

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

Form #3

Do Not Mark In This Box

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2010 JUL 30 PM 5:02

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: WV Board of Optometry TITLE NUMBER: 14CSR1

CITE AUTHORITY: §30-8-1, et. seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14CSR1

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: \_\_\_\_\_

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

**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, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Board of Optometry, 179 Summers Street, Charleston, WV 25301, 304-558-5901

\_\_\_\_\_  
\_\_\_\_\_

LEGISLATIVE RULE TITLE: ~~§14CSR1 Rules of the West Virginia Board of Optometry~~

\_\_\_\_\_

1. Authorizing statute(s) citation §30-8-1, et seq

\_\_\_\_\_

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

June 25, 2010

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

A memo was mailed to all licensees directing them to our web site, www.wvbo.org, where the proposed rules were posted. Notice was given by phone and hand delivery of the rules to the West Virginia Optometric Association, and notice was given by phone contact and an e-mail was sent to the West Virginia Academy of Ophthalmologists informing them of the posting on the web site.

\_\_\_\_\_

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

July 26, 2010 at noon

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

Attached xx No comments received \_\_\_\_\_

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

July 30, 2010 at 2:00 p.m.

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

Pamela Carper, 179 Summers Street, Suite 231, Charleston, WV 25301, 304-558-5901 The cell phone number is 304-546-2907.

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

Gregory Moore, O.D., President, WV Board of Optometry, 179 Summers Street, Suite 231, Charleston, WV 25301, 304-558-5901 or 304-768-7902 or contact Pam Carper listed above.

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

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

n/a

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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

WEST VIRGINIA BOARD OF OPTOMETRY

14CSRI

**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**

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

Rule Title: \_\_\_\_\_

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: [wvbdopt@verizon.net](mailto:wvbdopt@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.

[Empty box for memorandum content]

Date: 7/30/10

Signature of Agency Head or Authorized Representative



TITLE 14  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF OPTOMETRY

SERIES 1  
RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY

FILED  
2010 JUL 30 PM 5:02

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 TMOD 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 31<sup>st</sup> 1<sup>st</sup> 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.



# WEST VIRGINIA BOARD OF OPTOMETRY

179 Summers Street, Suite 231

Charleston, WV 25301

Phone: (304) 558-5901

Fax: (304) 558-5908

e-mail: [wvbdopt@verizon.net](mailto:wvbdopt@verizon.net)

## MEMORANDUM

TO: All Licensees

FROM: Gregory Moore, O.D., President

DATE: June 28, 2010

RE: Board Rules Filed For Comment Last Week

The Board has been working on rule amendments and two new rules to comply with Senate Bill 230 which passed during the 2010 Legislative Session. The bill completely re-wrote the Board's enabling statute, W. Va. Code, §30-8.

New provisions needed to be written to implement the privileges gained. We have made amendments to the Board's existing rules, §14-1 through §14-8. The Board is also proposing three new rules, §14-9, §14-10 and §14-11. These rules outline the certificate procedure to prescribe contact lenses that contain and deliver pharmaceutical agents required by SB 230, separate the continuing education provisions currently listed in §14-1 with some modernization of the rule and a new specific procedure for course pre-approval, and a rule outlining the procedures required to obtain the privilege to use injections for substances other than epinephrine as required by SB 230. These provisions are listed in §30-8-15 of SB 230.

The proposed rules are posted on our web site, [www.wvbo.org](http://www.wvbo.org) in two places. The first is just under the Board's mission statement beside the Annual Report and Education and Training of Optometrists. The second posting is under "Laws and Regulations Governing Optometry" under proposed rules. We have also posted the full text of SB 230 so you may refer to the requirements listed requiring the changes to the rules. The language to be eliminated is struck through and the new language is underlined. There are no underlines or strike throughs in §14-9 through §14-11 because they are new rules.

The Board welcomes and values your opinion. Please review the proposed rules and let us know of your recommendations or concerns. Please send your written comments to the Board by e-mail to [wvbdopt@verizon.net](mailto:wvbdopt@verizon.net), by postal mail at 179 Summers Street, Suite 231, Charleston, WV 25301, or by fax at 304-558-5908. The Board office phone number is 304-558-5901 if you have any questions.

