

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

Form #2

Do Not Mark In This Box

FILED

2010 JUN 25 AM 11:06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Optometry TITLE NUMBER: §14-1

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §30-8

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: §14-1

TITLE OF RULE BEING AMENDED: Rules of the West Virginia Board of Optometry

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 26, 2010 AT noon ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Optometry
179 Summers Street, Suite 231
Charleston, WV 25301

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA BOARD OF OPTOMETRY

14CSR1

Rules of the West Virginia Board of Optometry

Summary

The amendment to §14-1 is written to comply with the passage of Senate Bill 230 during the 2010 Legislative Session. Senate Bill 230 completely revised the Board's enabling statute, W. Va. Code §30-8.

- The amendment expands the number of those who may administer applications, exams, licensing, and renewal by referring to "the Board or its designee" in contrast to the present references to a specific individual.
- The amendment adds provisions for a third party to administer the West Virginia Examination.
- It re-writes the notification process for license renewal.
- It establishes a Temporary Permit in compliance with Senate Bill 230.
- The amendment commemorates the Special Volunteer License listed in Senate Bill 230.
- The amendment establishes a Special Event Permit for a single charitable event where an optometrist from another jurisdiction may provide optometric services authorized in his or her state without remuneration.
- It establishes an Inactive License as required by Senate Bill 230.

WEST VIRGINIA BOARD OF OPTOMETRY

14CSR1

Rules of the West Virginia Board of Optometry Amendment

Circumstances

The amendment is written in order to comply with the requirements of Senate Bill 230 passed during the 2010 Legislative Session rewriting the Board's enabling statute, W. Va. Code §30-8.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules of the West Virginia Board of Optometry, §14-1

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Optometry

Address: 179 Summers Street, Suite 231
Charleston, WV 25301

Phone Number: 304-558-5901 Email: wbdopt@verizon.net

Fiscal Note Summary

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

The rule adds two types of permits and two types of licensure which are not currently in existence. There will be increased staff and processing costs associated with these new forms of licensure.

The increase is estimated to be \$4612 for a total cost of this rule at \$50835.

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	46,223.00	4,612.00	50,835.00
Personal Services	26,475.00	2,647.00	29,122.00
Current Expenses	19,538.00	1,954.00	21,492.00
Repairs & Alterations	210.00	11.00	221.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	58,500.00	0.00	55,800.00

Rule Title: Rules of the West Virginia Board of Optometry, §14-1

Rule Title: _____

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Administration of §14-1 takes approximately 50% of the Board's resources. The two new permits and two new forms of licensure will add 5% to the demand.

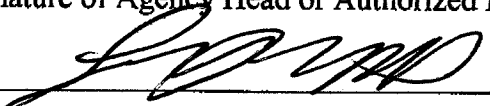
This rule sets up fees for the new forms of licensure. The Board estimates there will be a loss of revenue with the initiation of the Inactive License. If the board uses the 5% figure for those who will choose inactive licensure the loss should be \$4200 (294 licensees x 7% = 21. 21 licensees x 200 = \$4200).

§14-5, Schedule of Fees, adds a Temporary Permit Fee of \$300. The Board estimates that 5 applicants will apply for a Temporary Permit = \$1500. This will result in a loss of revenue of \$2700 (\$4200-\$1500 = \$2700).

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.

Date: 6/25/10

Signature of Agency Head or Authorized Representative


FILED

TITLE 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY 2010 JUN 25 AM 11:06

SERIES 1
RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§14-1-1. General.

1.1. Scope. -- This rule establishes the operation of the West Virginia Board of Optometry and the requirements, procedures and responsibilities for licensure as an optometrist.

1.2. Authority. -- W. Va. Code §30-8-1 et. seq.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

§14-1-2. Definitions.

2.1. "Applicant" means any person making application for a license or temporary permit under the provisions of W. Va Code §30-8-1 et. seq. and the Board's rules, 14CSR.

2.2. "Board" means the West Virginia Board of Optometry.

2.3. "License" means a license to practice optometry.

2.4. "Licensee" means an optometrist licensed under the provisions of W. Va. Code §30-8-1 et. seq. and the provisions of the Board's rules, 14CSR.

