative, which by the proposed definition means non-invasive, that these lasers are more safe then using a knife, anesthesia, or otherwise performing an invasive surgical procedure. This is precisely why the demand for these procedures has grown significantly in recent years; technology has made these treatments available through less invasive, more cost effective means. According to a Global Aesthetic Market research report from Medical Insight, Inc., total worldwide sales of aesthetic equipment, which obviously is driven by the demand for these services, will rise by 10.3 % per year from 2007 to 2011. Thus, the Proposed Rule, which will require physicians to perform or supervise these procedures, is not only unnecessary, but it ultimately will drive the costs of these services higher, leading to more limited availability and affordability of these highly-demanded services.

Refuge Medical Spa respectfully requests reconsideration of this Proposed Legislative Rule. Thank you for your assistance. If you have any questions or need additional information of any kind, please do not hesitate to contact me.

Very truly yours,

Jill C. Bentz
Counsel to Refuge Medical Spa

cc: Deborah Rodecker, General Counsel

West Virginia Association of Physician Assistants

June 27, 2008

Mr. Robert Knittle, M.S.
Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

Dear Mr. Knittle,

I am sending you this communication on behalf of the West Virginia Association of Physician Assistants (WVAPA) in response to several proposed Legislative Rules currently under consideration by the Board of Medicine (BOM). As you know, the BOM licenses more than 500 physician assistants (PAs) in this state and the WVAPA very much appreciates the opportunity to comment on the proposals.

After careful consideration, it is the opinion of the WVAPA that the proposed rules could have a significant impact on PAs as licensed health care professionals and their ability to continue to provide high quality health care services to their patients.

In fact, the new rules as proposed could have the unintended consequence of limiting access to care by patients and restricting the professional health care services now available to patients from PAs. It is also appropriate to observe the potential negative impact of the proposed new rules on the professional patient care working relationships by and between supervising physicians and PAs.

For purposes of this communication to the BOM the WVAPA desires to comment on SERIES 10 DEFINITION OF SURGERY & SERIES 1B LICENSURE, DISCIPLINARY AND COMPLAINT PROCEDURES, CONTINUING EDUCATION, PHYSICIAN ASSISTANTS.

Please understand that the submission of this communication to the BOM is in no way intended to limit subsequent communications to the West Virginia Legislative Rule Making Review Committee or the West Virginia Legislature.

The WVAPA deeply appreciates the dedicated service to the medical community provided by the Board of Medicine and its excellent staff. We thank you in advance for your courtesy and consideration of the comments and recommendations expressed in the following pages and again express our commitment to work with you on any unresolved issues.

Respectfully Submitted,

K. M PA-C, MPAS

Kristopher K. Musick, PA-C
WVAPA President
3547 Virginia Avenue
Hurricane, WV 25526

SERIES 10: DEFINITION OF SURGERY

While it is very much appreciated that the BOM is dedicated to the exclusive limitation of the practice of surgery to those who are properly licensed, with a desire to clearly prohibit this practice to those who are not, the proposed new rules as drafted simply is not the appropriate procedure. In fact, the impact of the rules defies a basic dictum of medicine "First Do No Harm" which in essence comes from the *Hippocratic Corpus*. That is because it does harm the current ability of both physicians and PAs licensed by the BOM to provide "surgery" to patients.

There are so many problems with the proposed new rules relating to "surgery" that space and time limit the full exploration in this communication. However, there are a few problems which are extremely significant and should be highlighted.

First, the definition of "supervision" as proposed in new rules 11-10-2 is in direct conflict with the term "supervision" as defined in 11-1B-2.1.f of current rules. This conflict is fatal to the application of the new definition and the applicability of the proposed new "surgery" rules.

For example, one component of the proposed new rules in 11-10-2 *"requires the physician to be physically present on the premises within the office suite, and immediately available at all times"* that the PA may be on duty. This is in direct conflict with the provision of 11-1B-2.1.f in current rules which states *"constant physical presence of the supervising physician . . . . is not required . . . . "* This same new proposal is also conflicted by the applicable provisions in current rules 11-1B-6 in pertinent part reading: *"It does not necessarily require the personal presence of the supervising physician at the place or places where services are rendered . . . . . "*

The proposed new rules for "supervision" also causes additional problems detrimental to the professional services by a PA to patients as found in 11-10-3 and 11-10-4. That is because these two new sections would require the physician to *"be responsible for the initial review of the patient."* This is just not practical in many patient encounters and is in direct conflict with many provisions of the current rules such as 11-1B-3 where the *"the delegation of certain acts to a physician assistant shall be stated on the job description in a manner consistent with sound medical practice and with the protection of the health and safety of the patient in mind"* as determined by the supervising physician and approved by the BOM.

The WVAPA is also concerned about the new rules regarding a proposed new definition of "surgery" It is important to note that the current rules in 11-1B-13 allow a supervising physician to utilize a PA to perform such clinical procedures for *"injuries, hemorrhage, venipuncture, care and suturing for lacerations, and removal of superficial foreign bodies."* It appears that these current specific procedures and many others practiced by PAs as authorized by a supervising physician would be in jeopardy under the new proposed "surgery" rules.

To further reflect the concerns with the drafting and applicability of the new definition of "surgery" is a major flaw in the proposed new rules. While there is a new proposed definition of the term "surgery" as contained in 11-10-2.1.l, at no time is the actual word "surgery" used in the following applicable new sections of the rule. This is very confusing

The WVAPA expended considerable effort to develop alternative language to the proposed "surgery" rules for consideration by the BOM. However, after an exhaustive search of statutory and regulatory applicable provisions in other states, there appears to be insufficient time to construct language that would be a workable solution. For that reason, the WVAPA respectfully requests that the BOM withdraw this proposed new set of "surgery" rules until a collaborative initiative may be undertaken by the BOM in cooperation with the WVAPA, the West Virginia State Medical Association and the West Virginia Academy of Family Physicians.

American Academy of Physician Assistants
950 North Washington Street ■ Alexandria, VA 22314-1552 ■ 703/836-2272 Fax 703/684-1924

June 27, 2008

Mr. Robert C. Knittle, M.S.
Executive Director
West Virginia Board of Medicine
101 Dee Drive Suite 103
Charleston, WV 25311

Dear Mr. Knittle:

The American Academy of Physician Assistants is the national professional society for physician assistants (PAs). In this capacity, the Academy represents over 60,000 physician assistants in the United States. The Academy would like to comment on the West Virginia Board of Medicine (Board) proposed rule entitled, "Definition of Surgery, 11 CSR 10."

- **k. "supervision" means the opportunity and ability of the physician to exercise continuous control and direction over the services of non-physician health care practitioners and requires the physician to be physically present on the premises, within the office suite, and immediately available at all times the non-physician health care provider may be on duty.**

A physician assistant's scope of practice is that of providing medical services with the supervision of a physician. An essential element of providing medical services is a clearly defined level of supervision. AAPA is concerned that the Board's new proposed rules will create a new standard of supervision for physician assistants by mandating that the supervising physician be physically present on the premises, within the office suite, and immediately available at all times when the PA is utilizing lasers and other similar devices.

The statute and rules that govern PA practice in West Virginia require supervision by licensed physicians (M.D.s or D.P.M.s). The physician is required to supervise and assume legal responsibility for the work or training of any PA under his or her supervision. The constant physical presence of the physician is not required so long as so long as the supervising physician and the physician assistant are or can easily be in contact with each other via telecommunication. The relevant rule, §11-1B-2.1, states:

> *f. "Supervision" means the opportunity or ability of the physician to provide or exercise control and direction over the services of physician assistants. Constant physical presence of the supervising physician of a physician assistant certified by the NCCPA is not required so long as the supervising physician and the physician assistant are or can easily be in contact with each*

other by radio, telephone or telecommunication. Supervision requires the availability of the supervising physician. An appropriate degree of supervision includes:

1. The active and continuing overview of the physician assistant's activities to determine that the supervising physician's directions are being implemented;
2. The availability of the supervising physician to the physician assistant for all necessary consultations;
3. Personal and regular (at least monthly) review by the supervising physician of selected patient records upon which entries are made by the physician assistant. The supervising physician shall select patient records for review on the basis of written criteria established by the supervising physician and the physician assistant and shall be of sufficient number to assure adequate review of the physician assistant's scope of practice, and;
4. Periodic (at least monthly) education and review sessions discussing specific conditions, protocols, procedures and specific patients, held by the supervising physician for the physician assistant under his or her supervision.

These rules clearly require physician supervision of PA practice.

The physician assistant profession is enduringly committed to the tenet that PAs practice with physician supervision. To quote from Academy Policy:

The AAPA believes that the physician-PA team relationship is fundamental to the PA profession and enhances the delivery of high quality health care. As the structure of the health care system changes, it is critical that his essential relationship be preserved and strengthened.[1]

The PA profession has not sought nor promoted independent practice by PAs. Physician assistants are licensed to practice in all fifty states, the District of Columbia, several U.S. territories, and are authorized to practice by federal employers (i.e., the Department of Defense, Department of Veterans Affairs, and the Public Health Service). In all of these jurisdictions practice with physician supervision is required.

The AAPA readily acknowledges that the utilization of lasers and related technology by non-physicians requires supervision by a supervising physician. We would hold that these safeguards **are already required by law for physician assistants.** Any practice by a physician assistant requires that a supervising physician delegate, supervise, and take responsibility for care provided by a physician assistant.

If the proposed rules are adopted, we fear they will add an element of undue rigidity to the health care delivery system. The current rules allow the physician greater flexibility to organize their own practice based on the education, skill, and experience of the physician assistant, the acuity of patients seen in the setting, and the physician's preferences.

---

[1] American Academy of Physician Assistants 2007-2008 Policy Manual. Alexandria, VA.

We are also concerned about the proposed definition of the term "surgery." It appears that its intent is to clarify that only trained persons should be authorized to perform tasks included in the definition. While we would agree that this should be the case, as currently written the rule could have the effect of prohibiting physician assistants from performing tasks routine to PA practice such as suturing, incision and draining of abscesses, and removal of superficial foreign bodies.

The Academy requests that the Board not promulgate this rule as written and instead reconsider the intent of the proposed regulation. At an absolute minimum, the Academy respectfully asks that the proposed rule for 11 CSR 10 be amended to exclude physician assistants as defined in the West Virginia Medical Practice Act, W. Va. Code § 30-3-16(a)(3) from the proposed supervision requirement when PAs perform ablative and non-ablative treatments with the use of lasers and other similar devices. We believe that this option would accomplish the Board's goals without placing unnecessary restrictions on providers or potentially decreasing access to care for patients. The utilization of lasers and related technology is covered by delegation and supervision requirements already in West Virginia law and rules.

If an amendment to this proposed rule were to be considered, it could use the following language:

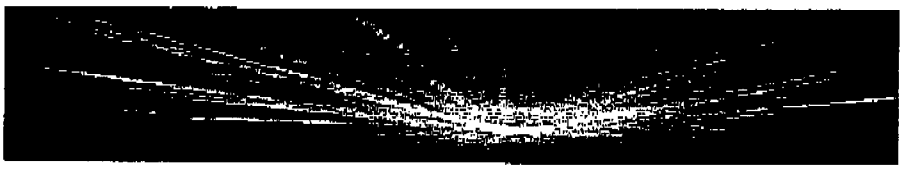
- **k. "supervision" means the opportunity and ability of the physician to exercise continuous control and direction over the services of non-physician health care practitioners and requires the physician to be physically present on the premises, within the office suite, and immediately available at all times the non-physician health care provider may be on duty. For the purposes of this series, "non-physician" does not include physician assistants. Physician assistants must comply with the physician supervision requirements as described in the West Virginia Medical Practice Act, W. Va. Code §30-3-16 and Legislative Rule, West Virginia Board of Medicine, 11 CSR 1B *et seq.***

The Academy appreciates the opportunity to address the Board on this important issue.

Sincerely,

Ann Davis, PA-C

Ann Davis, PA-C
Director of State Government Affairs



MANUFACTURERS OF EQUIPMENT FOR LIGHT-BASED AESTHETICS

Providing an Industry Perspective on Light-based Equipment Regulation

June 27, 2008

VIA FACSIMILE

Robert C. Knittle
Executive Director
101 Dee Drive, Suite 103
Charleston, West Virginia 25311

Re: Opposition to Proposed W. Va. Code R. § 11-10-1 *et seq.*

Dear Director Knittle:

The Manufacturers of Equipment for Light-based Aesthetics ("MELA") respectfully submit this letter in opposition to the proposed rule that would add W. Va. Code R. § 11-10-1 *et seq.* (the "Proposed Rule"). MELA is a trade association of manufacturers of laser and intense pulsed light systems for aesthetic skin care services whose mission is to provide information, education, and industry views on the safe and appropriate use of such devices.

Since the mid-1990s, cosmetic procedures, including hair removal, have undergone a revolution, with new light-based, non-invasive technologies dramatically expanding the range of available options to consumers and enhancing the safety of such services. Non-invasive, light-based aesthetic procedures include both laser and high powered lamp sources, which are targeted to improve appearance while minimizing any damage to surrounding skin. It is currently estimated that consumers spend several billion dollars per year on cosmetic light-based procedures in the United States. Consumers often seek these services to improve their self-image and self-esteem.

Further establishing the advances in the safety of these procedures and the available products, FDA has cleared for marketing light-based hair removal products that are marketed over-the-counter for home use by the consumer. FDA is the lead authority on the safety of this technology and the available products, and has made a determination that even untrained consumers are capable of safely operating available technology for hair removal in their homes.

The Proposed Rule would amend the West Virginia Board of Medicine's rules by adding Section 10, which would make the use of lasers, pulsed light, and radiofrequency devices in the diagnosis or therapeutic treatment of conditions or disease processes the practice of medicine. Under the Proposed Rule, physicians would be permitted to delegate the use of these devices for non-ablative treatments and procedures, including hair removal, to advanced nurse practitioners,

registered professional nurses, physician assistants, and aestheticians, but only under the "supervision" of the physician after the physician conducts an initial patient examination.

First, the Proposed Rule incorrectly designates procedures, such as laser hair removal, which do not meet the statutory definition of "practice of medicine," as the practice of medicine. Procedures such as laser hair removal are unquestionably not the "practice of medicine" under West Virginia law as these procedures do not entail the "diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition." W. Va. Code § 30-3-4(3). Hair growth is a normal function of the body that some people wish to have altered for purely cosmetic, not medical, purposes. Because the Proposed Rule as written seeks to regulate hair removal, the Proposed Rule exceeds the statutory authority delegated to the West Virginia Board of Medicine. The Proposed Rule must therefore be amended to exempt non-ablative light-based cosmetic procedures such as hair removal.

It should be noted that the Proposed Rule is far more restrictive than the Board of Medicine's (Board's) July 2007 policy statement, which adopted an American College of Surgeons (ACS) April 2007 statement word for word. Whereas the Board's and ACS policy statements both limit surgery to instruments "causing localized alteration or transposition of live human tissue" and do not include hair removal procedures (hair is made of dead cells), the Proposed Rule would define non-ablative treatments to include hair removal and deem it to be surgery.

Even if the Proposed Rule were legal, MELA opposes the Proposed Rule because its overly restrictive requirements will unfairly cause significant financial harm to consumers and providers of non-ablative aesthetic skin care services, without improving safety. As an example, section 11-10-4.1 of the Proposed Rule, combined with the definition of the term "supervision" in section 11-10-2.1(k), requires that a delegating physician be "on the premises" and "immediately available" when a nurse, physician assistant, or aesthetician performs a non-ablative light-based aesthetic procedure. In addition, section 11-10-4.3 of the Proposed Rule would require a delegating physician to conduct an initial patient review and to authorize the treatment plan prior to a non-physician health care provider performing a non-ablative light-based aesthetic procedure. The very few adverse effects that do occur with such procedures are most frequently minor and transient and would not be prevented by having a physician on-site, or by having a physician evaluation. A burn is an acute event. It happens too quickly for physician consultation or supervision to stop it. The goal should be to prevent burns outright, and that is achieved through appropriate training of all professionals who perform non-ablative procedures, physicians included. Therefore, with respect to non-ablative procedures, the Proposed Rule will not increase safety, but will significantly impact providers of non-ablative aesthetic skin care services because of the very limited numbers of available physicians and will significantly increase costs to the consumers who wish to receive these treatments. The number of physicians available to supervise both ablative and non-ablative procedures would be further limited by the Proposed Rule's requirement that supervising physicians be certified in an "appropriate surgical specialty" by a member board of the American Board of Medical Specialties (ABMS).

MELA believes that proper training of all users of the devices is the key to ensuring the safety of consumers of such services. Appropriate training should include laser physics, hair and skin biology, hair growth cycles, laser safety, client care, laser maintenance, hands-on training, and handling complications. MELA believes that a properly trained professional provides the greatest assurance of protection for the safety of consumers of aesthetic skin care services and that examination by a physician prior to a non-invasive cosmetic procedure does not provide a meaningful benefit to consumers. The American Society for Laser Medicine and Surgery has initiated a process in which professional associations and device manufactures are working together to standardize existing training courses for those who perform light-based cosmetic procedures.

The Proposed Rule suggests highly restrictive regulations that would fundamentally alter market forces for cosmetic procedures and adversely affect West Virginia businesses, including businesses that have invested in the purchase of laser or light-based devices to provide cosmetic services. Many of these businesses and related jobs will be eliminated if supervision by physicians is imposed on them. Moreover, requiring immediate supervision by such highly paid professionals will increase the costs and limit access of consumers to these safe cosmetic procedures. As a result consumers may resort to more invasive procedures. Damaging valuable state businesses, driving up costs for consumers, and radically overhauling the current regulatory regime are unwarranted when there is no demonstrated public health basis for such action.

In sum, the Proposed Rule as written exceeds the authority that has been delegated to the West Virginia Board of Medicine. Even if the Proposed Rule were within the authority of the Board, there has been no information presented that indicates, let alone demonstrates, that the current regulatory regime in West Virginia is inadequate to ensure the safe and effective use of lasers and other light-based devices for non-ablative cosmetic procedures. Further, MELA is aware of no data which suggest requiring direct supervision by physicians would improve the already excellent safety record for these procedures. Consequently, the Proposed Rule would result in an unjustified, radical, and costly overhaul of professional regulation of cosmetic procedures in West Virginia. In either case, significant revisions to the rule are required.