Once again, we value your opinion. Please review these proposals and give us your input. **The last date we can receive your comments for §14-11, Injection Certificate, is Friday, July 23, at 5:00 p.m. The last day we may receive comments for the rest of the rules is noon on Monday, July 26.** Thank you for your time and attention.

### MISSION STATEMENT

To ensure that all applicants for licensure and all Doctors of Optometry currently licensed, practice their profession in a manner that benefits and protects the public, and to ensure that the highest quality optometric eye and vision care is provided in a professional, competent, and ethical manner.

**Laws**

- Senate Bill 230 Chapter 30-8
- Chapter 30 - Article 8 Optometrists
- 14-1 Rules Of The West Virginia Board of Optometry
- 14-2 Expanded Prescriptive Authority Procedures for Optometrists
- 14-3 Contested Case Hearing Procedure
- 14-4 Disciplinary and Complaint Procedures for Optometrists
- 14-5 Schedule of Fees
- 14-6 Examination and Scoring Policy
- 14-7 Administration and Board Meeting
- 14-8 Licensure by Endorsement

**Proposed Rules**

- Senate Bill 230 Chapter 30-8
- 14-1 Rules of the West Virginia Board of Optometry
- 14-2 Oral Pharmaceuticals
- 14.3 Contested Case Hearing Procedures
- 14.4 Disciplinary and Complaint Procedures
- 14.5 Schedule of Fees
- 14.6 Examination and Scoring Policy
- 14.7 Administration and Board Meetings
- 14.8 Licensure by Endorsement
- 14.9 Contact Lenses that Contain and Deliver Pharmaceutical Agents Certificate
- 14.10 Continuing Education
- 14.11 Injectable Pharmaceutical Agents Certificate

**Optometrist List**  
Click here to start, or call the  
board office for more information

**West Virginia Board of Optometry**  
179 Summers Street, Suite 231  
Charleston, WV 25301  
Phone: (304) 558-5901  
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## West Virginia Board of Optometry

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**From:** West Virginia Board of Optometry [wvbdopt@verizon.net]

**Sent:** Thursday, June 24, 2010 6:12 PM

**To:** Nancy Tonkin (nancy.tonkin@wvmtmg.com)

**Subject:** Rules

**Attachments:** 14-11 Proposed Rule Injections 062410.doc

The injection rule was filed today. All of the rules were sent to our web master to be posted on our web site. Guess which one has a broken link? I have sent an email to Dream Catcher to correct it. They are usually pretty fast. It should be up by tomorrow. Here is a copy until then.

Have a good evening,

*Pamela Carter*

West Virginia Board of Optometry

179 Summers Street, Suite 231

Charleston, WV 25301

Phone: 304-558-5901

Fax: 304-558-5908

E-mail: wvbdopt@verizon.net

Web Site: www.wvbo.org

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**TO: CHAIRMAN MINARD AND CHARIMAN BROWN  
THE LEGISLATIVE RULE-MAKING COMMITTEE**

**FROM: THE WEST VIRGINIA BOARD OF OPTOMETRY**

**SUBJECT: LIST OF COMMENTERS FOR PROPOSED RULES**

**DATE: 7/29/2010**

**COMMENT PERIOD ON PROPOSED RULES ENDING July 26, 2010**

Please note that a complete response, including amendments, and the reasons for the amendments is enclosed in this packet. It is a memo dated July 29, 2010, Response to Public Comments.

**LIST OF COMMENTER BY RULE**

**14CSR 1 RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY**

David W. Harshberger, O.D. by e-mail, [dwharshberger @verizon.net](mailto:dwharshberger@verizon.net)

**14CSR2 ORAL PHARMACEUTICAL CERTIFICATE**

Edgar Gamponia, President, West Virginia Academy of Ophthalmologists, 2110 Kanawha Boulevard, East, Suite 220, Charleston, WV 25311

Sidney B. Jackson, M.D., President, WV Academy of Family Physicians, P.O. Box 1090 Hurricane, WV 25526

Carlos C. Jiminez, M.D., President, WV Medical Association, 4307 MacCorkle Avenue, SE, Charleston, WV 25364