2.5. "Temporary permit" or "permit" means a permit issued to a person who has graduated from an accredited optometry school, has taken all parts of the prescribed National Board Examination and is awaiting results of the examination.

2.6. "National Board Examination" means the prescribed national examination in optometry composed and administered by the National Board of Examiners in Optometry or its successor. The National Board Examination is a

prerequisite for taking the West Virginia Examination.

2.7. "West Virginia Examination" is the examination administered by the West Virginia Board of Optometry or its designee required for a license to practice optometry in West Virginia under the provisions of W. VA. Code 30-8-1, et seq. and the provisions of the Board's rules, 14 CSR.

2.8. "Special Event Permit" means a permit issued by the Board to an optometrist for a single charitable event where no remuneration is paid to the optometrist for services rendered.

2.9. "Accredited Optometry School" means a school accredited by the Accreditation Council on Optometric Education or its successor recognized by the U.S. Department of Education.

§14-1-2 3. Applications And Examinations.

23.1. Before any person may take the examination for a license to practice optometry in this State he or she shall submit a written application on the Board's application form, which will be supplied by the ~~secretary of the~~ Board or its designee upon written request, setting forth his or her name, address, date and place of birth, citizenship and a detailed history of his or her educational qualifications, showing the name, the place where and the length of time which the applicant attended pre-optometry and optometry schools. The applicant shall also state in the application whether he or she has taken any other State Board examinations and the results of the examinations and whether or not he or she has actively engaged in practice of optometry in any other state. With the application he or she shall include two (2) current photographs of himself or herself, not to exceed two (2) inches by two (2) inches in size.

~~23.2.~~ In the application the applicant shall state that he or she will abide by the laws of this State regulating the practice of optometry and by the Rules adopted by the Board.

~~23.3.~~ The application shall be subscribed by the applicant and sworn by him or her before any officer legally qualified to administer oaths.

~~23.4.~~ The Board shall deny the right to take the examination to any person furnishing false information in the application, or if the applicant has been licensed before it is made known to the Board of the falseness of the information, the license is subject to suspension, revocation or cancellation.

~~23.5.~~ Certified copies of the transcripts of records from pre-optometry and optometry colleges attended by the applicant shall accompany each application. The certified transcripts of record shall show the total number of hours of attendance, the subjects studied, the grades given and the date of graduation.

~~23.6.~~ Passing all parts of the National Board Examination (~~and the TMOB prior to 1996~~) is a prerequisite for taking the West Virginia Examination, to be confirmed by receipt of a passing grade report from the National Board of Examiners' office.

~~23.7.~~ The applicant shall file the completed application and examination fee with the ~~secretary of the Board~~ or its designee not later than thirty (30) days prior to the first day of the examination dates. In the event an applicant intends to retake the examination, the fee and the notice of his or her intention to retake the examination shall also be in the ~~secretary's Board~~ office thirty (30) days prior to the examination dates. The completed application, records and fees are to be mailed to the ~~secretary Board~~ or its designee in one (1) parcel and all transcripts are to be left sealed.

~~23.8.~~ The fee for taking the examination shall be determined by the Board's rule, Schedule of Fees, 14CSR5.

~~23.9.~~ Receipt of an application by the ~~secretary Board~~ or its designee, the processing

of records for an applicant's qualification to take the examination, and an examination prepared shall be, the same as taking the examination without grades when an applicant fails to appear. This section does not apply if an applicant has notified the ~~secretary Board~~ or its designee of his or her inability to appear for examination due to acceptable extenuating circumstances.

~~§14-1-34.~~ Rules For Examination.

~~34.1.~~ The Board shall conduct, examinations for a license to practice optometry in this State by any means the Board determines adequate to ascertain the qualifications of the applicant. This may include a West Virginia Examination administered by a third party organization. Such exam shall be prepared, administered, and graded by the National Board of Examiners in Optometry or other nationally recognized optometric organization as approved by the Board. If the Board chooses to have a third party organization administer the West Virginia exam, the procedures of the third party organization shall be used to administer the exam. The Board will approve all questions in the third party examination. The Board shall give each applicant due notice of the date, time and place of the examination and advise that his or her records have been received and are complete. If the applicant's records are incomplete the Board shall advise the applicant as to what records are missing or improper.