* * * * * *

We appreciate this opportunity to provide you with this further information regarding the likely impact of the Proposed Rule. Should you have any questions regarding the issues raised in this letter, we encourage you to contact us at (202) 737-4289.

Sincerely yours,

A. Wes Siegner, Jr.
President

Cc: West Virginia Board of Examiners for Registered Professional Nurses

AWS/BFP/jlb
5475.001

Sandra E. Swisher
2712 Fairview Ave.
Parkersburg, WV 26104

WV Board of Medicine
101 Dee Drive Suite 103
Charleston, WV 25331

Dear Sirs:

This letter is to express my opposition to the proposed changes in the Definition of Surgery.

I am a Family Nurse Practitioner working for Ritchie County Primary Care. As a Federally Qualified Health Center we accept any and all patients who request our services. Caring for the uninsured and working in rural areas of health care professionals shortages such as ours is a role that Advanced Practice Nurses fulfill very well. Much of the time we are the only clinician on site.

Changing the definition of surgery will severely limit our patient's ability to receive care. Nurse Practitioners are very capable of suturing simple wounds and destructing or removing simple lesions. We are highly educated and have the ability of deciding what we are capable or not capable of doing. It is not possible in our geographic area for patients to always receive these services from a physician.

The proposal will limit the nurse practitioners practice and limit the patient's access to care. It will also add to the workload of physicians particularly in the rural areas of WV where clinicians are in need and many NP's fulfill.

Respectfully,

Sandra E. Swisher APN, BC

From: "Michael Stitely" <mstitely@hsc.wvu.edu>
To: <bobknittle@wvdhhr.org>
Date: 6/12/2008 1:33:13 PM
Subject: Proposed revision to Title 11 series 10-definition of surgery

Bob,

Some of our advanced practice nurses (certified nurse midwives, Registered nurse practitioner) have expressed concern over the proposed changes to the definition of surgery Title 11 series 10. I share that concern as a practicing OB/GYN physician.

I just wanted to be sure that any revisions do not restrict the advanced practice nurses (APN) from being able to provide appropriate outpatient primary care procedures such as endometrial biopsy, vulvar, vaginal, or cervical biopsies, or office therapeutic procedures such as LEEP and cryotherapy of the cervix (provided these APNs have the prerequisite training).

My concern is that some of the appropriate, safe care that is being provided currently by APNs may become restricted if this definition of surgery is not very carefully delineated. Such restrictions could cause a loss of access to care for patients in the rural setting. Due to the existing shortage of providers, I see a number of patients who travel long distances for what I consider to be routine obstetric and gynecologic care (endometrial biopsies, IUD insertion, routine prenatal care). The cost of gasoline is making it more difficult for these patients to travel to receive care. I fear that a further reduction in the availability of services such as PAP, colposcopy and biopsy, endometrial biopsy, IUD insertion, vulvar/vaginal biopsy, LEEP and cryotherapy procedures for the cervix may occur if careful attention is not paid to the intent and the wording of the proposed changes to the definition of surgery. These services are presently being safely and properly provided by a number of APNs in our state.

I thank you for taking the time to allow me to address my concerns.

Mike Stitely, MD

Michael L. Stitely, MD
Associate Professor and Vice Chairman for Clinical Services
Medical Student Clerkship Director
Department of Obstetrics and Gynecology
West Virginia University School of Medicine
Morgantown, WV
Telephone (304) 293-1566
Fax (304) 293-5709
E-mail: MStitely@hsc.wvu.edu

DONLEY W. HUTSON, RPH
319 THIRD STREET
NUTTER FORT, WV 26301

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle;

As a member of the Board of Directors of Health Access, Incorporated, the Free Clinic in Clarksburg, WV I am writing to oppose the proposed rule titled "Definition of Surgery". Many procedures that would fall under the definitions of surgery in this proposed rule are currently standard practice for Nurse Practitioners in Primary Care Clinics (including Free Clinics).

For the past fifteen years, Nurse Practitioners at Health Access, Incorporated have provided excellent care to thousands of patients. There is not always a physician in attendance, so this proposed rule would, in essence, severely curtail our ability to treat our patients, or possibly cause our clinic to close. Uninsured low-income patients that receive primary care at Health Access, Incorporated would have no access to care in Harrison or Doddridge County without this clinic. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would skyrocket at United Hospital Center. We believe that this proposed rule not only creates an expensive barrier to health care access to a large population of uninsured adults in our area, but I think it is poorly conceived and not well thought out as to its negative ramifications to free clinics.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition of Surgery". I base this opinion upon my experience as a member of the Board of Directors of Health Access, Incorporated and as a citizen of rural part of West Virginia.

Sincerely,

D. W. Hutson, R.Ph.
Member, Board of Directors
Health Access, Incorporated

WEST VIRGINIA SCHOOL OF OSTEOPATHIC MEDICINE
ROBERT C. BYRD CLINIC
400 North Jefferson Street, Lewisburg, West Virginia 24901 (304) 645-3220 Fax (304) 645-4103

June 10, 2008

Robert C. Knittle, M.S. Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle:

As a health care administrator in rural West Virginia, I write to oppose the proposed rule "Definition Of Surgery". Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PA's in our emergency department and local primary care clinics. These procedures are standard for nurse practitioners across the country and are included in national standards of primary care practice.

I can find no data supporting claims that nurse practitioners and PA's provide inadequate or sub-standard care. Nurse practitioners in local facilities provide excellent care and allow physicians to attend to patients who truly require their expertise. In fact, nurse practitioners perform much of the time-consuming suturing in the emergency department. To prohibit nurse practitioners and PA's from suturing and performing other procedures that you have defined as "surgery" will reduce the number of patients we can care for and prevent our facility from providing service at its present level.

In addition to the emergency department, nurse practitioners and physician assistants are often the only providers present in rural primary care facilities in my area. These clinics and many physician's offices would not be able to provide the same level of service to the public if the proposed rule were to prevail—it would severely restrict health care access, increase health care costs to hospitals, clinics, and physicians, and endanger lives.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery". I base this opinion upon my experience as a health care administrator, on my knowledge of current practice patterns, established national standards of practice, ethical imperatives of the healing professions, and the health care needs of West Virginia citizens.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Michael J. Painter
Administrator

June 10, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a member of the Board of Directors of Mercer Health Right clinic and as a volunteer physician at the clinic for the past 9 years, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in primary care clinics.

For the past 18 years, nurse practitioners at Mercer Health Right have provides excellent care to thousands of patients. There is seldom a physician in attendance, so your proposed rule would, in essence, close a facility that has saved many lives. Indigent patients who now receive care at Mercer Health Right would have no access to primary care in our community. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would increase the financial burden to the community and add to the already enormous emergency department population. Thus, the proposed rule not only creates an expensive barrier to health care access, but it is unethical at its very core.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon my experience as a physician working alongside nurse practitioners and as a long-time member of the Board of Directors of Mercer Health Right clinic and as a citizen or rural West Virginia.

I also disagree completely with the Board of Medicine's opposition to the new nursing rule changes that would allow nurse practitioners more authority in writing prescriptions. I have found the NP's to be knowledgable, professional, and careful in their use of this priviledge. I believe that their authority should be expanded as in their proposed

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Mary Louise Kistner MD

Mary Louise Kistner, MD
Volunteer Physician
Member, Board of Directors

June 13,2008
Board of Medicine

Dear Members

Did you know.....

That the proposed new rule that defines the practice of medicine and surgery has the potential of eliminating the role of advanced practice nurses. It would make it illegal For any advance practice nurse to suture wounds, order injections, remove skin lesions, and do history and physicals.

That the physician must be in attendance throughout performance of a procedure by non physician health care providers. This proposed rule change would make it illegal for any one other than physicians to conduct all procedures.

I agree on the need for change, but the change should be forward and progressive not backward. When you weigh the Risks and burdens of a fragile health care system with limited resources ,at some point you have to utilize available health care resources to meet the ever-increasing demands for care not restrict it. Advanced Practiced Nurses are a readily available resource and as research data has shown are very capable of assisting Physicians in a variety of roles to meet the health care systems needs.

Nurses have worked with Physicians in a variety of roles for decades and have been a vital link in providing health care to the ill. What can we do to make this a win win situation and utilize the resources that are available ?

Sincerely Yours

Wayne McDowell FNP- BC

RIVER VALLEY HEALTH & WELLNESS CENTER

Facsimile Cover Page

Date: 6-11-08 Time: 11:20 # of pages (incl. Cover): 2

Recipient Information

To: Board of Medicine

Attention:

Fax Number: 304-558-2084

Sender Information

From: River Valley Health & Wellness Center * P.O. Box 157 * Ravenswood, WV 25164

Telephone: 304-273-1033 Fax: 304-273-1034

Name of our staff sending facsimile Deborah Casdorph FNP

Message: Re: Prescriptive Privileges Surgical Procedures

Notice: Confidential Protected Health Information Enclosed

Protected Health Information (PHI) is personal and sensitive information related to a person's health care. It is being faxed to you after appropriate authorization from the patient or under circumstances that do not require patient authorization. As the recipient of this PHI, we ask that you use or maintain it in a safe, secure and confidential manner. Re-disclosure without additional patient consent or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality may be subject to federal and/or state law limitations and restrictions, including penalties for any such unauthorized use or disclosure.

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Deborah Casdorph

From: "Deborah Casdorph" <deborahcasdorph@msn.com>
To: <deborahrodecker@wvdhr.org>
Cc: <dgreynolds2505@yahoo.com>
Sent: Tuesday, June 10, 2008 9:55 PM
Subject: Prescriptive privileges/surgical procedures for APNs

I am a Master's prepared Family Nurse Practitioner who recently moved back to my home state of WV after practicing in Idaho where my husband is from. I had my own practice for 15 years in ID with over 3800 patients and had a wonderful collaborative working relationship with specialists as well as Family Practice Physicians in surrounding counties. APNs in ID have the same prescriptive privileges as physicians and there are many states in the US with similar privileges. I can tell you from experience, we practice safely and within our scope.

When I moved back to WV, I was appalled and disappointed that APNs in this state have as many restrictions as they have on their ability to totally care for their patients. Not only is WV in dire need of health care providers, but the people of this state deserve to not have to make appointments with 2-3 different providers in order to get help with pain management, mental health problems, and minor surgical procedures. Some can hardly afford one office visit.

We need to be able to prescribe Schedule II through V medications as we are very cautious in the use of these meds and have been educated to make decisions involving the use of these meds. Many clinics do not have physicians on site or only have one there 1-2 days a week. We NPs must make adjustments to coumadin and refill many narcotics and other meds we cannot order in our own names. I know, due to the shortage of physicians everywhere, this is the only way to keep patients on track and meet their medical needs. Some schools will not let children attend if their ADD meds are not refilled. I cannot understand why we are able to make these decisions under a physician's name and not our own.

Regarding the proposed limits to surgical procedures, I am understanding this as the BOM's intent to restrict these procedures to be done only if a physician oversees them. How is this going to work when there are so many situations which arise and so few physicians? We have been trained to practice minor surgical procedures that are within our scope of practice. I see an average of 25 patients a day. I am overwhelmed with the Board's proposed restrictions on APNs.

I believe there is a misconception with physicians feeling they will be "sued" or accountable for our actions. We as APNs are accountable for our own actions and answer to the Board of Nursing not the Board of Medicine. The Board of Nursing should independently be able to make changes to our Practice Act according to our education and certification levels.

WV already has a reputation of being behind the times and backward. Let us move forward and make positive changes that will allow the good people of this state to receive the best medical care from professionals who work together to deliver this care. I am going to work with my colleagues to ensure that legislators in this state understand what APNs are contributing to health care. I ask that members of the Board of Medicine support us and not introduce these proposed changes.

Sincerely,

Deborah Casdorph MSN,FNP-C

From: "laurarhodes" <lrhodes@state.wv.us>
To: <edurant@hsc.wvu.edu>
Date: 6/11/2008 12:24:30 PM
Subject: Re: Change in def of surgery

Dear Ms. Durant,

I am forwarding a copy of your message to the Executive Director for the Board of Medicine as it appears you are commenting on the Board of Medicine's proposed rule related to the definition of surgery.

I you have any questions please contact me at this e-mail address.

Thank you
Laura Rhodes
Executive Director
----- Original Message -----
From: "Cyndy Haynes" <chaynes@state.wv.us>
To: "Laura S. Rhodes" <lrhodes@state.wv.us>
Sent: Wednesday, June 11, 2008 12:01 PM
Subject: Fw: Change in def of surgery

>
> ----- Original Message -----
> From: "RNBoard" <rnboard@state.wv.us>
> To: "Cyndy Haynes" <chaynes@state.wv.us>
> Sent: Wednesday, June 11, 2008 11:45 AM
> Subject: FW: Change in def of surgery
>
>
> >
> >
> > -----Original Message-----
> > From: Elizabeth Durant [mailto:edurant@hsc.wvu.edu]
> > Sent: Wednesday, June 11, 2008 10:45 AM
> > To: rnboard@state.wv.us; dgreynolds2505@yahoo.com
> > Cc: Sandra Cotton; Elizabeth Baldwin
> > Subject: Change in def of surgery
> > >
> > >
> > > Dear Sir,
> > > If this vote comes about in favor of narrowing the scope of
practice
> > for APNs , Many of my patients, in the free clinic, will suffer an undue
> > hardship. They have restricted and limited visit access to the
university
> 's
> > health services now. Procedures as HPV cryotherapy, endometrial
biopsies,
> > IUD insertion etc. will be either be cost prohibitive or they will not
be
> > allowed access to care. What alternative can I offer? In my private
> clinic,

> > I frequently get the over flow or appointments that are delayed by two
> > months or more due to high volume. These patients will be inconvenienced
> and
> > charged for a second visit if I have to reschedule them with a physician
> for
> > simple office procedures.
> > With regard to the Title doctor, Many have worked very hard to earn
> > that title in many walks of life. I am very clear about my role as a
nurse
> > and how if differs from medicine. I make that clear to patient's, at
each
> > visit. Also, if medical care instead of nursing care is required then I
> will
> > refer them to a PHYSICIAN. I refer to 'doctors' by their proper working
> > title, physician, so no one is confused. My professors at every
university
> I
> > have attended were called Doctor by virtue and out of respect to them
for
> > their level of education. Yet a Doctor of English's working title would
be
> > professor like my working title is midwife or nurse and a M.D.'s working
> > title is physician. I agree Role clarity is important but to restrict
care
> > or add to patient burden because of a title dispute does not seem to be
in
> > everyone's best interest.
> >
> > Thank you
> >
> > Mary Elizabeth DuRant
> >
> > Mary Elizabeth DuRant, MSN, WHNP, CNM
> > Clinical Assistant Professor
> > Health Promotion/Risk Reduction Department
> > School of Nursing,
> > West Virginia University
> > PO Box 9630
> > Morgantown, WV 26506
> > 304-293-1391
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>
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CC: "Robert Knittle" <bobknittle@wvdhhr.org>

June 9, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a nurse practitioner at Robert C. Byrd Clinic, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in primary care clinics.

For 18 years, I have practiced as a nurse practitioner in rural, isolated clinic. I have cared for people of West Virginia that would not have had health care if I, or another midlevel provider was not in the clinic. Often, in satellite clinics, we are the sole provider. We have provided excellent care and worked with physicians to promote an environment of excellent care in rural and less rural areas.

This proposed rule would be disastrous for multiple people in West Virginia. As a fellow in the National Rural Health Association, we work to extend care in rural areas nationally that is not provided. To remove care that is provided puts West Virginia further behind in achieving better health for our population.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery" based on 32 years of experience in rural areas and 17 years as a nurse practitioner in our state.

Sincerely,

Jill Cochran RN. CFNP

Jill Cochran, RN-BC, FNP

209 East Grandview Addition
Princeton, West Virginia 24740
June 10, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

I write as an ethicist, educator, and clinician in opposition to the proposed rule "Definition of Surgery." The proposed rule threatens the health and welfare of the citizens of West Virginia through elimination of vital services—services provided at a high level by nurse practitioners for nearly half a century. Many procedures that fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners. The proposed rule will make it illegal for an advanced practice nurse to suture wounds, administer local anesthetics, remove benign skin lesions, and many other procedures included in nurse practitioner educational programs. In addition, as I am sure you are aware, since the proposed rule defines the practice of medicine and surgery as the "diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition," it threatens the very existence of the profession of nurse practitioner. By doing so, it also increases the burden on already overworked physicians and compounds their malpractice risk. It leaves injured patients bleeding and in pain as they await transport to facilities staffed by physicians. Ridiculous!

Nurse practitioner educational programs began in the mid-1960s in response to a vital shortage of primary care providers. This shortage continues in West Virginia, even today. Hundreds of nurse practitioners currently serve as primary care providers in clinics, hospitals, and private offices, caring for thousands of West Virginians. Often no physician colleagues are available on site—sometimes no physicians are willing to live or work in these locations. Adequate health care in these areas depends upon nurse practitioners. Affected clinics, emergency rooms, and physician's offices would fail to provide the same level of service if the proposed rule were to prevail—it would severely restrict health care access, increase health care costs to hospitals, clinics, and physicians, and endanger lives. Since it is the moral imperative of both nursing and medicine to provide necessary health care services to society, prohibiting nurse practitioner practice is immoral. It is shameful that the West Virginia Board of Medicine has taken this abhorrent step back in time.

We hear the claim from members of the West Virginia Board of Medicine that nurse practitioners have inadequate training and the care they provide is substandard. Nothing could be further from the truth. Nurse practitioners have no less than six years of formal undergraduate and graduate academic education in their discipline. Numerous published

research studies have shown that patients treated by nurse practitioners have very favorable outcomes. Some studies even suggest that outcomes for certain conditions are better when patients receive care from nurse practitioners rather than physicians. No formal evidence indicates that nurse practitioners provide inferior or substandard care. The small percentage of malpractice claims against nurse practitioners supports this fact. Therefore, it is clear that the West Virginia Board of Medicine proposes a rule with no rational foundation.