Randolph L. Johnston M.D., President and Cynthia A. Bradford, M.D., Senior Secretary for Advocacy, Academy of Ophthalmology, P.O. Box 7424, San Francisco, CA 94120

Michael D. Maves, M.D., MBA, Executive Vice President, American Medical Association, 515 N. State Street, Chicago, IL 60654

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

Michael F. McGuire, M.D., President, American Society of Plastic Surgeons, 444 East Algonquin Road, Arlington Heights, IL 60005

David R. Neilsen, M.D., Executive Vice President and CEO, American Academy of Otolaryngology – Head and Neck Surgery

William D. James, M.D. F.A.A.D., President, American Academy of Dermatology Association

Joseph L. LoCascio, III, M.D., F.A.C.S., 5170 U.S. Rt. 60, East, Huntington, WV 25702

Stephen R Powell, M.D.

David B. Hoyt, M.D. FACS, Executive Director, American College of Surgeons, 633 N Saint Clair Street, Chicago, IL 60611

Laurance M. Minardi, M.D., 500 Donnally Street, Charleston, WV 25301

Christoforo R. Larzo, M.D., P.O. Box 9193, Morgantown, WV 26506-9193

#### **14CSR5 SCHEDULE OF FEES**

David W. Harshberger, O.D., by e-mail, [dwharshberger@verizon.net](mailto:dwharshberger@verizon.net)

#### **14CSR10 CONTINUING EDUCATION**

David W. Harshberger, O.D., by e-mail, [dwharshberger@verizon.net](mailto:dwharshberger@verizon.net)

#### **14CSR11 INJECTABLE PHARMACEUTICAL AGENTS CERTIFICATE**

Edgar Gamponia, President, West Virginia Academy of Ophthalmologists, 2110 Kanawha Boulevard, East/Suite 220, Charleston, WV 25311

Sidney B. Jackson, M.D., President, WV Academy of Family Physicians, P.O. Box 1090 Hurricane, WV 25526

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Stanley E. Toompas, O.D., by e-mail, [stankim@mypcstv.com](mailto:stankim@mypcstv.com)

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**TO: CHAIRMAN MINARD AND CHAIRMAN BROWN  
THE LEGISLATIVE RULE-MAKING COMMITTEE**

**FROM: THE WEST VIRGINIA BOARD OF OPTOMETRY**

**SUBJECT: RESPONSE TO PUBLIC COMMENTS**

**DATE: 7/29/2010**

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On May 27 and 28, 2010, the West Virginia Board of Optometry (hereinafter "Board") filed proposed legislative rules with the Secretary of State's office. In accordance with appropriate laws, the Board held a public comment period for each of the proposed rules which concluded on July 26, 2010 at noon. The Board has carefully considered all comments received and prepared the following response which will address the comments by rule. Some comments may be paraphrased as many were redundant; however, copies of all received comments are included in this packet as required by law.

**14CSR1 RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY**

**COMMENT: WHY IS THE BOARD USING ANNUAL RENEWAL?**

The Board has opted to change to annual renewal because doing so eases compliance with W. Va. Code §30-1-10.

**14CSR2 ORAL PHARMACEUTICAL CERTIFICATE**

**COMMENT(S): THE LEGISLATURE DID NOT INTEND FOR THE EXPANSION OF THE ORAL FORMULARY.**

The Board received sixteen (16) comments suggesting that 14CSR2, as proposed, goes beyond legislative intent when passing Senate Bill 230. It is the Board's position that such an assertion is incorrect and that the legislative intent was expressed in Enrolled Senate Bill 230, subsequently signed into law by the Governor. West Virginia Code §30-8-9(a)(3) states, in pertinent part, that the scope of practice of an optometrist includes the ability to:

“(A) Administer or prescribe any drug from the drug formulary, as established by the board pursuant to section six of this article, for use in the examination, diagnosis or treatment of diseases and conditions of the

human eye and its appendages: *Provided*, That the licensee has first obtained a certificate;  
(B) New drugs and new drug indications may be added to the drug formulary by approval of the board[.]”