~~34.2.~~ Prior to an examination ~~the secretary of the Board~~ or a member of the Board designated by the president, if the secretary is absent, shall prepare a tentative schedule showing the time allotted to each subject and the order in which they will be given. The schedule shall meet the approval of a majority of the members of the Board. The ~~secretary~~ designee shall make the approved schedule available to the applicants taking the examination.

~~34.3.~~ The examinations shall start on the second Sunday of February and July unless otherwise directed by the ~~president Board~~.

~~34.4.~~ When examination papers are delivered to the ~~secretary or~~ presiding examiner, they become the property of the Board and shall

not be returned to the applicant or delivered to any other person. Each Board member shall be custodian of his or her own examination papers which must be preserved for a period of thirty (30) days after final grading and the results are announced to the applicant.

34.5. At the direction of the president, ~~the secretary or~~ his or her appointed representative may conduct the examination without a quorum of the Board being present.

§14-1-45. Colleges Of Optometry.

45.1. A college of optometry, to be approved by the Board, shall maintain high scholastic and professional standards and be ~~approved~~ accredited by the Accreditation Council on Optometric Education (ACOE) of the American Optometric Association or its successor.

45.2. The ~~secretary~~ Board shall keep an up-to-date list of all Colleges of Optometry approved by the Board, and make the list available upon request.

§14-1-56. Licenses.

56.1. When an applicant is examined by the Board and found qualified to practice the profession of optometry in this State he or she shall be notified by letter by the ~~secretary~~ Board or its designee. In this letter the ~~secretary~~ Board or its designee shall also advise the applicant of the required certificate fee and the annual renewal fee. If the applicant fails to pay the required fees within ninety (90) days, his or her records shall be so marked and he or she shall not be listed as a registered optometrist in this State. The ~~secretary~~ Board or its designee shall make every effort to locate the applicant and shall send a registered letter with receipt requested to the address given by the applicant.

56.2. The Board shall issue a license to practice the profession of optometry in this State to any person who passes the examination and meets the requirements of the Board, or is approved by endorsement. The fee for issuing this license is to be paid by check or money order made payable to the West Virginia Board

of Optometry.

56.3. The Board shall issue a ~~certificate~~ license to include the licensee's name in full, a ~~certificate~~ license registration number, the Board seal, the effective date of the certificate and the signatures of the Board members. One photograph shall be affixed to the large certificate and one shall remain in the permanent file.

§14-1-67. Renewals.

67.1. A ~~registered optometrist~~ licensee who desires to continue in active practice shall, ~~biennially~~ annually, on or before the ~~thirty first~~ first day of July, of the year of expiration, renew his or her ~~certificate of registration~~ license and pay a ~~biennial~~ an annual renewal fee and maintain proof of acquisition of all required continuing education hours for random audit. Any ~~certificate of registration~~ license which has not been renewed during the month of ~~August~~ July expires on the first day of ~~September~~ August.

67.2. Renewal fees shall be paid by check, money order or credit card made payable to the West Virginia Board of Optometry.

67.3. Upon receipt of the renewal fee the ~~secretary~~ Board or its designee shall issue a ~~biennial~~ renewal certificate license card bearing the number of the license, the years for which renewed and any other information the Board considers necessary.

~~67.4. When an optometrist has failed to pay his or her biennial annual renewal fee by July 31st 1st of that year, it is the duty of the secretary to notify the optometrist by registered mail at his or her last known address that the fee is due and unpaid and cite the penalties of practicing optometry without the renewal. The executive secretary shall further advise the optometrist that his or her license to practice optometry expires on the following first day of September August. It is the responsibility of each licensee to make timely application for license renewal and complete the process properly, to retain the required continuing education documentation and to pay the fees required. Any information or reminders which the Board may issue are~~

courtesies and shall not diminish the responsibilities of the licensee.

~~6.5. The secretary of the Board or its designee shall make every effort to notify all optometrists that they are required to renew their registration. Failure to receive the notification does not relieve a registered optometrist of the duty to renew his or her registration.~~

6-67.5. A licensee whose license has expired for three years or less may have his or her license restored upon payment of all required renewal and late fees for each lapsed year and submission of proof of the required continuing education hours for each year that has lapsed. A licensee whose license is expired and who has not restored his or her license under this provision within the required time period shall apply for licensure by endorsement or by examination.