The move to restrict nurse practitioner practice is out of step with the rest of the nation. Nurse practitioners increasingly fill in the health care gaps in all U.S states and around the world. In fact, the Governor in neighboring Pennsylvania in 2007 created a progressive program to improve health care access in his state by supporting nurse practitioner practice and expanding their independent role. It is just another embarrassment that our state's medical leadership is out of step with the times and blind to the needs of our citizens as they attempt to protect their turf.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon current practice patterns, established national standards of practice, ethical imperatives of the healing professions, and the health care needs of West Virginia citizens.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Alvita Nathaniel

Alvita Nathaniel, PhD, FNP-BC

cc: Governor Joe Manchin, III
Secretary, Martha Walker
Laura Skidmore Rhodes, MSN, RN
Joseph Letnauchyn
Louise Reese
Leah Heimbach, JD, RN, EMT-P
Jan Towers, PhD

West Virginia University
SCHOOL OF NURSING

June 6, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As Dean of the West Virginia University School of Nursing, I am writing to oppose the proposed rule "Definition Of Surgery." It is the goal of the West Virginia University School of Nursing to prepare advanced practice nurses who will improve and protect the health of people in West Virginia. As Dean, it is my responsibility to know nationally established standards of practice and contemporary practice patterns in order to oversee the curriculum and instruction of students in the advance practice programs. Therefore, I believe I am uniquely prepared to comment on the appropriateness and timeliness of the proposed rule.

The first nurse practitioner educational program began in 1967 in response to a growing need for primary care providers in rural areas. Since the 1960s, the profession has grown and University based, formal masters level educational programs have become standardized. Nurse practitioners have been providing primary care for over 40 years. There is a growing body of evidence describing and evaluating nurse practitioner practice patterns and health outcomes of their patients. Studies show that nurse practitioner outcomes are at least equivalent to those of physicians. There is no data supporting claims that nurse practitioners provide inadequate or sub-standard care.

Many minor procedures that would fall under the definition of surgery in your proposed rules are standard practice for nurse practitioners. These procedures are standard for nurse practitioners across the country and are included in national standards of primary care practice. Primary care nurse practitioner textbooks include a multitude of procedures that would be prohibited by the proposed rule.

I base my opposition to this proposed rule on our shared moral imperative to improve and protect the health of citizens. Nurse practitioners and physician assistants are often the only providers present in rural primary care facilities. On occasion, nurse practitioners or physician assistants may be the only professional staff present in small rural hospital emergency departments. Many other emergency departments and physicians across the state employ nurse practitioners, who perform these types of procedures. Affected clinics, emergency rooms, and physician's offices would not be able to provide the same level of service to the public if the proposed rule were to prevail—it would severely restrict health care access, increase health care costs to hospitals, clinics, and physicians, and endanger lives.

Office of the Dean
6700 Health Sciences South
PO Box 9600
Morgantown, WV 26506-9600
Phone: 304-293-4831
Fax: 304-293-6826

WestVirginiaUniversity
SCHOOL OF NURSING

Therefore, I must oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon current practice patterns, established national standards of practice, ethical imperatives of the healing professions, and the health care needs of West Virginia Citizens. There is no evidence that a Nurse Practitioner in West Virginia has harmed a patient under the current scope of practice related to the areas covered in the proposed rule.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Georgia L. Narsavage

Georgia Narsavage, PhD, ANP-BC, FAAN
Dean and Professor

Office of the Dean
6700 Health Sciences South
PO Box 9600
Morgantown, WV 26506-9600
Phone: 304-293-4831
Fax: 304-293-6826

WEST VIRGINIA
WESLEYAN COLLEGE

June 5, 2008

Board of Medicine
101 Dee Drive Drive 3
Charleston, WV 25311

To Whom It May Concern:

As a registered professional nurse and educator, as well as a consumer of health care, I am distressed at the definition of surgery proposed by the Board of Medicine. In this time of health care crisis and the need for more health care providers of all types in the most rural areas of our state, it is very strange that your Board would want to tie the hands of the mid-level provider.

As you are undoubtedly aware, nurse practitioners and nurse midwives are prepared at the baccalaureate level and have a master's of science degree with many hours of clinical practice prior to sitting for their certification examinations. They are a group of intelligent and highly qualified people who are committed to serving the health care needs of our rural state. Physician Assistants are also highly trained individuals who are excellent providers of health care. Their role is to provide basic care to our people, and to do so, they need more resources and tools, not less.

As you define surgery, perhaps the nurse midwife could not repair a perineal laceration, or cut an episiotomy and repair the perineum. A PA, or NP could not remove a wart or mole, inject lidocaine and repair a simple laceration. Do the physicians really want to be called in to repair those common injuries, or take care of those common problems? I think that your definition is far too narrow. This proposed rule change would make it illegal for anyone, other than a physician, to conduct almost any procedure. "The physician must be in attendance in the room throughout the performance of the procedure by a non-physician health care provider". This statement will set all health care providers up for lawsuits as some physicians will delegate the procedure and leave. Most physicians are very pleased with the PA', CNM's and NP's with whom they work. I would imagine that they would not want to decrease their colleagues' abilities to perform vital tasks.

I am not sure of the motivation of the Board in proposing this change. I believe it has to do more with "turf" and less with protecting and promoting the health of West Virginians. There is room for everyone to practice according to their education and scope of practice.

Very Sincerely Yours,

Shauna Lively Aurelio Popson

Shauna Lively Aurelio Popson, RN, EdD
Associate Professor
West Virginia Wesleyan College
Buckhannon, WV 26201

The Senate of West Virginia
Charleston

C. RANDY WHITE
212 River Drive
Webster Springs 26288
Res. (304) 847-7489
Bus. (304) 847-5305

COMMITTEES:
Education
Enrolled Bills
(Chair)
Government Organization
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Natural Resources
(Vice Chair)
Transportation and
Infrastructure

June 10, 2008

Robert Knittle, Executive Director
WV Board of Medicine
101 Dee Drive, Suite103
Charleston, WV 25311

Dear Mr. Knittle,

I am responding to a number of constituent's concerns regarding the Board of Medicine proposing new rules which has the potential of eliminating the role of advanced practice nurse. I am adamantly opposed to this possibility.

The proposed rule would make it illegal for any advanced practice nurse to suture wounds, order injections, remove skin lesions, etc. If anything, the Board of Medicine should be expanding the roles of advanced practice nurse. They provide a valuable tool in health care for all West Virginians.

Another inquiry I have is the attempt by the Board to again make it a felony for anyone practicing medicine to use the title Doctor. This would deny those persons who have obtained from academia the title of Doctor of Nursing Practice or a PhD. This again is a proposal without merit or necessary.

I would appreciate a response to this inquiry and concern.

With all good hope, I am

Sincerely yours,

C. Randy White
WV Senate

CRW:me

From: <dpeasak2@ma.rr.com>
To: <dgreynolds2505@yahoo.com>, <jminard@mail.wvnet.edu>, <bbrown1@mail.wvnet.edu>, <wvsos@wvsos.com>
Date: 6/18/2008 2:34:36 PM
Subject: WV BON and WV BOM Proposed Rule Changes

June 17, 2008

To: West Virginia Board of Medicine

Attention: John Wade, M.D.

Dr. Wade:

This letter is in reference to recent proposed rule changes submitted by the West Virginia Board of Medicine regarding changing the "Definition of Surgery" and the West Virginia Board for Registered Professional Nurses "Prescriptive Authority Rule Changes".

I, as well as several of my colleagues, am concerned and more so opposed to the proposed change to the "Definition of Surgery". This change will in fact be detrimental to all Nurse Practitioners and Physician Assistants Practicing in West Virginia. This law has the potential to eliminate the role of all Mid-level Providers. It certainly has the potential to make it illegal for any Advanced Practice Nurse to suture wounds, order injections, and remove skin lesions and so on. The proposed rule defines the practice of medicine and surgery as, "the diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition". Further the rule requires the nurse to be closely supervised by the physician. "The physician must be in attendance in the room throughout the performance of the procedure by a non-physician healthcare provider." This rule change goes on to essentially make it illegal for anyone, other than a physician, to conduct almost any procedure. This will void years and years of collaborative work between the disciplines of medicine and most importantly adversely affect the health and well being of all West Virginians.

In reference to the West Virginia Board for Registered Professional Nurses "Prescriptive Authority Rule Changes". There are very subtle changes to this rule, where most of the states in this country have nearly eliminated any restrictions on practice. Many insurances provide cheaper prescriptive coverage for 3-month supplies of medications for chronic conditions which is clearly to the advantage of the patient. There was also concern expressed regarding a very slight expansion on prescribing of controlled substances in which there has been no evidence supporting the idea that this would increase the abuse of prescription drugs in West Virginia as other states can attest to. Please feel free to review many of the other state laws and you may find yourself quite surprised.

Mid-Level Providers (MLPs), including both Nurse Practitioners and Physician Assistants, play a key role in the delivery of quality healthcare across West Virginia. In rural areas, MLPs serve as sole primary care providers to individuals who would otherwise be without healthcare services or who would have to travel miles and miles to receive these healthcare services which they are receiving in their own community.

As I mentioned the importance of the MLPs existence in rural areas, an equally important role is provided in the more urban or near-urban areas in our state as well. MLPs have been in existence for years, working in the majority of the emergency departments, local family physicians offices, and specialty areas such as psychiatry, surgery, and pediatrics across the State of West Virginia as well as the United States.

MLPs are in no way attempting to replace the physician, but work in a collaborative fashion to continue to provide quality and effective preventative medicine and healthcare to the people of West Virginia. In May 2008, Clinician Reviews discussed Fast Tracking NPs and PAs through medical school and cited an educational comparison and the big difference were not so much in the core content but the time in school. NP and PA programs run between 80 and 110 weeks where medical school is typically

155 weeks. Although there is no internship or residency, the clinical education for NPs and PAs amounts to 1,500 to 2,000 hours of direct patient contact. In addition, many NPs and PAs have up to several years of clinical experience before they even begin their educational programs. Please do not assume I am comparing physicians and MLPs, but simply noting MLPs are well educated to provide quality healthcare...

In summary, the majority of MLPs work autonomously in their respective practice with a collaborating or supervising physician under periodic review and as needed. MLPs are well educated in all aspects of patient education and care and the procedures the Board of Medicine are proposing to change have been performed for years without any documented negative outcomes and will undoubtedly be detrimental to practice and possibly the extinction of Mid-Level Practice. Furthermore, the changes proposed through the Board of Nursing are for continuing and improved patient care rather than the benefit of the NP. I was taught to practice evidence-based medicine and have seen no clear evidence supporting the Board of Medicine rule change or any reason not to support the Board of Nursing change.

Please do not hesitate to contact me for further discussion or information. I can be reached at 304 622-4423 or 304 677-2312.

Sincerely,

David P. Peasak II, NP
82 Oak Ridge Drive
Mount Clare, WV 26408

CC: <ebaldwin@wvuh.com>, <lrhodes@state.wv.us>, <anathaniel@hsc.wvu.edu>, <caputo@mail.wvnet.edu>, <whocann@mail.wvnet.edu>, <jdelong@mail.wvnet.edu>, <rfragale@mail.wvnet.edu>, <tmanchin@mail.wvnet.edu>, <timmiley@mail.wvnet.edu>, <iaquinta@mail.wvnet.edu>, <wsharpe@mail.wvnet.edu>, <speaker.thompson@verizon.net>, "cgoode: hsc.wvu.edu" <cgoode@hsc.wvu.edu>, "christygain: yahoo.com" <christygain@yahoo.com>, "docgeewvu: aol.com" <docgeewvu@aol.com>, "doczog: comcast.net" <doczog@comcast.net>, "drff12tp: yahoo.com" <drff12tp@yahoo.com>, "Heather_Potter: teamhealth.com" <Heather_Potter@teamhealth.com>, "jchilders: hsc.wvu.edu" <jchilders@hsc.wvu.edu>, "jimmo1994: hotmail.com" <jimmo1994@hotmail.com>, "mlacaria: hsc.wvu.edu" <mlacaria@hsc.wvu.edu>, "rvmonseau: att.net" <rvmonseau@att.net>, "rvmonseau: comcast.net" <rvmonseau@comcast.net>, "sbrown: hsc.wvu.edu" <sbrown@hsc.wvu.edu>, "stalnakerdp: mail.ab.edu" <stalnakerdp@mail.ab.edu>, <deborahrodecker@wvdhhr.org>, <bobknittle@wvdhhr.org>

June 17, 2008

WV Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

RE: Proposed new rule on Definition of Surgery, 11 CSR 10

I would like to comment on the proposed rule referenced above. I voice my opposition because of the detrimental affect it could have on advanced practice nursing in the state of West Virginia.

This rule could potentially make it illegal for any advanced practice nurse to suture wounds, order injections, remove skin lesions, etc. In a time when West Virginians need access to more health care providers, this would be unacceptable

As a future advanced practice nurse, this rule could limit my contributions to the citizens of West Virginia and impede their access to the care that they need.

Sincerely,

Billy Davis

Billy Davis, RN, BSN
HC 73 Box 6
Glen Fork, WV 25845

West Virginia Health Right, Inc.

1520 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311
PHONE: (304) 343-7000
FAX: (304) 343-7009

June 17, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

I am writing to oppose the rule "Definition of Surgery" as proposed by the Board of Medicine. Many routine procedures undertaken by nurse practitioners and PAs fall under the rule's definition of surgery.

WV Health Right is the state's largest and oldest free clinic. WV Health Right opened its doors in 1982 and currently provides care to over 18,000 uninsured impoverished patients per year. Nurse practitioners are the mainstay of the clinic's day to day operation assisted by over 100 volunteer physicians who care for an ever growing patient population of the uninsured poor. The physicians who volunteer are primary care and MANY specialists and are **not** volunteering their time to oversee the work of staff nurse practitioners. WV Health Right has a volunteer physician who also serves on the Health Right Board of Director's as our nurse practitioners' collaborating MD.

As you may be aware there are only nine free medical clinics in WV and all rely on paid staff nurse practitioners to care for over **50,000** West Virginians who are not poor enough for Medicaid and not old enough for Medicare. These patients are the 'working poor' of WV and receive medical diagnosis, care and treatment at free clinics. They have no other access to primary care.

The repercussions of your rule would be harmful to WV: lives would be lost, uncompensated emergency room visits would increase the financial burden to the community and State and add to the already massive emergency department population. Indeed, the proposed rule not only creates an expensive barrier to health care access, it is seriously detrimental to the health care system overall. But, mostly, for the working poor of our State, the rule would be disastrous.

Should you have any questions please feel free to call me at 304-414-5911.

Sincerely,

Patricia H. White, MPA, MPH
Executive Director

R. Kay Cottrill LSW NHA
Rt. 3 Box 815
Lost Creek, WV 26385
304-745-3634

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle;

As a member of the Board of Directors of Health Access, Incorporated, the Free Clinic in Clarksburg, WV I am writing to oppose the proposed rule titled "Definition of Surgery". Many procedures that would fall under the definitions of surgery in this proposed rule are currently standard practice for Nurse Practitioners in Primary Care Clinics (including Free Clinics).

For the past fifteen years, Nurse Practitioners at Health Access, Incorporated have provided excellent care to thousands of patients. There is not always a physician in attendance, so this proposed rule would, in essence, severely curtail our ability to treat our patients, or possibly cause our to close. Uninsured low-income patients that receive primary care at Health Access, Incorporated would have no access to care in Harrison or Doddridge County without this clinic. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would skyrocket at United Hospital Center. We believe that this proposed rule not only creates an expensive barrier to health care access to a large population of uninsured adults in our area, but I think it is poorly conceived and not well thought out as to its negative ramifications to free clinics.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition of Surgery". I base this opinion upon my experience as a member of the Board of Directors of Health Access, Incorporated and as a citizen of rural part of West Virginia.

Sincerely,

R Kay Cottrill

Vice President, Board of Directors
Health Access, Incorporated

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a member of the Board of Directors of Mercer Health Right clinic, I am writing this letter to oppose the proposed rule "Definition of Surgery." The definition of surgery in your proposed rule encompasses many of the procedures that are standard practice for nurse practitioners and Physician Assistants in primary care clinics.

Nurse practitioners at Mercer Health Right have provided excellent care to thousands of patients over the course of the last 18 years. Although physicians volunteer at the clinic, more often than not the clinic is staffed solely by nurse practitioners. Therefore this proposed rule would in effect close a facility that has effectively served many citizens in our community. Indigent patients who receive care at Mercer Health Right would have no access to primary care and would be forced to make emergency room visits to receive care. These uncompensated emergency room visits would not only increase the already enormous emergency department population but increase the financial burden to the community as well. In an era when other state agencies as well as private insurers have acknowledged the importance of preventative and early intervention, this proposed rule seems particularly unwise and unfair to our citizens who perhaps need health care access the most.

As a citizen of rural West Virginia, and a long-time member of the Board of Directors of Mercer Health Right clinic, I oppose the West Virginia Board of Medicine's proposed rule "Definition of Surgery"; and respectfully ask that you reconsider your decision.

Sincerely,

Alcesta Wells

Alcesta Wells
Member, Board of Directors
Mercer Health Right

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

I am a member of the Board of Directors of Mercer Health Right, the free clinic in Bluefield, West Virginia. As a board member, I am intimately aware of the number of uninsured in West Virginia (16% of the population) and the immense benefits of our clinic to the surrounding community. I have also been a nurse practitioner since 1979 (undergraduate degree in nursing from the University of Virginia, and Masters in Nursing and FNP certification from Emory University) The nurse practitioners and I provide life-saving assessment, diagnosis, and care to thousands of uninsured patients every year at the Mercer Health Right clinic. If these patients went to the local community hospital emergency rooms, the hospitals would be acquiring tremendous, prohibitive costs.

I have, in fact, been taking care of uninsured patients in West Virginia since 1979. The nurse practitioner movement, initiated in 1969, was in response to the tremendous need for health care providers in rural, underserved areas in which physicians would not practice. My first experience as a nurse practitioner was caring for the indigent and uninsured in Algoma, West Virginia in 1981. I have been caring for the indigent patient population in West Virginia since that time, and I can assure you, that circumstances have not changed at all in regard to improved care for the uninsured and the poor people in West Virginia.

As a highly educated and board certified family nurse practitioner, I have provided quality, life-saving health care to indigent patients in West Virginia for 27 years. The proposed rule "Definition of Surgery" would close a facility that has saved many lives and restrict the practice of nurse practitioners like me. To me, this act would be unconscionable as well as morally and ethically wrong. This rule would condemn thousands of West Virginians to NO health care, not just restrict their access to care. Therefore, as an experienced, practicing health care practitioner in West Virginia, I oppose the West Virginia Board of Medicine proposed rule "Definition of Surgery," and I thank you for this opportunity to comment on the proposed rule.

Sincerely,

Beth Pritchett, APRN, B.C.
Board Member, Mercer Health Right

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle;

As a member of the Board of Directors of Health Access, Incorporated, the Free Clinic in Clarksburg, WV I am writing to oppose the proposed rule titled "Definition of Surgery". Many procedures that would fall under the definitions of surgery in this proposed rule are currently standard practice for Nurse Practitioners in Primary Care Clinics (including Free Clinics).

For the past fifteen years, Nurse Practitioners at Health Access, Incorporated have provided excellent care to thousands of patients. There is not always a physician in attendance, so this proposed rule would, in essence, severely curtail our ability to treat our patients, or possibly cause our to close. Uninsured low-income patients that receive primary care at Health Access, Incorporated would have no access to care in Harrison or Doddridge County without this clinic. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would skyrocket at United Hospital Center. We believe that this proposed rule not only creates an expensive barrier to health care access to a large population of uninsured adults in our area, but I think it is poorly conceived and not well thought out as to its negative ramifications to free clinics.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition of Surgery". I base this opinion upon my experience as a member of the Board of Directors of Health Access, Incorporated and as a citizen of rural part of West Virginia.

Sincerely,

Andrew Baxter, CPA

Member, Board of Directors
Health Access, Incorporated

Health Access, Inc.
489 Washington Avenue • Clarksburg, West Virginia 26301
Phone: 304-622-2708 • Fax: 304-623-9302 • E-mail: healthac@ma.rr.com • Web: www.healthaccessinc.org

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle;

As a member of the Board of Directors of Health Access, Incorporated, the Free Clinic in Clarksburg, WV I am writing to oppose the proposed rule titled "Definition of Surgery". Many procedures that would fall under the definitions of surgery in this proposed rule are currently standard practice for Nurse Practitioners in Primary Care Clinics (including Free Clinics).

For the past fifteen years, Nurse Practitioners at Health Access, Incorporated have provided excellent care to thousands of patients. There is not always a physician in attendance, so this proposed rule would, in essence, severely curtail our ability to treat our patients, or possibly cause our clinic to close. Uninsured low-income patients that receive primary care at Health Access, Incorporated would have no access to care in Harrison or Doddridge County without this clinic. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would skyrocket at United Hospital Center. We believe that this proposed rule not only creates an expensive barrier to health care access to a large population of uninsured adults in our area, but I think it is poorly conceived and not well thought out as to its negative ramifications to free clinics.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition of Surgery". I base this opinion upon my experience as a member of the Board of Directors of Health Access, Incorporated and as a citizen of a rural part of West Virginia.

Sincerely,

Andrew Barber

Member, Board of Directors
Health Access, Incorporated

Health Access, Inc.
489 Washington Avenue • Clarksburg, West Virginia 26301
Phone: 304-622-2708 • Fax: 304-623-9302 • E-mail: healthac@ma.rr.com • Web: www.healthaccessinc.org

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle;

As a member of the Board of Directors of Health Access, Incorporated, the Free Clinic in Clarksburg, WV I am writing to oppose the proposed rule titled "Definition of Surgery". Many procedures that would fall under the definitions of surgery in this proposed rule are currently standard practice for Nurse Practitioners in Primary Care Clinics (including Free Clinics).

For the past fifteen years, Nurse Practitioners at Health Access, Incorporated have provided excellent care to thousands of patients. There is not always a physician in attendance, so this proposed rule would, in essence, severely curtail our ability to treat our patients, or possibly cause our clinic to close. Uninsured low-income patients that receive primary care at Health Access, Incorporated would have no access to care in Harrison or Doddridge County without this clinic. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would skyrocket at United Hospital Center. We believe that this proposed rule not only creates an expensive barrier to health care access to a large population of uninsured adults in our area, but I think it is poorly conceived and not well thought out as to its negative ramifications to free clinics.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition of Surgery". I base this opinion upon my experience as a member of the Board of Directors of Health Access, Incorporated and as a citizen of a rural part of West Virginia.

Sincerely,

Jillian K. Rudolph, Sec'y

Member, Board of Directors
Health Access, Incorporated

Health Access, Inc.
489 Washington Avenue • Clarksburg, West Virginia 26301
Phone: 304-622-2708 • Fax: 304-623-9302 • E-mail: healthac@ma.rr.com • Web: www.healthaccessinc.org

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle;

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Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition of Surgery". I base this opinion upon my experience as a member of the Board of Directors of Health Access, Incorporated and as a citizen of a rural part of West Virginia.

Sincerely,

Joann Devericks

Member, Board of Directors
Health Access, Incorporated

From: "Charlotte Jewell" <charlottejewell@wvdhhr.org>
To: "Bob Knittle" <bobknittle@wvdhhr.org>
Date: 6/23/2008 8:40:27 AM
Subject: Fwd: PROPOSED SURGERY DEFINITION CHANGE

>>> Daniel Stalnaker <stalnakerdp@ab.edu> 06/19/08 2:32 PM >>>

Hi Charlotte,

I am writing you to find out about this proposed surgical definition change... I read the proposed law and believe that this will truly be very detrimental to any practicing mid-level provider in this state!

I will be contacting my local legislators and complaining about what I believe to be a law that will end the care as we know it provided by many MLP's and will force many of us to leave the state and therefor causing a lot of my fellow West Virginian's to go without good quality health-care...

Do I believe that some people may be doing procedures that they are not qualified for?? Yes (both MD,DO, PA and NP but the majority of us have worked in settings where we have gained valuable and extensive training and are highly capable of performing minor surgical procedures without direct supervision...I.e. (Dr in the room while a procedure is performed)

This proposed law change will affect all aspects of the PA and Mid-Level profession and the training we receive will be all-for-nothing and as far as I'm concerned I will have to leave my native WV, that I love so much, just to be able to perform the job that I was trained and worked so hard to get... Graduating at the top of my class and scoring in the 95th percentile on the NCCPA exam... I believe the practicing rules are much more stringent in the State of WV than many other surrounding states...

I would like to point out an example: About 1 year ago I had a young girl come into the ER at StJ hospital and had a parent requesting a plastic surgeon because "Daddy's girl" would be scarred for life from an approximately 1.5cm Lac just lateral to the left eye from a fall into a coffee table... I repaired the Lac with steri-strips and Dermabond without any direct supervision from a doctor and about 3-4 months later

I saw the same child for an upper respiratory infection and the family praised the service that I had given and how well the child had healed... This is only one example but I would like to think that I can continue to give such valuable service to the people of WV...

Just didn't know who I should address this to, but I'm hoping we can get some informed decision-making before our legislators and representatives do something that will be of grave consequence!!!

If we look at surrounding states, I can't find anything that resembles these rules and guidelines for MLP's and wonder where this piece of legislation originated? Believe me this will cost the state significant quality health-care providers and will not improve health-care to WV it will only be detrimental!!!

Sincerely,

Daniel P Stalnaker MS, PA-C

June 6, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a health care provider in rural West Virginia, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in our emergency department and local primary care clinics. These procedures are standard for nurse practitioners across the country and are included in national standards of primary care practice.

I can find no data supporting claims that nurse practitioners and PAs provide inadequate or sub-standard care. Nurse practitioners in local facilities provide excellent care and allow physicians to attend to patients who truly require their expertise. In fact, nurse practitioners perform much of the time-consuming suturing in the emergency department. To prohibit nurse practitioners and PA from suturing and performing other procedures that you have defined as "surgery" will reduce the number of patients we can care for and prevent our facility from providing service at its present level. In addition,

In addition to the emergency department, nurse practitioners and physician assistants are often the only providers present in rural primary care facilities in my area. These clinics and many physician's offices would not be able to provide the same level of service to the public if the proposed rule were to prevail—it would severely restrict health care access, increase health care costs to hospitals, clinics, and physicians, and endanger lives.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon my experience as a health care provider, on my knowledge of current practice patterns, established national standards of practice, ethical imperatives of the healing professions, and the health care needs of West Virginia citizens.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Lynda Daniel CRNP

THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

SCHOOL OF PUBLIC HEALTH

DEPARTMENT OF MATERNAL AND CHILD HEALTH
CAMPUS BOX 7445
CHAPEL HILL, NC 27599-7445

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Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Re: "Definition Of Surgery." June 20, 2008

Dear Mr. Knittle,

As a WV resident, I am writing to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in primary care clinics.

Having practiced pediatrics in WV for 11 years, I have often worked with both nurse practitioners and physicians assistants. NPs and PAs have provided excellent care and worked with physicians to promote an environment of excellent care in rural and less rural areas. Often mid levels are the sole staff in much needed, school based or other rurally located clinics.

As you are aware, West Virginians have some of the poorest health indicators in the nation including high rates of smoking, huge prevalence of obesity and its related sequella to mention only a few. According to the 2008 Title V application, almost 75% of WV counties are health profession shortage area.

This proposed rule would be disastrous for multiple people in West Virginia. Mid levels provide care in rural areas that would not be not provided otherwise. To remove existing care puts West Virginia further behind achieving better health and well being.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery"

Sincerely,

Patricia Lally, DO, MPH candidate 2009
University of North Carolina School of Public Health

210 E Randolph St -
Lewisburg WV 24901

June 6, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a member of the Mercer County medical community, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in primary care clinics.

For the past 18 years, nurse practitioners in Mercer County have provided excellent care to thousands of patients. There is seldom a physician in attendance, so your proposed rule would, in essence, close facilities that have saved many lives. Patients who now receive care would have no access to primary care in our community. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would increase the financial burden to the community and add to the already enormous emergency department population. Thus, the proposed rule not only creates an expensive barrier to health care access, but it is unethical at its very core.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon my experience as a long-time member of the medical community and as a citizen or rural West Virginia.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Robert E Wynn, JR, RN, MSN, APRN-BC, CEN
Certified Family Nurse Practitioner

June 6, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a member of the Mercer County medical community, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in primary care clinics.

For the past 18 years, nurse practitioners in Mercer County have provided excellent care to thousands of patients. There is seldom a physician in attendance, so your proposed rule would, in essence, close facilities that have saved many lives. Patients who now receive care would have no access to primary care in our community. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would increase the financial burden to the community and add to the already enormous emergency department population. Thus, the proposed rule not only creates an expensive barrier to health care access, but it is unethical at its very core.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon my experience as a long-time member of the medical community and as a citizen or rural West Virginia.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Sandra Wynn, CFNP

June 6, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a health care provider in rural West Virginia, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in our emergency department and local primary care clinics. These procedures are standard for nurse practitioners across the country and are included in national standards of primary care practice.

I can find no data supporting claims that nurse practitioners and PAs provide inadequate or sub-standard care. Nurse practitioners in local facilities provide excellent care and allow physicians to attend to patients who truly require their expertise. In fact, nurse practitioners perform much of the time-consuming suturing in the emergency department. To prohibit nurse practitioners and PA from suturing and performing other procedures that you have defined as "surgery" will reduce the number of patients we can care for and prevent our facility from providing service at its present level. In addition,

In addition to the emergency department, nurse practitioners and physician assistants are often the only providers present in rural primary care facilities in my area. These clinics and many physician's offices would not be able to provide the same level of service to the public if the proposed rule were to prevail—it would severely restrict health care access, increase health care costs to hospitals, clinics, and physicians, and endanger lives.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon my experience as a health care provider, on my knowledge of current practice patterns, established national standards of practice, ethical imperatives of the healing professions, and the health care needs of West Virginia citizens.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

June 6, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a health care provider in rural West Virginia, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in our emergency department and local primary care clinics. These procedures are standard for nurse practitioners across the country and are included in national standards of primary care practice.

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Thank you for the opportunity to comment on the proposed rule.

Sincerely,

June 6, 2008

Robert C. Knittle, M.S., Exec tive Director
West Virginia Board of Medi ine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

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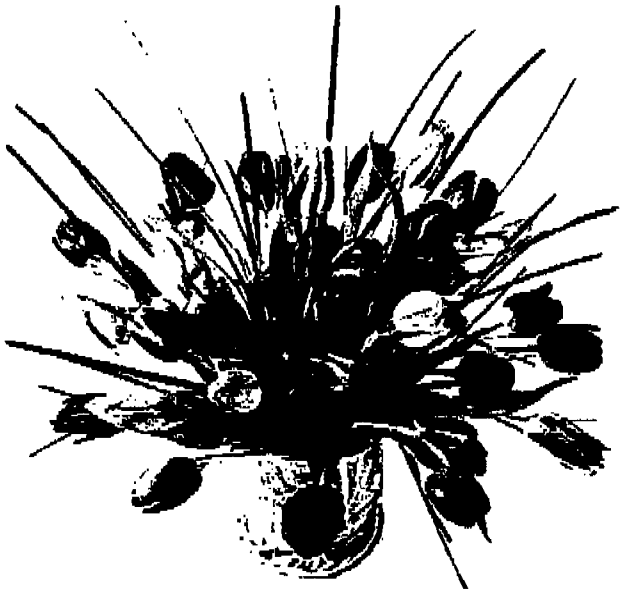
Thank you for the opportuni to comment on the proposed rule.

Sincerely,

Allen G Saoud, D.O.
164 Thompson Drive
Bridgeport WV 26330



FAX COVER SHEET

Partners in Women's Health Care
1000 JD Anderson Drive, Suite 402
Morgantown, WV 26505-1239
Phone: 304-599-6811
Fax: 304-599-7159

Send To: W.V. BOM

Attention: Mr. Knittle

Fax Number: 304 558-2084

Comments: Re: limiting NP practice

From: JCKoch, CRNP

Date: 6/24/08

Total Pages: 2

PARTNERS IN WOMEN'S [illegible]
Tom Harman, M.D., Patsy Harman, CNM, Jane Koch, CRNP, Julie Armistead, RNC-WHNP
1000 JD Anderson Drive Suite 402 · Morgantown, WV 26505 · (304) 599-6811 · www.womenshealthwv.com

June 24, 2008

Robert Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle:

This letter is in regard to the proposed rule change to the "Definition of Surgery" Rule Title11, Series 10 that is currently under consideration by the Board of Medicine. It is evident that adoption of this proposal would have a clear and far reaching impact on the current standard of health care provided by advanced practice nurses in our state. Limiting the ability of specialty trained nurse practitioners and nurse midwives to provide comprehensive health care will create yet another barrier to health care so many West Virginians already face.

The broad sweeping change suggested by this proposal would redefine the current role advanced practice nurses have held for decades. Our nurse practitioners skillfully perform colposcopy and cervical biopsy, biopsy the endometrium, suture incisions, and insert intrauterine devices. Our interpretation is that the proposed rule change would omit these routine procedures from the scope of advanced practice as well as require physician presence during their performance. Further, these providers serve many uninsured and underinsured women in our community through our private practice as well as community health programs operating in Monongalia and Preston County.

The benefit of restricting advanced nursing practice in our state is quite unclear. We oppose the proposed changes under consideration by the Board of Medicine that could create obstacles to care for our citizens. We strongly encourage you to consider the evidence in national practice standards and the state precedents that are already in place. You will find evidence that the care provided by advanced practice nurses is vital and should be supported at all levels.

Sincerely,

Thomas F. Harman, M.D.

Jane Koch, C.R.N.P.

Rita K. Payne, M.D.

Julie A. Armistead, R.N.C., W.H.N.P.

Patsy Harman, C.N.M.

June 23, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a health care provider in rural West Virginia, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in our emergency department and local primary care clinics. These procedures are standard for nurse practitioners across the country and are included in national standards of primary care practice.

I can find no data supporting claims that nurse practitioners and PAs provide inadequate or sub-standard care. Nurse practitioners in local facilities provide excellent care and allow physicians to attend to patients who truly require their expertise. In fact, nurse practitioners perform much of the time-consuming suturing in the emergency department. To prohibit nurse practitioners and PA from suturing and performing other procedures that you have defined as "surgery" will reduce the number of patients we can care for and prevent our facility from providing service at its present level. In addition,

In addition to the emergency department, nurse practitioners and physician assistants are often the only providers present in rural primary care facilities in my area. These clinics and many physician's offices would not be able to provide the same level of service to the public if the proposed rule were to prevail—it would severely restrict health care access, increase health care costs to hospitals, clinics, and physicians, and endanger lives.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon my experience as a health care provider, on my knowledge of current practice patterns, established national standards of practice, ethical imperatives of the healing professions, and the health care needs of West Virginia citizens.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Kristi Lafferty, CRNP

WestVirginiaUniversity
SCHOOL OF MEDICINE

June 23, 2008

To Whom It May Concern:

I am a Pediatric Neurosurgeon currently working at WVU Children's Hospital I work very closely with many nurse practitioners and have a nurse practitioner in my department. My experience has been that nurse practitioners are safe in their prescription writing practices. I would not hesitate to have these changes implemented. I feel expanding prescriptive privileges will help extend high quality primary care to many of West Virginia children.

I am very concerned with the limitations on the scope of practice of nurse practitioners as being purposed in the new rule by the board of medicine11CSR 10, Definition of surgery. I feel this rule appears to have many unintended consequences in the proposed language. This rule could restrict nurse practitioners from independently providing wound debridement to promote wound to heal by secondary intention. This care is performed at the discretion of the NP providing the wound care with no direct supervision of the physician. Although the physicians are informed by the nurse practitioner in timely matters of all their post-op patients' conditions that are in any way concerning the nurse practitioners are responsible for decisions of wound care to promote healing. This team work has worked very well for the West Virginia University Pediatric Neurosurgery division. I am opposed to any rule that would limit the ability of the nurse practitioner to provide these necessary services for our team.