~~6-77.6. Every optometrist shall display his or her renewal certificate in a conspicuous place in the principal office where he or she practices optometry. If an optometrist practices his or her profession in more than one (1) office (branch office) he or she shall have an additional renewal card for each office, obtained upon request to the secretary Board. Every optometrist shall notify the secretary Board of any branch office and its address.~~

§14-1-78. Unlawful Use Of The Prefix "Doctor" Or "Dr."

78.1. Under West Virginia Code §61-10-21, it is unlawful for any person to use the prefix "Doctor" or "Dr." in connection with his or her name in any letter, postcard, advertisement, sign or public display of any nature whatsoever, without affixing thereto suitable words or letters designating the degree which he or she holds.

§14-1-8. Continuing Education.

~~8.1. The following rule governs the attendance of educational optometric programs for annual license renewal:~~

~~8.2. It is the responsibility of a registered optometrist to maintain evidence of meeting the education requirements when he or she applies~~

~~for renewal of his or her license. This evidence shall include the current and previous renewal periods:~~

~~8.3. The evidence shall show his or her attendance for a minimum of forty ~~twenty~~ hours during the preceding two years ~~year~~ at educational optometric programs covering one or more of the subjects approved by the Optometry Board including the following requirements:~~

~~(a) a minimum of twelve (12) ~~six (6)~~ hours of study in pharmacology or therapeutics courses;~~

~~(b) a maximum of six (6) ~~three (3)~~ hours of study in practice management;~~

~~(c) a maximum of ten (10) ~~five (5)~~ hours of optometric study may be taken by correspondence, or via the Internet;~~

~~(d) all continuing education study must be sponsored by one of the organizations listed in sub-section 8.4 of this section or pre-approved by the Board as outlined in subsection 8.6 of this section;~~

~~8.4. Educational programs sponsored by the following organizations approved as meeting the minimum standards are:~~

~~(a) Educational meetings of the American Optometric Association;~~

~~(b) Educational meetings of the West Virginia Optometric Association and other state Optometric Association educational meetings;~~

~~(c) Scientific sections of the American Academy of Optometry;~~

~~(d) International Optometric sponsored meetings;~~

~~(e) Regional Optometric Extension Program congresses;~~

~~(f) Postgraduate courses offered at any approved College of Optometry;~~

- ~~— (g) Southeastern Educational Congress;~~
- ~~— (h) National Contact Lens Congress;~~
- ~~— (i) Optometric Center of New York;~~
and
- ~~— (j) Council on Optometric Practitioner Education (COPE).~~

~~— 8.5. — Evidence of attendance shall be furnished by the sponsoring organization to each registrant at the program, signed by its secretary or chairman showing the date and place of meeting or instruction by correspondence, Internet or other electronic means, speaker or instructor, the title of the course, the sponsor of the meeting, COPE approval number if applicable and hours in attendance. The registrant shall maintain evidence of attendance, subject to random audit by the Board, for renewal of his or her license. To be granted exemption from the required attendance, a registrant shall file a sworn affidavit containing reasons acceptable to the Board for noncompliance with the Secretary of the West Virginia State Board of Optometry when he or she applies for renewal of his or her license.~~

~~— 8.6. — Upon request for approval from the registrant at least thirty (30) days prior to the meeting or seminar, the Board may approve meetings or seminars either within or without the State of West Virginia.~~

§14-1-9. Temporary Permit.

9.1. The Board may issue a temporary permit to practice optometry to an applicant who has graduated from an optometry school accredited by the Accreditation Council on Optometric Education or its successor, has taken and passed Parts I and II of the National Board Examination on the practice of optometry which is prepared, administered and graded by the National Board of Examiners in Optometry or its successor and has taken Part III of the National Board Exam and is awaiting results of Part III. The applicant shall also meet the requirements of subsections 9.2 – 9.3.1 and pay the temporary permit fee required in the Board's rule, Schedule of Fees, 14CSR5. The temporary permit may be

issued prior to the applicant's taking and passing of the West Virginia Examination.

9.2. A printed copy of the passing score notification of Part I and Part II of the National Board examination administered by the National Board of Examiners in Optometry or its successor and a printed copy of the online registration verification for Part III of the National Board exam or its successor shall be submitted with the application for a temporary permit.