Furthermore I feel it is a step backward for the health care of our state to propose restrictions to care of the citizen by nurse practitioners within the safe scope of their practices. Health care teams are a necessary form of delivery and have been proven time and again by a substantial body of research evidence to be safe and effective. As a physician in West Virginia I believe we must follow the best evidence based practices within our state thus allowing nurse practitioners to be an essential part of the health care delivery team without impeding and unwarranted restrictions.

Sincerely,

John J. Collins, MD., FACS
Associate Professor, Department of Neurosurgery
Chief, Section of Pediatric Neurosurgery

jjc:rs

Department of Neurosurgery
Pediatric Neurosurgery Division

Robert C. Byrd Health Sciences Center South
PO Box 9183
Morgantown, WV 26506-9183

Wheeling 304-243-7676
Martinsburg 304-264-2020
Morgantown 304-293-7499

June 12, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle;

As a member of the Board of Directors of Health Access, Incorporated, the Free Clinic in Clarksburg, WV I am writing to oppose the proposed rule titled "Definition of Surgery". Many procedures that would fall under the definitions of surgery in this proposed rule are currently standard practice for Nurse Practitioners in Primary Care Clinics (including Free Clinics).

For the past fifteen years, Nurse Practitioners at Health Access, Incorporated have provided excellent care to thousands of patients. There is not always a physician in attendance, so this proposed rule would, in essence, severely curtail our ability to treat our patients, or possibly cause our to close. Uninsured low-income patients that receive primary care at Health Access, Incorporated would have no access to care in Harrison or Doddridge County without this clinic. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would skyrocket at United Hospital Center. We believe that this proposed rule not only creates an expensive barrier to health care access to a large population of uninsured adults in our area, but I think it is poorly conceived and not well thought out as to its negative ramifications to free clinics.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition of Surgery". I base this opinion upon my experience as a member of the Board of Directors of Health Access, Incorporated and as a citizen of rural part of West Virginia.

Sincerely,

M Jean McNabb

M. Jean McNabb/ VP/BB&T
Member, Board of Directors
Health Access, Incorporated

TO: Robert C. Kittle
Executive Director
West Virginia Board of Medicine

FROM: Department of Obstetrics and Gynecology Faculty Members
WVU National Center of Excellence in Women's Health
West Virginia University
School of Medicine

RE: Proposed Surgery Rule, Title 11, Series 10

DATE: June 20, 2008

We, Faculty members of the Department of Obstetrics and Gynecology at West Virginia University, are writing to express our concern regarding proposed changes to the Definition of Surgery Rule, Title 11 Series 10 that could subsequently have a detrimental impact on access to women's health care in West Virginia.

Our interpretation is that this legislation could critically restrict Advanced Practice Nurses (Certified Nurse Practitioners and Certified Nurse Midwives) with prerequisite training from being able to provide appropriate outpatient gynecologic procedures such as endometrial biopsy, vulvar / vaginal / cervical biopsy, and IUD insertion. Additionally, limiting outpatient therapeutic procedures such as cryotherapy and LEEP procedure could have a deleterious effect on the medically underserved women in West Virginia.

Given West Virginia's shortage of health care providers, we implore the Board of Medicine to consider carefully the wording of the proposed Definition of the Surgery Rule so that it would continue to allow specialty-trained Advanced Practice Nurses (APNs) to provide this much needed care to the women of our State.

Name (Please Print):	**Signature:**
MICHAEL VERNON	
Michael L. Stitely, MD	
Mahreen Hashmi MD	
Hobson G. Booth, MD	Hobson G Booth
Charles Hochberg MD	Chas. Hochberg
Lorraine L. Tyre	Lorraine L. Tyre

Name (Please Print):	**Signature:**
Roger C. Toffle	
Kelli M. Gevas	
	Mark Behram (Resident)
Courtney Cuppett	COURTNEY CUPPETT (Resident)
Matthew Jason Horaker	(Resident)
Shari J Twigg	(Resident)
Jessica Close	Jessica Close (Resident)
Melanie Clemmer	
Sushma Singh	
Wanda M Hembree MD	WANDA M HEMBREE, MD

TO: Robert C. Kittle
Executive Director
West Virginia Board of Medicine

FROM: Department of Obstetrics and Gynecology Faculty Members
WVU National Center of Excellence in Women's Health
West Virginia University
School of Medicine

RE: Proposed Surgery Rule, Title 11, Series 10

DATE: June 20, 2008

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Name (Please Print):	**Signature:**
WILLIAM M HOLLS III MD	
DONNA Dorinzi, WHNP-BC	D Dorinzi, RN-NP
Erie Lee.	

06/26/08

Delores Lucky FNP-BC
Summersville Skin Care Center Inc.
818 Arbuckle Rd, Suite 102
Summersville WV 26651

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

RE: Proposed rule 11CSR 10, Definition of Surgery.

Dear WV Board of Medicine members:

I am writing to express my concern regarding the severity of the proposed rule changes for surgical procedures provided by Nurse Practitioners and Physicians Assistants. This change will directly and negatively impact healthcare services available to the citizens of WV.

Many counties throughout rural WV do not offer specialty services from Dermatologists, ENT or Plastic Surgeons. Restricting Nurse Practitioners and Physicians Assistants from providing any type of surgical procedures without direct supervision from physicians will create a direct hardship on many patients and many physicians as well. Furthermore, the inability of some patients to travel long distances for appointments; increased cost of travel; potential loss of wages for employment loss to travel; longer waiting time for appointments; and an increased cost to the state of WV Medicaid program for travel vouchers are negative factors you must consider.

All Nurse Practitioners and Physicians Assistants in WV work in conjunction with a physician. These physicians should be the ones to judge the competency of the Nurse Practitioner or Physician Assistant to determine if the training and skill level is adequate. Nurse Practitioners and Physician Assistants work as an extension of physicians and not as replacements providing services to the underserved in rural areas. Appropriate referrals are then made for higher levels of care from physicians if indicated. This helps to contain costs and provide availability of health care services.

I do not believe that the proposed changes to the definition of surgery are in the interest of public safety and welfare. These changes appear to be designed more for suppressing the role of the Advanced Nurse Practitioner and that of the Physician Assistant in the provision of health care services.

Sincerely,

Delores Lucky FNP-BC

Pocahontas Memorial Hospital

R.R. 2 Box 52W
Buckeye, WV 24924
PH 304-799-7400
FAX 304-799-6636

June 26, 2008

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

Dear Mr. Knittle

We have reviewed and discussed the proposed change to the definition of surgery Title Number 11, cite authority WV Code § 30-3-7(a) (1).

We well understand the need to include laser surgery within the definition, but have issues with the implications of what very minor lesion removal and simple suturing will do to our rural clinics and over flow of our ER.

These clinics are staffed with a PA and NP who are under the supervision of an attending physician. This physician is not always in the clinic but is available for consult. Clear guidelines exist as to procedures and practices. The need for simple suturing and/or a simple lesion removal occurs on a regular basis; change in this definition would mean the need to send these patients to areas outside our county or to the ER. This would create a hardship on patients as no public transportation exists and no surgeons are available within our area.

Thank your for your consideration to this matter.

Sincerely,

Kyna Moore

Kyna Moore, DON

June 27, 2008

Robert Knittle, Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, West Virginia 25311-1620

RE: Definition of Surgery

Dear Mr. Knittle,

This letter is in response to the Definition of Surgery as proposed by the West Virginia Board of Medicine. The West Virginia Primary Care Association is supportive of legislation that improves patient safety and the quality of care. The members of the Association are recognized for their leadership in many quality improvement initiatives utilizing the care management model, six sigma and others. However, our system of care relies heavily on the professional capability and scope of practice currently defined for Advanced Practice Nurses and Physician Assistants. These professionals are vital to our mission, and contribute significantly to our ability to assure access to affordable, high quality primary care in our rural and urban settings throughout the state.

The following summarizes our position regarding the changes proposed to the Definition of Surgery:

- It is critically important to ALL legitimate health care professionals and West Virginians, that the Board of Medicine exercise due diligence in identifying and minimizing/eliminating the potential for harm to patients caused by non-licensed/non-credentialed pseudo-professionals inappropriately or dangerously performing any medical function including those requiring the use of lasers, pulsed light, and radiofrequency devices or the administration of anesthetics, etc.

- In performing its due diligence to protect ALL West Virginians from un-due harm, it is vitally important that the Board of Medicine *NOT* inadvertently restrict the scope of practice of any appropriately licensed and credentialed health professional, including Advanced Practice Nurses and Physician Assistants, such that any qualified, appropriately credentialed licensed professional would be prohibited from performing optimally within their scope of practice.

Thank you for the opportunity to comment on the proposed rule.

Truly yours,

Louise Reese

WEST VIRGINIA PRIMARY CARE ASSOCIATION, INC.
1219 Virginia Street, East • Charleston, WV 25301 • (304) 346-0032 • Fax (304) 346-0033

healthright
WHEELING

June 28, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As the Volunteer Physician Medical Director of Wheeling Health Right, I write to oppose the proposed rule "Definition of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and physician's assistants in primary care clinics.

For the past 22 years, nurse practitioners and physician's assistants at Wheeling Health Right have provided excellent care to thousands of patients. When a physician is not in attendance, the midlevel providers have access, through direct telecommunications, to their collaborating physicians. Passing this proposed rule "Definition of Surgery", will, in essence, deny thousands of working poor and indigent patients the right to quality health care by restricting the scope of practice of the nurse practitioner and forcing free clinics to close. Local primary care physicians do not have the capability to care for 17,000 uninsured patients within their own practices, leaving thousands of uninsured patients within the northern panhandle without access to healthcare.

The repercussions would be tremendous. Primary care access would decrease and uncompensated emergency room visits would increase the financial burden to the local hospitals. These hospitals are already overwhelmed by the ever increasing volume of unisures patients being treated in their emergency rooms. This proposed rule creates an expensive barrier to health care access for the working poor, uninsured that have no other access to quality health care.

Therefore, I respectfully request the Board of Medicine reconsider their position with regard to the proposed rule "Definition Of Surgery." I base this opinion upon my experience as a Volunteer Physician and Medical Director at Wheeling Health Right. I also base this on my 22 year working relationship with the midlevel practitioners whom I have worked with and supervised.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

James L. Comerci, MD
Volunteer Medical Director

61 - 29th Street, Wheeling, WV 26003
phone: 304-233-9323 • fax: 304-233-3869

United Way

Ebenezer Medical Outreach, Inc. • 1448 Tenth Avenue, Suite 100 • Huntington, WV 25701
(304) 529-0753 • Fax (304) 529-0591

June 27, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a member of the Medical Profession, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in primary care clinics. This would have a negative effect on the Rural Health Initiatives across the state.

For the past 18 years, nurse practitioners at Clinics across the state have provided excellent care to thousands of patients. There is seldom a physician in attendance, so your proposed rule would, in essence, close a facility that has saved many lives. Indigent patients who now receive care at Clinics would have no access to primary care in our community. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would increase the financial burden to the community and add to the already enormous emergency department population. Thus, the proposed rule not only creates an expensive barrier to health care access, but it is unethical at its very core.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon my experience as a physician and as a citizen of rural West Virginia.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Charles E Turner MD FACP
Charles E Turner MD
Volunteer Physician @ EMO

Ebenezer Medical Outreach, Inc. • 1448 Tenth Avenue, Suite 100 • Huntington, WV 25701
(304) 529-0753 • Fax (304) 529-0591

June 27, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As the Medical Director of Ebenezer Medical Outreach, I write to oppose the proposed rule "Definition of Surgery." I am concerned that many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in primary care clinics.

For the past 18 years, nurse practitioners at Free Clinics across the state have provided excellent care to thousands of patients. There is seldom a physician in attendance at the same time that they are providing this care. Any changes in the rules that require physician presence for routine medical care by nurse practitioners will severely adversely affect the free clinic's ability to care for indigent patients. Please consider rejecting any proposed changes in the "Definition of Surgery" that will limit free clinics from providing essential care to the communities they service.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Stephen Petrany, M.D.
Medical Director
Ebenezer Medical Outreach

June 6, 2008

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As a health care provider in rural West Virginia, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in our emergency department and local primary care clinics. These procedures are standard for nurse practitioners across the country and are included in national standards of primary care practice.

I can find no data supporting claims that nurse practitioners and PAs provide inadequate or sub-standard care. Nurse practitioners in local facilities provide excellent care and allow physicians to attend to patients who truly require their expertise. In fact, nurse practitioners perform much of the time-consuming suturing in the emergency department. To prohibit nurse practitioners and PA from suturing and performing other procedures that you have defined as "surgery" will reduce the number of patients we can care for and prevent our facility from providing service at its present level. In addition,

In addition to the emergency department, nurse practitioners and physician assistants are often the only providers present in rural primary care facilities in my area. These clinics and many physician's offices would not be able to provide the same level of service to the public if the proposed rule were to prevail—it would severely restrict health care access, increase health care costs to hospitals, clinics, and physicians, and endanger lives.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon my experience as a health care provider, on my knowledge of current practice patterns, established national standards of practice, ethical imperatives of the healing professions, and the health care needs of West Virginia citizens.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Shelly William PA MSA CFAP

Shelly William PA MSA CFAP

06/27/08

Tammy King FNP-BC
West Virginia Vein and Skin Centers
4130 Robert C. Byrd Drive
Beckley, WV 25801

Robert Knittle M.S. Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

RE: Proposed rule 11CSR 10, Definition of Surgery.

Dear WV Board of Medicine:

I am writing to express my concern in the proposal of a new rule that defines the practice of medicine and surgery. As a Certified Family Nurse Practitioner who has been trained and has specialized in dermatology for the past 7 years I am extremely concerned that the rule will make it illegal for me or any of the advanced practice nurses to suture wounds, remove skin lesions etc. This rule will obviously impact the lives and the healthcare services to the citizens of West Virginia.

The citizens of WV often wait months to see a dermatologist. Biopsy of a suspicions lesion is the utmost importance especially in the case of diagnosing melanoma. This is first and foremost the most important part of the care for our patients. For these patients to wait extensive time can literally mean a matter of life and death.

All Nurse Practitioners work in conjunction with their physicians. We are an extension for these services. We are not a replacement for the physician who is specifically trained in this area. It is the extension of the services that help contain costs and improve availability to the under served in the rural areas. Limiting the Nurse Practitioners services will only cause further hardship on our citizens.

Sincerely,

Tammy King FNP-BC

West Virginia Association of Free Clinics

June 27, 2008

MEMBER CLINICS:

Beckley Health Right
Beckley

Eastern Panhandle Free Clinic
Charles Town

Ebenezer Medical Outreach
Huntington

Good Samaritan Clinic, Inc.
Parkersburg

Health Access
Clarksburg

Mercer Health Right
Bluefield

Milan Puskar Health Right
Morgantown

Susan Dew Hoff Memorial Clinic
West Milford

West Virginia Health Right
Charleston

Wheeling Health Right
Wheeling

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311-1620

Dear Mr. Knittle,

As the Executive Director of the West Virginia Association of Free Clinics, I write to oppose the proposed rule "Definition Of Surgery." Many procedures that would fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners and PAs in primary care clinics. It would cost thousands of patient visits that currently maintain the quality of life for these West Virginians.

For the past 18 years, nurse practitioners at the Free Clinics across the state have provided excellent care to thousands of patients. There is seldom a physician in attendance, so your proposed rule would, in essence, close a facility that has saved many lives. Indigent patients who now receive care at West Virginia Free Clinics would have no access to primary care in our community. The repercussions would be tremendous. Lives would be lost and uncompensated emergency room visits would increase the financial burden to the community and add to the already enormous emergency department population. Thus, the proposed rule not only creates an expensive barrier to health care access, it would make it impossible for patients to receive the quality of care that they deserve.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon years of service the Free Clinics have provided to this population.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Andrea Leffingwell, Executive Director
West Virginia Association of Free Clinics

1448 10th Avenue – #302, Huntington, WV 25701 • Phone: (304) 633-0799 • Fax: (304) 529-0591

DERMATOLOGY CENTERS, INC.
THOMAS M. KARRS, M.D., F.A.A.D.

COLIN BURROUGHS, MPAS, PA C
TONIA DANIELS, RNC-FNP
SHERRY DUVALL, RNC-FNP

JOHNATHAN PIERSON, PA-C
KIMBERLY PIERSON, PA-C

AIRPORT INDUSTRIAL PARK
134 MEDICAL PLACE
BEAVER, WV 25813
(304)255-1080
(304)255-1082 FAX

103 DAVIS STUART RD
RONCEVERTE, WV 24970
(304)645-7546
(304)645-7547 FAX

Robert Kittle
Executive Director
WV Board of Medicine

RE: Legislative Rule
Title 11
Series 10 Definition of Surgery

6-27-08

Dear Mr Kittle,

As a family nurse practitioner also certified in dermatology, I have had the honor and responsibility to care for and treat thousands of patients with skin cancers and other diseases of the skin hair and nails.

The proposed rule changes defining the practice of medicine and surgery are a step backward in improving and protecting the health of West Virginia citizens.

I oppose these rule changes as they stand!

Sincerely, Sherry Duvall MSN, RN, CFNP, DCNP

From: "Martha Cook Carter" <martha.cookcarter@familycarewv.org>
To: <bobknittle@wvdhhr.org>
Date: 6/27/2008 4:30:16 PM
Subject: Proposed Surgery Rules

Dear Mr. Knittle and Ms. Rodecker,
I represent the 20+ clinicians at FamilyCare HealthCenter, an FQHC serving Putnam, Kanawha and Boone counties.

It appears that nurse practitioners and nurse midwives could not continue to practice according to their approved scope of practice if this rule is enacted, particularly in areas such as removal of minor skin lesions and colposcopy, without direct physician supervision.

We are opposed to the proposed rule defining surgery and request a thorough review of the implications for access to care in the state that would follow if this rule was enacted.

Regards,
Martha Carter, RN, CNM, CEO
FamilyCare HealthCenter
304-757-6999

CC: <deborahrodecker@wvdhhr.org>

Pinewood Medical Center
401 N. Pike St.
Grafton, WV 26354
(304) 265-1350

Robert C. Knittle, M.S., Executive Director
West Virginia Board of Medicine 101 Dee
Drive, Suite 103 Charleston, WV 25311-1620

Dear Mr. Knittle,

I write as a family practice nurse practitioner in a rural community in opposition to the proposed rule "Definition of Surgery." Many of my patients do not want to go to the local hospital and would forego medical treatment if they could not come in to see me at our clinic for suturing and simple surgical procedures. The proposed rule threatens the health and welfare of the citizens of West Virginia through elimination of vital services—services provided at a high level by nurse practitioners for nearly half a century. Many procedures that fall under the definition of surgery in your proposed rule are standard practice for nurse practitioners. The proposed rule will make it illegal for an advanced practice nurse to suture wounds, administer local anesthetics, remove benign skin lesions, and many other procedures included in nurse practitioner educational programs. In addition, as I am sure you are aware, since the proposed rule defines the practice of medicine and surgery as the "diagnosis or treatment of, or operation or prescription for, any human disease, pain, injury, deformity or other physical or mental condition," it threatens the very existence of the profession of nurse practitioner. By doing so, it also increases the burden on already overworked physicians and compounds their malpractice risk. It leaves injured patients bleeding and in pain as they await transport to facilities staffed by physicians. Ridiculous!

Nurse practitioner educational programs began in the mid-1960s in response to a vital shortage of primary care providers. This shortage continues in West Virginia, even today. Hundreds of nurse practitioners currently serve as primary care providers in clinics, hospitals, and private offices, caring for thousands of West Virginians. Often no physician colleagues are available on site—sometimes no physicians are willing to live or work in these locations. Adequate health care in these areas depends upon nurse practitioners. Affected clinics, emergency rooms, and physician's offices would fail to provide the same level of service if the proposed rule were to prevail—it would severely restrict health care access, increase health care costs to hospitals, clinics, and physicians, and endanger lives. Since it is the moral imperative of both nursing and medicine to provide necessary health care services to society, prohibiting nurse practitioner practice is immoral. It is shameful that the West Virginia Board of Medicine has taken this abhorrent step back in time.

We hear the claim from members of the West Virginia Board of Medicine that nurse practitioners have inadequate training and the care they provide is substandard. Nothing could be further from the truth. Nurse practitioners have no less than six years of formal undergraduate and graduate academic education in their discipline. Numerous published research studies have shown that patients treated by nurse practitioners have very favorable outcomes. Some studies even suggest that outcomes for certain conditions are better when patients receive care from nurse practitioners rather than physicians. No formal evidence indicates that nurse practitioners provide inferior or substandard

care. The small percentage of malpractice claims against nurse practitioners supports this fact. Therefore, it is clear that the West Virginia Board of Medicine proposes a rule with no rational foundation.

The move to restrict nurse practitioner practice is out of step with the rest of the nation. Nurse practitioners increasingly fill in the health care gaps in all U.S. states and around the world. In fact, the Governor in neighboring Pennsylvania in 2007 created a progressive program to improve health care access in his state by supporting nurse practitioner practice and expanding their independent role. It is just another embarrassment that our state's medical leadership is out of step with the times and blind to the needs of our citizens as they attempt to protect their turf.

Therefore, I oppose the West Virginia Board of Medicine proposed rule "Definition Of Surgery." I base this opinion upon current practice patterns, established national standards of practice, ethical imperatives of the healing professions, and the health care needs of West Virginia citizens

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

Judy Lipscomb, FNP-BC

Judy Lipscomb, FNP-BC

cc: Governor Joe Manchin, III
Laura Skidmore Rhodes, MSN, RN
Joseph Letnauchyn
Louise Reese
Dean Wilkerson, MBA, JD, CAE
Commissioner Martha Walker
Jan Towers, PhD

Laura S. Rhodes, M.S.N., R.N.
Executive Director

email:rnboard@state.wv.us
web address:www.wvrnboard.com

TELEPHONE:
(304) 558-3596
FAX (304) 558-3666

STATE OF WEST VIRGINIA
BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES
101 Dee Drive, Suite 102
Charleston, WV 25311-1620

June 27, 2008

HAND DELIVERED

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

RE: Proposed rule, 11 CSR 10 Definition of Surgery

Dear Mr. Knittle:

The West Virginia Board of Examiners for Registered Professional Nurses (RN Board) in open session June 12, 2008 reviewed the proposed rule 11 CSR 10 Definition of Surgery. The RN Board is opposed to this rule specifically with regard to any language that suggests or expressly provides for any authority other than the RN Board to regulate and define the practice of nursing. In regard to portions that appear to relate directly to the sole practice of medicine, the RN Board has no objection. The RN Board recommends the following changes to the rule if the West Virginia Board of Medicine (BOM) decides to move forward with the rule.

1. Strike 11-10-2.b.
2. Modify 11-10-2.c. "appropriately educated and trained" to read "appropriately educated and trained" means training that pertains to performing any act or procedure defined in this rule.
3. Strike 11-10-2.d.
4. Strike 11-10-2.i.
5. Strike 11-10-2.j.
6. Modify 11-10-2.l to read, "surgery" means structural alteration of the human body by the incision or destruction of tissues and is part of the practice of medicine and other disciplines. Strike the remaining portion of the definition.

7. Modify 11-10-3.1. to read "A supervising physician may delegate the performance of ablative treatments to advanced nurse practitioners and physician assistants, who are appropriately educated and trained, and licensed by the State of West Virginia." Strike the remainder of the statement.
8. Strike 11-10-3.2.
9. Strike 11-10-3.3.
10. Strike 11-10-4 in its entirety.
11. Strike 11-10-5 in its entirety.
12. Define "written protocols", (11-10-6) in the definitions
13. Strike 11-10-8 in its entirety.
14. Modify 11-10-9. Applicability of Rules to read:
    11-10-9.1. These rules do not apply to persons who are duly licensed heath care providers under other pertinent provisions of the West Virginia code and who are acting within the scope of their license.

    Strike 11-10-9.2. in its entirety. The RN Board is responsible for defining the practice of advanced practice nurses and the related regulatory activities.

For centuries, physicians have delegated practices to registered professional nurses and other health care providers competent to perform the activity. Providing direction to those licensed by the BOM is certainly within your regulatory authority, however trying to usurp the authority of another agency to define the practice of those they regulate is unconscionable, irresponsible and not in the best interest of West Virginia's public. The RN Board hopes the BOM withdraws this rule or at minimum proceeds with the recommended changes.

It appears as though the West Virginia Board of Medicine is aligning itself with the American Medical Association's encouragement to eliminate the role of the advanced practice nurse or to so horribly restrict the practice as to render that group completely helpless in providing some necessary services to West Virginia's public. Although this letter of response is directly related to the rule defining "Surgery" it is impossible to view it in a vacuum. We are all aware that the Board of Medicine completely opposed the proposed changes to the Limited Prescriptive Authority rule for Advanced Practice Nurses, with no legitimate reasons, evidence, or data presented to support that opposition. Based upon the conversation held during the BOM's Legislative Committee meeting on June 3, 2008, the BOM wants even further restrictions on the practice of advanced practice nurses, such as requiring the collaborative physician to see patients every six (6) months. When the Governor of our sister state of Pennsylvania is doing everything he can to provide health care services to the citizens of that state by supporting advanced practice nurses, West Virginia's

BOM seems intent on moving health care for West Virginia's citizens backward. The Board of Medicine has attempted, with no supporting data, to allege that advanced practice nurses carry the responsibility for the state's substance abuse problem, and, with this rule, suggests that appropriately delegated tasks related to some surgical interventions, including suturing, require "personal supervision". Additionally, the BOM continues to misrepresent that the advanced practice nurse's education is inferior or lacking. This simply is not true. It is a disappointing time for the citizens of West Virginia to be so misled by the misrepresentations of the BOM.

Thank you for the opportunity to comment.

For the Board,

Laura Skidmore Rhodes by Alice R. Fawcett

Laura Skidmore Rhodes
Executive Director

P. O. Box 1090
Hurricane, WV 25526

Phone: (304) 562-4433
Fax: (304) 562-4469
Website: wvaafp.org
Tax ID: #55-0419533

June 27, 2008

Mr. Robert C. Knittle, M.S.
Executive Director
West Virginia Board of Medicine
101 Dee Drive Suite 103
Charleston, WV 25311

Dear Mr. Knittle:

The West Virginia Academy of Family Physicians is sending you this letter regarding several legislative rules proposed by the West Virginia Board of Medicine.

These rules relate to the regulation and scope of practice by the Board of Medicine for physician assistants practicing under a supervising physician as proposed in 11 CSR 1B, and creating a new definition of surgery as proposed in 11CSR 10.

We understand the significant importance of these proposals on licensed medical professionals and on the quality health care services provided to their patients.

We also understand the statutory time frames in which the Board of Medicine has to work within to offer these proposals for public comment.

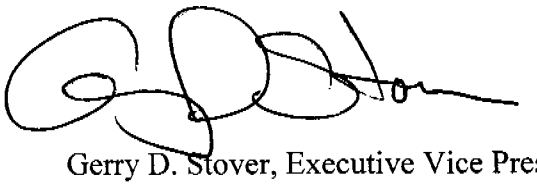
We hope that you also understand that we have a structure for evaluation, review and response for major health care policies issues such as these proposals in order to provide official comments and recommendation on behalf of our medical organizations.

Just as the Board of Medicine has taken the appropriate time and effort to develop these proposed rules, we hope that you appreciate that our Board of Directors must undertake a similar evaluation and review in order to provide an official response. Due to the time constraints of the comment period our Board has not had official meetings where these proposals could be appropriately considered.

There is a need to develop a clear definition of surgery and a need to update and refine the appropriate scope of practice for physician assistants. However, there are some major provisions in both proposed rules that require a more exhaustive analysis than time for an official response has permitted. While supportive of the need for the legislative rules proposals, some of our family physician members do have significant concerns which must be addressed.

We pledge to provide you with an official response as soon as our Board has completed this task.

Respectfully Submitted,



Gerry D. Stover, Executive Vice President
West Virginia Academy of Family Physicians

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

July 16, 2008

Gerry D. Stover, Executive Vice President
West Virginia Academy of Family Physicians
P.O. Box 1090
Hurricane, West Virginia 25526

Re: Proposed Rule 11 CSR 10

Dear Mr. Stover,

Thank you for your letter of June 27, 2008. The Board of Medicine has met and approved an Agency Approved Rule quite different from the initial filing. It will be filed by the end of this month with the Legislature, and it will be available for your review when filed, on our website, www.wvdhhr.org/wvbom. I suggest that your organization work from that Agency Approved Rule and of course, from now on, while including us, make your comments to the Legislature as it is considered there.

Best wishes to you.

Sincerely,

Robert C. Knittle

lab

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

July 16, 2008

HAND DELIVERED

Laura Skidmore Rhodes, M.S.N., R.N.
Executive Director
Board of Examiners for Registered Professional Nurses
101 Dee Drive, Suite 102
Charleston, WV 25311

Re: Proposed Rule, 11 CSR 10

Dear Ms. Rhodes,

The Board of Medicine received timely comments from eight individuals who we believe are licensed by your board. We do not know their addresses and in two cases, are unable to read their names. I have enclosed copies of their letters with this letter. Would you be so kind as to forward them a copy of this letter?

We thank you for your comments and the Board of Medicine has found them educational and helpful. As a result of your comments, and those of others, the Board of Medicine has made a number of changes to the above proposed rule addressing your concerns, including changing the definition of surgery to focus more on lasers and similar devices, and excluding from the rule licensed P.A.'s, advanced practice nurses, advanced nurse practitioners and certified nurse midwives, who are in a collaborative relationship with a physician. Hospitals have never been included in the rule, and free clinics are now excluded.

When the Agency Approved Rule is filed with the Legislature this month, it will be available on our website, www.wvdhhr.org/wvbom. In the future, it would help to

include your address so that we are able to respond to you directly. Thank you.

Thank you for assisting with this matter. The Board of Medicine appreciates your help.

Sincerely,

Robert C. Knittle

lab
enclosures

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

July 16, 2008

****HAND DELIVERED****

Laura Skidmore Rhodes, Executive Director
Board of Examiners for Registered Professional Nurses
101 Dee Drive, Suite 102
Charleston, West Virginia 25311

Re: Proposed Rule, 11CSR10

Dear Ms. Rhodes:

Thank you for your comments on the above proposed rule. The comment process is always helpful for purposes of information and education and for helping to focus on what needs to be accomplished. As a result of comments from the Board of Examiners for Registered Professional Nurses and others, the Board of Medicine has voted to file as the Agency Approved Rule quite a different rule than the one initially filed. The title of the proposed rule has changed to reflect its central purpose. It will now be titled "Definition of Surgery to Include the Use of Lasers, Ionizing Radiation, Pulsed Light and Radiofrequency Devices", and the definition of surgery is substantially different, and the Board of Medicine believes it will be more to your liking. Advanced practice nurses, advanced nurse practitioners, and certified nurse midwives, who have collaborating agreements with physicians, are excluded from the proposed rule.

Some of the inflammatory comments in your letter were purely speculative in nature and without basis, which would indicate that the Board of Examiners for Registered Professional Nurses has had a misunderstanding of the Board of Medicine's intentions and concerns in proposing this rule.

Sincerely,

Robert C. Knittle

lab

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

July 16, 2008

Sherry Duvall, RNC-FNP
Dermatology Centers, Inc.
103 Davis Stuart Road
Ronceverte, WV 24970

Re: Proposed Rule 11 CSR 10

Dear Ms. Duvall:

Thank you for your comments on the above proposed rule. The Board of Medicine has changed the proposed rule substantially as a result of all the comments received, and the Agency Approved Rule will soon be filed with the Legislature and then will be available on our website, www.wvdhhr.org/wvbom.

I think that you will find the definition of surgery more to your liking. Please look as well at the end of the proposed rule for those practitioners who are excluded. Among those excluded are advanced practice nurses and advanced nurse practitioners, acting pursuant to a collaborative agreement.

Sincerely,

Robert C. Knittle

lab

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

July 17, 2008

Stephen Petrany, M.D., Medical Director
Ebenezer Medical Outreach, Inc.
1448 Tenth Avenue, Suite 100
Huntington, WV 25701

Re: Proposed rule 11 CSR 10

Dear Dr. Petrany:

Thank you very much for your comments on the proposed rule. The comment period after an initial rule is filed is always an opportunity to be informed and educated and for the agency to determine what is in the best interests of the citizens of the State of West Virginia. As a result of the many comments received, the proposed rule has been substantially changed by the Board of Medicine, and the Agency Approved Rule now changes the definition of surgery to focus on lasers and similar devices and completely excludes clinics such as Ebenezer Medical Outreach, Inc. from the proposed rule's provisions. It also excludes advanced nurse practitioners and advanced practice nurses, in a collaborative relationship with a physician, from its provisions, as well as licensed P.A.'s.

The Agency Approved Rule will be filed before the end of this month with the Legislature and when filed it will be posted on the Board of Medicine's website, www.wvdhhr.org/wvbom where you may review it.

Thank you for your important service as Medical Director at Ebenezer Medical Outreach, Inc.

Sincerely,

Robert C. Knittle

lab

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

July 17, 2008

Charles E. Turner, M.D.
Ebenezer Medical Outreach, Inc.
1448 Tenth Avenue, Suite 100
Huntington, WV 25701

Re: Proposed rule 11 CSR 10

Dear Dr. Turner:

Thank you very much for your comments on the proposed rule. The comment period after an initial rule is filed is always an opportunity to be informed and educated and for the agency to determine what is in the best interests of the citizens of the State of West Virginia. As a result of the many comments received, the proposed rule has been substantially changed by the Board of Medicine, and the Agency Approved Rule now changes the definition of surgery to focus on lasers and similar devices and completely excludes clinics such as Ebenezer Medical Outreach, Inc. from the proposed rule's provisions. It also excludes advanced nurse practitioners and advanced practice nurses, in a collaborative relationship with a physician, from its provisions, as well as licensed P.A.'s.

The Agency Approved Rule will be filed before the end of this month with the Legislature and when filed it will be posted on the Board of Medicine's website, www.wvdhhr.org/wvbom where you may review it.

Thank you for your important service volunteering at Ebenezer Medical Outreach, Inc.

Sincerely,

Robert C. Knittle

lab

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

July 17, 2008

Tammy King, FNP-BC
West Virginia Vein and Skin Centers
4130 Robert C. Byrd Drive
Beckley, WV 25801

Re: Proposed rule 11 CSR 10

Dear Ms. King:

Thank you for your comments on the above noted proposed rule. As a result of the many comments received, the Board of Medicine is filing an Agency Approved Rule which is quite different from the proposed rule as originally filed. The definition of surgery has been changed and advanced nurse practitioners and advanced practice nurses in a collaborative relationship with a physician have been excluded from the proposed rule. After it is filed with the Legislature it will be available on our website www.wvdhhr.org/wvbom. We expect to file the Agency Approved Rule before the end of the month.

We think you will be satisfied with the changes.

Sincerely,

Robert C. Knittle

lab

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

July 17, 2008

Judy Lipscomb, FNP-BC
Pinewood Medical Center
401 N. Pike Street
Grafton, WV 26354

Re: Proposed rule 11 CSR 10

Dear Ms. Lipscomb,

Thank you for your comments regarding the above proposed rule. As a result of all the comments received, the Board of Medicine has exempted advanced practice nurses and advanced nurse practitioners, who have collaborative agreements with physicians. The definition of surgery has been changed to focus on the use of lasers and similar devices, which is the purpose of the proposed rule. The proposed rule as changed looks quite different from the initial proposed rule and we think you will find it satisfactory.