9.3. A letter from an active licensee who has agreed to supervise the applicant shall be submitted with the application for a temporary permit.

9.3.1. The active licensee shall submit the prescribed form for proof of malpractice insurance in the amount of not less than One Million Dollars (\$1,000,000) per occurrence and not less than Three Million Dollars (\$3,000,000) aggregate coverage. The active licensee shall ensure that the permittee will be covered by this insurance.

9.4. If the permittee receives a passing score on the West Virginia Examination and all parts of the National Board Examination, a temporary permit expires thirty (30) days after the permittee receives the results of the West Virginia Examination.

9.5. If the permittee receives a failing score on the West Virginia examination or Part III of the National Board Examination, the temporary permit expires immediately.

9.6. An applicant under this subsection may only be issued one temporary permit. Upon the expiration of a temporary permit, a person may not practice as an optometrist until he or she is fully licensed under the provisions of §30-8-1 et seq. In no event may a permittee practice on a temporary permit beyond a period of ninety (90) consecutive days.

9.7. A Temporary permittee under this rule shall work under the on-site supervision of an active licensee. Patient charts written by the permittee shall be cosigned by the active

licensee supervisor within 48 hours.

§14-1-10. Special Volunteer License.

10.1. A Special Volunteer License shall be issued by the Board using the provisions listed in W. Va. Code §30-8-16.

10.2. The applicant for a special volunteer license must submit the prescribed application.

10.3. The applicant for a special volunteer license shall provide proof of completion of the required continuing education hours listed in the Board's rule 14CSR10.

10.4. The applicant shall submit the written agreement between the applicant and the clinic stating that the optometrist will provide voluntary uncompensated optometric services under the control of the clinic to patients of the clinic. Such agreement shall state that the clinic will provide liability coverage for the applicant in the amount of not less than One Million Dollars (\$1,000,000) per occurrence.

§14-1-11. Special Event Permit.

11.1. The Board may issue a Special Event Permit to an applicant meeting the requirements of this section.

11.2. An optometric licensee from another jurisdiction may apply for a permit to perform the practice of optometry for a charitable event for which he or she will not receive remuneration.

11.3. The applicant shall submit the prescribed form.

11.3.a. The applicant shall submit a letter from the charitable event's sponsor identifying the applicant and the specific services the applicant shall perform.

11.3.b. The applicant shall submit a copy of his or her current active license(s) from another jurisdiction or jurisdictions.

11.3.c. The applicant shall submit evidence of liability insurance coverage in an

amount not less than One Million Dollars (\$1,000,000) per occurrence.

11.4. The applicant shall submit to an interview as considered necessary by the Board at a time and place designated by the Board.

11.5. The permittee shall pay the fee designated in the Board's rule 14CSR5.

11.6. The permit shall be issued for the cited event only and shall not exceed a period of two weeks.

11.7. In no event shall the permittee perform procedures that are not authorized by his or her jurisdiction.

§14-1-12. Inactive License.

12.1. An active licensee who is not practicing, and who has no disciplinary action pending against his or her license may request an inactive license.

12.2. The licensee shall complete the annual renewal process and select the inactive license option.

12.3. The licensee shall pay the inactive license fee listed in the Board's rule, Schedule of Fees, 14CSR5.

12.4. An inactive licensee's credentials shall remain in the Board's database for license verification as an inactive license.

12.5. An inactive licensee may receive an active license by:

12.5.1. Submitting a written request for active licensure to the Board.

12.5.2. Paying the active license restoration fee as listed in the Board's rule, Schedule of Fees, 14CSR5.

12.5.2. Submit to an oral examination and interview as considered necessary by the Board at a time and place as prescribed by the board.

12.5.3. The Board, a Board member, or designee may require, after the interview, remedial education and/or examination passage prior to active licensure reinstatement.

12.5.4. If an active license reactivation was requested prior to the expiration of one (1) year from the date of inactive licensure, the Board may require payment of the inactive license restoration fee, past due renewal fees and submission of proof of the Board's required continuing education hours.

12.5.5. Any inactive license shall be reactivated at the highest level of licensure. The inactive licensee shall submit to all requirements for the highest level of licensure prior to reactivation.