The Agency Approved Rule will be posted on the Board of Medicine's website before the end of this month, when it is filed with the Legislature. You may review it at www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 17, 2008

Patricia H. White, MPA, MPH, Executive Director
West Virginia Health Right, Inc.
1520 Washington Street, East
Charleston, West Virginia 25311

Re: Proposed rule 11 CSR 10

Dear Ms. White:

Thank you for your comments on the Board of Medicine's proposed rule noted above. We are well aware of the contributions of West Virginia Health Right, Inc. and it has not been the intent of the Board of Medicine in developing this rule to harm West Virginia. On behalf of the Board, I thank you for the wonderful service West Virginia Health Right, Inc. performs.

The Agency Approved Rule which will be filed with the Legislature before the end of the month is quite different than the proposed rule as initially filed. When it is filed, it will be available on our website for you to review at www.wvdhhr.org/wvbom. Clinics such as West Virginia Health Right, Inc. have been excluded from the proposed rule, as have advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician. You will also see that the rule itself is focused on laser surgery and that the definition of surgery has been changed. The comment period has been very helpful to the Board of Medicine in focusing its efforts where they need to be.

The Board of Medicine is of the opinion that the free clinics will not be opposed to the Agency Approved Rule.

Sincerely,

Robert C. Knittle

lab

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

July 17, 2008

James L. Comerci, M.D.
Wheeling Health Right
61-29th Street
Wheeling, WV 26003

Re: Proposed rule 11 CSR 10

Dear Dr.Comerci:

Thank you very much for your comments on the proposed rule. The comment period after an initial rule is filed is always an opportunity to be informed and educated and for the agency to determine what is in the best interests of the citizens of the State of West Virginia. As a result of the many comments received, the proposed rule has been substantially changed by the Board of Medicine, and the Agency Approved Rule now changes the definition of surgery to focus on lasers and similar devices and completely excludes clinics such as Wheeling Health Right from the proposed rule's provisions. It also excludes advanced nurse practitioners and advanced practice nurses, in a collaborative relationship with a physician, from its provisions, as well as licensed P.A.'s.

The Agency Approved Rule will be filed before the end of this month with the Legislature and when filed it will be posted on the Board of Medicine's website, www.wvdhhr.org/wvbom where you may review it.

Thank you for your important service volunteering as Medical Director of Wheeling Health Right.

Sincerely,

Robert C. Knittle

lab

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

MEMORANDUM

TO: All Members, Board of Directors of Health Access, Inc.

FROM: Robert C. Knittle

DATE: July 17, 2008

RE: Proposed Rule 11 CSR 10

The Board of Medicine received seven identical comments from members of the Health Access, Inc. Board of Directors. Because in some cases, we were unable to read the name of the writer, we trust that you will accept this form of responding. We thank each of you who did write. Your comments were helpful.

As a result of all the comments received, the Board of Medicine will be filing an Agency Approved Rule which is quite different from the initial proposed rule filed. The Board of Medicine was not interested in curtailing clinics like yours in treating patients, and "clinics organized in whole or in part for the delivery of health services to needy and indigent patients without charge" are specifically excluded from the proposed rule. In addition, the definition of surgery now focuses more specifically on lasers and similar devices, which is the Board of Medicine's interest with this proposed rule. Also, advanced practice nurses and advanced nurse practitioners, in collaborative relationships with physicians, are exempted from the proposed rule.

The Agency Approved Rule will be filed with the Legislature before the end of the month and it will be available on the Board of Medicine's website at that time for you to review. The address is www.wvdhhr.org/wvbom.

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

July 18, 2008

Mary Louise Kistner, M.D.
Member, Board of Directors, Mercer Health Right.
Route 2, Box 378
Bluefield, WV 24701

Re: Proposed Rule 11 CSR 10

Dear Dr. Kistner,

Thank you very much for your comments on the proposed rule. As a result of the many comments received, the proposed rule has been substantially changed by the Board of Medicine, and the Agency Approved Rule now changes the definition of surgery to focus on lasers and similar devices and completely excludes clinics such as Mercer Health Right from the proposed rule's provisions. It also excludes advanced nurse practitioners and advanced practice nurses, in a collaborative relationship with a physician, from its provisions, as well as licensed P.A.'s.

The Agency Approved Rule will be filed before the end of this month with the Legislature and when filed it will be posted on the Board of Medicine's website, www.wvdhhr.org/wvbom where you may review it.

The comment period after an initial rule is filed is always an opportunity to be informed and educated and for the agency to determine what is in the best interests of the citizens of the State of West Virginia. Thank you for your important service volunteering as a physician for the past nine years at Mercer Health Right.

Sincerely,

Robert C. Knittle

lab

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

July 18, 2008

Beth Pritchett, APRN, B.C.
Board Member, Mercer Health Right
Route 2, Box 378
Bluefield, West Virginia 24701

Re: Proposed Rule 11 CSR 10

Dear Ms. Pritchett,

Thank you for taking the time to comment on the above proposed rule. Your comment was helpful, and as a result of it, and many others received, the Board of Medicine has excluded free clinics from the proposed rule's provisions and has also excluded advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician, from the proposed rule's provisions. The definition of surgery has been altered to focus on lasers and similar devices.

The Agency Approved Rule will be filed before the end of this month with the Legislature and when filed it will be posted on the Board of Medicine's website, www.wvdhhr.org/wvbom where you may review it.

It is most unfortunate that in your twenty seven years of practice the circumstances have not changed at all regarding care for the uninsured and poor people in the State of West Virginia. The Board of Medicine is not interested in making that situation any worse through its proposed rule.

Sincerely,

Robert C. Knittle

lab

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

July 18, 2008

Ms. Alcesta Wells
Member, Board of Directors, Mercer Health Right
Route 2, Box 378
Bluefield, West Virginia 24701

Re: Proposed Rule 11 CSR 10

Dear Ms. Wells:

Thank you for your comments on the above proposed rule. As a result of the many comments received, the proposed rule has been substantially changed by the Board of Medicine, and the Agency Approved Rule now alters the definition of surgery to focus on lasers and similar devices and excludes clinics like Mercer Health Right from the proposed rule's provisions. The proposed rule also excludes advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician, from its provisions. I think you will find the Agency Approved Rule more to your liking.

The Agency Approved Rule will be filed before the end of this month with the Legislature and when filed it will be posted on the Board of Medicine's website, www.wvdhhr.org/wvbom where you may review it.

The Board of Medicine understands the fine and much needed service that free clinics provide in West Virginia and has no intention of interfering with that.

Sincerely,

Robert C. Knittle

lab

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

July 18, 2008

Andrea Leffingwell, Executive Director
West Virginia Association of Free Clinics
1448 10th Avenue - #302
Huntington, WV 25701

Re: Proposed Rule 11 CSR 10

Dear Ms. Leffingwell:

Thank you very much for your comments on the proposed rule. As a result of the many comments received, the proposed rule has been substantially changed by the Board of Medicine, and the Agency Approved Rule now alters the definition of surgery to clarify the focus on lasers and similar devices and the proposed rule specifically excludes those clinics which are members of your association from all of its provisions. The Board of Medicine understands the remarkable and essential service that the free clinics in the State of West Virginia provide and the intent of the proposed rule is not to hinder that.

The Agency Approved Rule will be filed before the end of this month with the Legislature and when filed it will be posted on the Board of Medicine's website, www.wvdhhr.org/wvbom where you may review it.

Best wishes to you.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

John J. Collins, M.D., FACS
Associate Professor, Department of Neurosurgery
Chief, Section of Pediatric Neurosurgery
Robert C. Byrd Health Sciences Center South
P.O. Box 9183
Morgantown, WV 26506-9183

Re: Proposed Rule 11 CSR 10

Dear Dr. Collins:

Thank you for your comments regarding the above proposed rule. Many comments on the proposed rule were received, and as a result, the Agency Approved Rule which will be filed with the Legislature by the end of this month is quite different than the original. I believe you will be satisfied. The proposed rule now excludes advanced practice nurses and advanced nurse practitioners, who have a collaborative relationship with a physician, and licensed P.A.'s, from its provisions. The definition of surgery has been changed as well, and the proposed rule now more clearly focuses on laser and similar surgeries. The comment period for proposed rules is always helpful to the Board of Medicine in reaching a determination as to what is in the public interest.

Please look on our web site, www.wvdhhr.org/wvbom, to review the Agency Approved rule in about two weeks. It will be posted there when it is filed with the Legislature.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

Delores Lucky FNP-BC
Summersville Skin Care Center, Inc
818 Arbuckle Road, Suite 102
Summersville, WV 26651

Re: Proposed rule 11 CSR 10

Dear Ms. Lucky

Thank you for your comments regarding the above proposed rule. As a result of all the comments received, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician, as well as licensed P.A.'s, have been excluded by the Board of Medicine from the proposed rule. The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern. I think you will find the Agency Approved Rule satisfactory.

When the Agency Approved Rule is filed with the Legislature, and we hope to do that by the end of this month, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

Kyra Moore, DON
Pocahontas Memorial Hospital
R.R. 2 Box 52W
Buckeye, WV 24924

Re: Proposed Rule 11 CSR 10

Dear Ms. Moore:

Thank you for your comments regarding the above proposed rule. As a result of all the comments received, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician, as well as licensed P.A.'s, have been excluded by the Board of Medicine from the proposed rule, thus eliminating your worry that the proposed rule forbids simple lesion removal and simple suturing by those categories of health professionals. The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern.

When the Agency Approved Rule is filed with the Legislature, and we hope to do that by the end of this month, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

Ms. Louise Reese
West Virginia Primary Care Association, Inc.
1219 Virginia Street, East
Charleston, West Virginia 25301

Re: Proposed Rule 11 CSR 10

Dear Ms. Reese,

Thank you for your letter commenting on the above proposed rule. The Board appreciates the fact that you support its efforts to ensure that non-licensed, non-credentialed individuals are not inappropriately or dangerously performing medical functions including using lasers, pulsed light and radiofrequency devices. As a result of all the comments received, the Agency Approved Rule differs from the proposed rule as initially filed in that it focuses on laser and similar devices, both in the title and in the definition. Also, advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician, as well as licensed P.A.'s, are excluded from the proposed rule. We think you will be pleased with the changes which have been made.

When the Agency Approved Rule is filed with the Legislature, before the end of this month, it will be available for your review on our website at www.wvdhhr.org/wvbom.

Best wishes to you.

Sincerely,

Robert C. Knittle

lab

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

MEMORANDUM

TO: Thomas F. Harmon, M.D
Rita K. Payne, M.D.
Patsy Harmon, C.N.M.
Jane Koch, C.R.N.P.
Julie A. Armistead, R.N.C., W.H.N.P.

FROM: Robert C. Knittle

DATE: July 21, 2008

RE: Proposed Rule 11 CSR 10

Thanks to all of you for your comments on the above proposed rule. As a result of your comments and other comments, the proposed rule as approved by the Board of Medicine excludes from all of its provisions advanced practice nurses, advanced nurse practitioners, and certified nurse midwives, acting pursuant to a collaborative agreement with a licensed physician. Licensed P.A.'s and free clinics are also excluded from the proposed rule.

When the Agency Approved Rule is filed with the Legislature later this month it may be viewed on the Board of Medicine website, www.wvdhhr.org/wvbom. It is not the Board's desire to restrict advanced nursing practice. The comments received helped the Board of Medicine develop the proposed rule to now clearly focus on laser and similar surgery. I believe your concerns have been addressed.

lab

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

MEMORANDUM

TO: Michael Vernon
Michael L. Stitely, M.D.
Maureen Hashmi
Hobson G. Booth
Charles Hochberg
Loraine L. Tyre
William M. Holls, III, M.D.
Donna Dorinzi, NP-BC
Kelli M. Gevas, CNM
Evie Love
Mark Behnam
Courtney Cuppett
Matthew Jason Honaker
Shari Twigg
Jessica Close
Melanie Clemmer
Sushma Singh
Wanda Hembree, M.D.
Roger C. Toffls

FROM: Robert C. Knittle

DATE: July 21, 2008

RE: Proposed Rule 11 CSR 10

Thanks to all the Faculty at the Department of Obstetrics and Gynecology at WVU for your comments on the above proposed rule. As a result of your comments and other comments, the proposed rule as approved by the Board of Medicine excludes from all of its provisions advanced practice nurses, advanced nurse practitioners, and certified nurse midwives, acting pursuant to a collaborative agreement with a licensed physician.

When the Agency Approved Rule is filed with the Legislature later this month it may be viewed on the Board of Medicine website, www.wvdhhr.org/wvbom. It was never the Board's desire to have a detrimental impact on access to women's health care in West Virginia in developing this proposed rule which is now clearly focused on laser and similar surgery.

lab

State of West Virginia
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Telephone 304.558.2921
Fax 304.558.2084

July 21, 2008

Jim Kranz, Vice President, Professional Activities
West Virginia Hospital Association
100 Association Drive
Charleston, West Virginia 25311-1571

Re: Proposed Rule 11 CSR 10

Dear Mr. Kranz:

Thank you for your comments on the above proposed rule and for the Hospital Association's recognition that with technological developments in surgery over recent years, especially the increasing use of lasers and pulsed light devices, the proposed rule is necessary.

At its meeting on July 14, 2008, the Board of Medicine voted to change the rule in a number of areas, including the title, and the definition of surgery, to clarify that the focus is on laser and similar surgery, and has excluded from the proposed rule, along with hospitals, licensed P.A.'s, acting pursuant to job descriptions approved by the Board of Medicine, supervised by a supervising physician. Also excluded from the proposed rule are advanced practice nurses, advanced nurse practitioners, or certified nurse midwives, acting pursuant to a collaborative agreement with a licensed physician, and free clinics. The Board of Medicine believes that the West Virginia Hospital Association will be in support of the Agency Approved Rule when it has the opportunity to review it.

We hope to file the Agency Approved Rule with the Legislature before the end of the month, and when it is filed it will be posted on our website, at www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

John W. Aldis, M.D.
4911 River Road
Shepherdstown, WV 25443

Re: Proposed Rule 11 CSR 10

Dear Dr. Aldis:

Thank you very much for your comments on the above proposed rule. The proposed rule as initially filed was modeled on the Board of Medicine's Public Policy Statement on Surgery Using Lasers, Pulsed Light Radiofrequency Devices, or Other Techniques. It is available on the Board's website, www.wvdhhr.org/wvbom. I believe that explains some of the language which you have pointed out.

All of the comments received assisted the Board in developing a rule which is different from the one initially filed. The Board has exempted advanced nurse practitioners, advanced practice nurses, and certified nurse midwives, acting pursuant to collaborative agreements with a physician, from the proposed rule. Also exempted from the proposed rule are licensed P.A.'s. This has allowed the Board to focus on regulation of laser and similar surgery, which is an increasing problem all across the country.

When the Agency Approved Rule is filed with the Legislature before the end of this month, it will be available on the Board's website for your review.

Sincerely,

Robert C. Knittle

lab

State of West Virginia
West Virginia Board of Medicine
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Charleston, WV 25311
Telephone 304.558.2921
Fax 304.558.2084

July 21, 2008

Ann Davis, PA-C
Director of State Government Affairs
American Academy of Physician Assistants
950 North Washington Street
Alexandria, Virginia 22314-1552

Re: Proposed Rule 11 CSR 10

Dear Ms. Davis:

Thank you for your comments regarding the above proposed rule. As a result of all the comments received, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Licensed P.A.'s have been excluded by the Board of Medicine from the proposed rule. You will find this in the last section, 10.1. The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern. I think you will find the Agency Approved Rule satisfactory.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

Sandra E. Swisher, APN, BC
2712 Fairview Ave.
Parkersburg, WV 26104

Re: Proposed Rule 11 CSR 10

Dear Ms. Swisher:

Thank you for your comments regarding the above proposed rule. As a result of all the comments received, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which should eliminate your concerns. Advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician, as well as licensed P.A.'s, have been excluded by the Board of Medicine from the proposed rule. The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern. I think you will find the Agency Approved Rule satisfactory.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom. Go first to look at the section on Applicability of Rule, at the end, at 10.1.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

Michael J. Painter, Administrator
West Virginia School of Osteopathic Medicine
Robert C. Byrd Clinic
400 North Jefferson Street
Lewisburg, West Virginia 24901

Re: Proposed Rule 11 CSR 10

Dear Mr. Painter:

Thank you for your comments on the above proposed rule. As a result of all the comments received on the above proposed rule, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Most important for the concerns you articulated, advanced practice nurses and advanced nurse practitioners, as well as certified nurse midwives, in a collaborative relationship with a physician, and licensed P.A.'s, have been excluded by the Board of Medicine from the proposed rule. You will find this at the end of the proposed rule, under "Applicability of Rule" at 10.1.

The Board of Medicine's central concern is laser and similar surgery and the Agency Approved Rule reflects that. The unregulated use of lasers all across this country is an increasing problem and the Board of Medicine does not believe it is in the public interest to ignore the problem in West Virginia. That was the motivation for the proposed rule. The comments received helped the Board of Medicine to develop the proposed rule appropriately. This is of course why there is a comment period. The Board of Medicine understands the importance of mid-level providers throughout the health system and has not in any way altered their functioning in the Agency Approved Rule.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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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July 21, 2008

Mary Elizabeth Durant, MSN, WHNP, CNM
Clinical Assistant Professor
Health Promotion/ Risk Reduction Department
School of Nursing, WVU
PO Box 9639
Morgantown, WV 26506

Re: Proposed Rule 11 CSR 10

Dear Ms. Durant:

Your comments on the above proposed rule were forwarded to the Board of Medicine from the Board of Examiners for Registered Professional Nurses. As a result of all the comments received on the above proposed rule, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Most important for the concerns you articulated, advanced practice nurses and advanced nurse practitioners, as well as certified nurse midwives, in a collaborative relationship with a physician, have been excluded by the Board of Medicine from the proposed rule. Also, free clinics have been excluded from the proposed rule. You will find this at the end of the proposed rule, under "Applicability of Rule" at 10.1.

The Board of Medicine's central concern is laser and similar surgery and the Agency Approved Rule reflects that. The unregulated use of lasers all across this country is an increasing problem and the Board of Medicine does not believe it is in the public interest to ignore the problem in West Virginia. That was the motivation for the proposed rule. The comments received helped the Board of Medicine to develop the proposed rule appropriately. That is why there is a comment period when rules are proposed. The Board of Medicine understands the importance of advanced nurse practitioners and advanced practice nurses, in a collaborative relationship with physicians, throughout our health system.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

June 18, 2008

The Honorable C. Randy White
212 River Road
Webster Springs, West Virginia 26288

Dear Senator White:

Thank you for your letter of June 10, 2008, wherein you comment on the Board of Medicine's proposed rule on Definition of Surgery. If you review the proposed rule on the Board of Medicine's website, www.wvdhhr.org/wvbom, you will see that the proposed rule does not make it illegal for any advanced practice nurse to suture wounds, order injections, remove skin lesions, etc., as you say. Moreover, the rule is proposed at this point, the Board is inviting comments, and will study all the comments, including yours, before filing the agency approved rule with the Legislative Rule Making Review Committee, which as you know, is just the beginning of the process of developing a rule. There is no doubt that advanced practice nurses are valuable in West Virginia. The rule as proposed recognizes that.

As to your inquiry about the Board of Medicine attempting to make the unauthorized practice of medicine a felony, it is correct that the Senate passed such a bill in the 2008 Regular Session of the Legislature. Unfortunately, it died in the House of Delegates. The bill had nothing to do with denying those persons who have obtained from academia the title of Doctor of Nursing Practice or a Ph.D., nor would that have been its effect. West Virginia Code § 61-10-21 makes it a crime for a person to use the prefix "Doctor" or "Dr." in connection with his or her name without affixing suitable words or letters designating the degree which he or she holds. That law has been in effect for almost seventy (70) years and has caused no problem for nurses, nor should it.

What the Board seeks to do in the Medical Practice Act by making the unauthorized practice of medicine a felony is entirely different, and it is a needed piece of legislation to protect the public safety. Just yesterday a woman was to be sentenced in Berkeley County for victimizing a number of people by pretending she was a physician when she was not. She caused harm to several persons, and as a misdemeanor, the available punishment at this time really does not fit the crime.

I appreciate your taking the time to comment on the proposed rule, 11CSR10, and if you would like to talk with me further, please don't hesitate to contact me. Best wishes to you.

Sincerely,

Robert C. Knittle
Executive Director

RCK/meb

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

July 21, 2008

The Honorable C. Randy White
212 River Drive
Webster Springs, WV 26288

Re: Proposed Rule 11 CSR 10

Dear Senator White:

This follows up on my letter to you of June 18, 2008. As a result of all the comments received on the above proposed rule, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Most important for the concerns you articulated, advanced practice nurses and advanced nurse practitioners, as well as certified nurse midwives, in a collaborative relationship with a physician, have been excluded by the Board of Medicine from the proposed rule. You will find this at the end of the proposed rule, under "Applicability of Rule" at 10.1.

The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern. The unregulated use of lasers all across this country is an increasing problem and the Board of Medicine does not believe it is in the public interest to ignore this. I think you will find the Agency Approved Rule satisfactory and the Board of Medicine hopes you will support it.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

David P. Peasak, II, NP
82 Oak Ridge Road
Mount Clare, WV 26408

Re: Proposed Rule 11 CSR 10

Dear Mr. Peasak:

Thank you for your comments addressed to Dr. Wade regarding the above proposed rule. As a result of all the comments received, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician, as well as licensed P.A.'s, have been excluded by the Board of Medicine from the proposed rule. The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern. I think you will find the Agency Approved Rule satisfactory.

When the Agency Approved Rule is filed with the Legislature, and we hope to do that by the end of this month, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

State of West Virginia
West Virginia Board of Medicine
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Charleston, WV 25311
Telephone 304.558.2921
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July 21, 2008

Georgia Narsavage, PhD, ANP-BC, FAAN
Office of the Dean
6700 Health Sciences South
P.O. Box 9600
Morgantown, WV 26506-9600

Re: Proposed Rule 11 CSR 10

Dear Dean Narsavage:

Thank you for your comments on the above proposed rule. As a result of all the comments received on the above proposed rule, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Most important for the concerns you articulated, advanced practice nurses and advanced nurse practitioners, as well as certified nurse midwives, in a collaborative relationship with a physician, and licensed P.A.'s, have been excluded by the Board of Medicine from the proposed rule. You will find this at the end of the proposed rule, under "Applicability of Rule" at 10.1.

The Board of Medicine's central concern is laser and similar surgery and the Agency Approved Rule reflects that. The unregulated use of lasers all across this country is an increasing problem and the Board of Medicine does not believe it is in the public interest to ignore the problem in West Virginia. That was the motivation for the proposed rule. The comments received helped the Board of Medicine to develop the proposed rule appropriately. This is of course why there is a comment period. The Board of Medicine understands the importance of mid-level providers throughout the health system.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 21, 2008

Patricia Lally, D.O.
210 E. Randolph Street
Lewisburg, WV 24901

Re: Proposed Rule 11 CSR 10

Dear Dr. Lally:

Thank you for your comments regarding the above proposed rule. As a result of all the comments received, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Advanced practice nurses and advanced nurse practitioners, in a collaborative relationship with a physician, as well as licensed P.A.'s, have been excluded by the Board of Medicine from the proposed rule. The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern. I think you will find the Agency Approved Rule satisfactory.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 22, 2008

Alvita Nathaniel, PhD, FNP-BC
209 East Grandview Addition
Princeton, West Virginia 24740

Re: Proposed Rule 11 CSR 10

Dear Dr. Nathaniel:

Thank you for your comments on the above proposed rule. As a result of all the comments received on the above proposed rule, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Most important for the concerns you articulated, advanced practice nurses and advanced nurse practitioners, as well as certified nurse midwives, in a collaborative relationship with a physician, have been excluded by the Board of Medicine from the proposed rule. You will find this at the end of the proposed rule, under "Applicability of Rule" at 10.1.

The Board of Medicine's central concern is laser and similar surgery and the Agency Approved Rule reflects that. The unregulated use of lasers all across this country is an increasing problem and the Board of Medicine does not believe it is in the public interest to ignore the problem in West Virginia. That was the motivation for the proposed rule. The comments received helped the Board of Medicine to develop the proposed rule appropriately. That is why there is a comment period when rules are proposed. The Board of Medicine understands the importance of advanced nurse practitioners and advanced practice nurses, in a collaborative relationship with physicians, throughout our health system.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 22, 2008

Shauna Lively Aurelio Popson, RN, EdD
Associate Professor
West Virginia Wesleyan College
Buckhannon, WV 26201

Re: Proposed Rule 11 CSR 10

Dear Dr. Popson:

Thank you for your comments on the above proposed rule. As a result of all the comments received on the above proposed rule, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Most important for the concerns you articulated, advanced practice nurses and advanced nurse practitioners, as well as certified nurse midwives, in a collaborative relationship with a physician, and licensed P.A.'s, have been excluded by the Board of Medicine from the proposed rule. You will find this at the end of the proposed rule, under "Applicability of Rule" at 10.1.

The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern. The unregulated use of lasers all across this country is an increasing problem and the Board of Medicine does not believe it is in the public interest to ignore the problem in West Virginia. That was the motivation for the proposed rule. The comments received helped the Board of Medicine to develop the proposed rule appropriately.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

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

July 22, 2008

A. Wes Siegner, Jr., President
Manufacturers of Equipment for Light-Based Aesthetics
700 13th Street, N.W., Ste. 1299
Washington, D.C. 20005

Re: Proposed Rule 11 CSR 10

Dear Mr. Siegner:

Thank you for your comment on the above proposed rule. As a result of all the comments, the Board of Medicine will be filing an Agency Approved Rule with the Legislature before the end of the month which is quite different from the initial proposed rule filed. The Board disagrees with your position that the Board has exceeded the statutory authority delegated to it. Furthermore, the unregulated use of lasers and light based devices has been an increasing problem throughout the country, and as you know, this Board of Medicine is following in the steps of many other states that have already moved to protect its citizens through policies, guidelines, rules or statutes pertaining to this subject.

When the Agency Approved Rule is filed with the Legislature it will be available for your review on our website, www.wvdhhr.org/wvbom. You may find it more palatable than the initial rule.

Sincerely,

Robert C. Knittle

lab

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

July 22, 2008

Robert E. Bowen, M.D.
2000 Foundation Way, Suite 2400
Martinsburg, WV 25401

Re: Proposed Rule 11 CSR 10

Dear Dr. Bowen,

Thank you very much for your helpful comments on the Board of Medicine's proposed rule. It is precisely because of what you note is the "breathtaking" evolution of lasers in the last twenty five years that the Board of Medicine determined that regulation of this surgery is essential for the protection of the public. The Board of Medicine appreciates your support. Throughout the country many states have moved to regulate this area. West Virginia is by no means a pioneer in this regard.

As a result of your comments, and the many more that the Board of Medicine received, the Board of Medicine will be filing with the Legislature an Agency Approved Rule by the end of this month. It has changes from the first, including some you suggested. Though you will not agree with the change exempting some categories of health personnel from the proposed rule, those persons exempted are in fact either in collaboration with physicians or supervised by physicians.

After the Agency Approved Rule is filed with the Legislature, it will be available on the Board's website for your review, at www.wvdhhr.org/wvbom. Comments from then on should go to the members of the Legislature, and in particular, the Legislative Rule Making and Review Committee which will be the first committee to place it on the agenda.

Sincerely,

Robert C. Knittle

lab

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

July 22, 2008

C. William Hanke, MD, FAAD, President
American Academy of Dermatology and AAD Association
1350 1 Street NW, Suite 870
Washington, D.C. 20005-3319

Re: Proposed Rule 11 CSR 10

Dear Dr. Hanke,

Thank you for your comments on the above proposed rule, and for your support of the proposed rule. We received many comments on the rule, and as a result, have changed the proposed rule. The Agency Approved Rule will be filed with the Legislature before the end of the month and you may review it at that time on our website, www.wvdhhr.org/wvbom.

You will note at the end of the proposed rule that several categories of health personnel are exempted from the proposed rule, as are free clinics.

If you have further comments after reviewing the proposed rule, they should go to the representatives of the Legislature, in particular, the members of the Legislative Rule Making Review Committee which is made up of representatives of both the Senate and the House of Delegates.

Sincerely,

Robert C. Knittle

lab

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

July 23, 2008

Jill C. Bentz, Esq.
Dinsmore & Shohl LLP
Huntington Square
900 Lee Street, Suite 600
Charleston, West Virginia 25301

Re: Proposed Rule 11 CSR 10

Dear Ms. Bentz:

Thank you for your comments on the above proposed rule on behalf of Refuge Medical Spa. As a result of all the comments received, the Board of Medicine will be filing an Agency Approved Rule before the end of the month which is quite different from the proposed rule as initially filed. When it is filed, it will be posted on the Board of Medicine website for your review, at www.wvdhhr.org/wvbom.

Let me say at the outset that if the proposed rule is enacted as it will be filed, it would not have any impact on your client because the physician who is the Medical Director of her spa is not an M.D. This Board of Medicine has no jurisdiction over D.O.'s. That Board develops its own rules.

Not all aestheticians practicing in West Virginia have the training and experience you cite that Ms. Terry has. Even if she has that, the Board of Medicine does not believe it is safe for a Medical Director not to do an initial physical examination of every patient and not to be on site. In that regard, your letter points up the need for better control of this activity. The lack of regulation of laser and similar surgery is an increasing concern throughout the country and the Board of Medicine does not believe it

is in the public interest to ignore the problem in West Virginia. Many other states have addressed laser surgery through guidelines, policies, rules and statutes.

Once again, thank you for your comments. They were helpful.

Sincerely,

Robert C. Knittle

lab

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

July 22, 2008

Nancy S. Tonkin, Executive Director
West Virginia Academy of Ophthalmology
2110 Kanawha Boulevard, East, Suite 220
Charleston, West Virginia 25311

Re: Proposed Rule 11 CSR 10

Dear Ms. Tonkin:

Thank you for your comment on the above proposed rule. The Board of Medicine received many comments on the proposed rule and will be filing an Agency Approved Rule before the end of July with the Legislature. When it is filed, you may review it at our website, www.wvdhhr.org/wvbom. A number of changes have been made to the proposed rule, including the applicability of the proposed rule. You will see at the end of the proposed rule, at 10.1, that excluded from the rule the Board has added free clinics, licensed P.A.'s, and advanced nurse practitioners, advanced practice nurses, and certified nurse midwives, in a collaborative relationship with a physician.

The Board of Medicine did not think in the public interest to exclude optometrists from the requirements of the rule. Their scope of practice clearly and specifically does not include surgery.

Sincerely,

Robert C. Knittle

lab

State of West Virginia
West Virginia Board of Medicine
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Telephone 304.558.2921
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July 23, 2008

Kristopher K. Musick, P.A.-C
WVAPA President
3547 Virginia Avenue
Hurricane, WV 25526

Re: Proposed Rule 11 CSR 10

Dear Mr. Musick:

Thank you for your comments regarding the above proposed rule. The comments were helpful. As a result of all the comments received, the Board of Medicine will file with the Legislature an Agency Approved Rule before the end of the month which addresses your concerns. Licensed P.A.'s have been excluded by the Board of Medicine from the proposed rule. You will find this in the last section, 10.1. The definition of surgery and the rule title both focus more on lasers and similar devices, which is the Board of Medicine's central concern. I think you will find the Agency Approved Rule satisfactory.

When the Agency Approved Rule is filed with the Legislature, it will be available for review on our website, www.wvdhhr.org/wvbom.

Sincerely,

Robert C. Knittle

lab

From: Bob Knittle
To: stalnakerdp@ab.edu
Date: 7/21/2008 9:32:54 AM
Subject: Response to rule 11 CSR 10

Mr. Stalnaker,
Thank you for your comments on the proposed rule 11 CSR 10. As a result of all the comments received, the Board of Medicine will be filing with the Legislature an Agency Approved Rule later this month which contains a changed definition of surgery and a focus on laser and similar surgery, which is the Board's concern and the reason for the proposed rule.
Most important for your concerns is that licensed P.A.'s, as well as advanced nurse practitioners and advanced practice nurses, in a collaborative relationship with a physician, are among those excluded from the proposed rule. (Go to 10.1, at the end of the rule, to "Applicability of Rules" and you will see this.)
The Agency Approved Rule will be available on our website for your review after filing in about two weeks, at www.wvdhhr.org/wvbom.
Sincerely,
Robert C. Knittle

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

From: Bob Knittle
To: martha.cookcarter@familycarewv.org
Date: 7/21/2008 9:24:20 AM
Subject: Response to propose rule 11 CSR 10

Dear Ms. Carter,

Thank you for your comments on proposed rule 11 CSR 10. As a result of your comments and those of others, the Board of Medicine will be filing with the Legislature before the end of this month an Agency Approved Rule which is quite different from the initial proposed rule. To address your concerns, it exempts advanced nurse practitioners and advanced practice nurses and certified nurse midwives, in a collaborative relationship with a physician, from its provisions. The definition of surgery focuses more on lasers, pulsed light and other such devices, which is the concern of the Board of Medicine.

The process the Legislature has set out by providing a comment period is educational and we think it works.

In about two weeks, the Agency Approved Rule will be available for review on our website, www.wvdhhr.org/wvbom.

Robert C. Knittle
Executive Director
WV Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311
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From: Bob Knittle
To: schoud5@uic.edu
Subject: West Virginia Board of Medicine proposed rule 11 CSR 10

Samreen Choudry
MD Candidate
College of Medicine
University of Illinois at Chicago

Dear Ms. Choudhry:

Thank you for your comment endorsing the Board of Medicine's proposed rule 11 CSR 10. Many comments were received after the initial filing, and as a result, the Board of Medicine has adopted an Agency Approved Rule which is different from the initial one filed. You may view the Agency Approved Rule on our website,www.wvdhhr.org/wvbom, after it is filed with the Legislature.

In fact, the Board of Medicine, by this proposed rule, has made clear that only licensed individuals may perform certain procedures, and only under supervision by physicians. Medical Assistants are not licensed in West Virginia, nor are electrologists. Aestheticians and Cosmetologists are licensed and the Agency Approved Rule requires that if they are being supervised in performing the procedures, it must be within their scope of practice to do what is being done.

If you have further comments after reviewing the Agency Approved Rule, they should go to the members of the Legislative Rule Making Review Committee at the West Virginia Legislature where is will next be taken up.

Robert C. Knittle

State of West Virginia
West Virginia Board of Medicine
101 Dee Drive, Suite 103
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REASONS FOR CHANGES

The Board of Medicine hoped for comments on its initial proposed rule filing in order for the Board to shape the proposed rule most effectively for the citizens of West Virginia. The goal was to ensure that the use of lasers, ionizing radiation, pulsed light and radiofrequency devices were understood to be "surgery", as mentioned in the West Virginia Medical Practice Act, and to regulate these surgical procedures, for the safety of the public. The title of the proposed rule has been altered to reflect this goal, as well as the definition of "surgery". In its present form, the proposed rule achieves that important goal, without harming the provision of essential health care in West Virginia.

As a result of the comments received, it became evident that the proposed rule as initially structured was too broad and would negatively impact the provision of the health care provided at the free clinics in West Virginia. This was never intended, so they are exempted from the proposed rule. Also, it was evident from the comments and from the Board of Medicine's hands on experience with Physician Assistants, wherein each and every job description of a P.A. is reviewed and approved by the Board of Medicine and by law, P.A.'s may only function under supervision of a physician, that it was not necessary or appropriate to include them in the proposed rule, and it would be confusing to do so.

Advanced nurse practitioners, advanced practice nurses, and certified nurse midwives, if prescribing, function with a collaborative agreement with a physician. The Board of Medicine believes that they need not be covered by the proposed rule as they are working in collaboration with a physician and the Board of Medicine does not want to harm the provision of health care in the rural areas of West Virginia by requiring such strict supervision that they are unable in fact to provide health care. These categories of health care providers should be excluded and are regulated under requirements of a different board.