West Virginia Code §30-8-14(a) further provides that:

(a) A licensee may prescribe: (1) topical pharmaceutical agents, (2) oral pharmaceutical agents that are included in the drug formulary established by the board pursuant to section six of this article or new drugs or new drug indications added by a decision of the board, and (3) contact lenses that contain and deliver pharmaceutical agents that have been approved by the Food and Drug Administration as a drug.

It is for those reasons that the Board respectfully submits that 14CSR2 as proposed is within the legislative intent of West Virginia Code §30-8-1 *et seq.*

**COMMENT(S): WHAT IS THE DEFINITION OF “APPENDAGES?”**

The term “appendages” was defined by the legislature in West Virginia Code §30-8-3(a).

**COMMENT(S): PLEASE CLARIFY THE LANGUAGE IN 14CSR2-6.6.2H THE NEW DRUGS AND NEW DRUG INDICATIONS SECTION.**

In reviewing this comment, the Board has amended the proposed rule to clarify the language in 14CSR2-6.6.2.h. The language previously submitted stated:

*6.2.h. New drugs or new drug indications from Schedules III, IV and V of the Uniform Controlled Substances Act, regardless of their listed categories, which have been shown to effective in the treatment and management of abnormalities of the eye or its appendages may be approved by the Board according to the provisions of W. Va. Code §§30-8-9 and 30-8-14.*

This language has been amended and additional language has been added which now states:

*6.2.h. New drugs or new drug indications from Schedules III, IV and V of the Uniform Controlled Substances Act which, regardless of their listed classification, have been shown to be effective in the treatment and management of the eye or its appendages may be approved by the Board according to the provisions of W. Va. Code §§30-8-9 and 30-8-14.*

6.2.i. *A list of approved new drugs and new drug indications proven to be shown to be effective in the treatment of the eye and its appendages will be maintained by the Board for public inspection.*

6.2.j. *The approval of Schedule I and Schedule II narcotics is prohibited.*

In addition to that language, the Board has proposed two additional sections to further clarify this process, which read as follows:

**§14-2-7. New Drug Approval.**

7.1. *The addition of new drugs or drug indications by the Board as cited in subsection 6.2 of this rule may be based on any of the following criteria:*

7.1.a. *A new or existing drug has been approved by the Food and Drug Administration for the treatment of the eye or its appendages.*

7.1.b. *A new drug or new drug indication has gained accepted use in the eye care field. Such acceptance may be indicated by its inclusion in the curriculum of an optometry school accredited by the Accreditation Council on Optometric Education or its successor approved by the U.S. Department of Education or approved post-graduate continuing education, through peer-reviewed, evidence-based research and professional journal articles, or by inclusion in established standards of practice and care published by professional organizations.*

**COMMENT(S): DID THE BOARD MEAN THAT OPTOMETRISTS COULD SELL DRUGS FOR INJECTION AT RETAIL?**

The Board did not intend for any pharmaceuticals, oral, topical or injection, to be sold at retail with the language proposed in 14CSR2.7.1.a & b. An amendment to that proposed rule has been made to better clarify this issue. 14CSR2.7.1.a & b as submitted for public comment provided that:

7.1.a. *Nothing in this section or in any other provision of law prohibits a licensee who is certified under the provisions of this rule from administering or supplying oral or topical pharmaceutical agents to a patient, without charge for the pharmaceutical agents, to initiate appropriate treatment.*

7.1.b. *Nothing within this rule or the W. Va. Code prohibits the direct sale to the patient of pharmaceuticals by injection or contact lenses that deliver pharmaceutical agents that have been approved by the Food and Drug Administration as a drug.*

The amended language, located in what is now 14CSR2-9.1.a & b, and provides that:

*9.1.a. Nothing in this section or in any other provision of law prohibits a licensee who is properly certified under the provisions of this rule from administering or supplying oral or topical pharmaceutical agents to a patient, to initiate appropriate treatment. An optometrist may also pass on to the patient a charge for any medications provided to initiate treatment which reflects only the actual amount paid by the optometrist for the agents. In no event shall an optometrist increase the cost of the pharmaceutical agent beyond the wholesale cost of that medication.*

*9.1.b. Nothing within this rule or the W. Va. Code prohibits the administration of pharmaceuticals by injection to a patient by a certified licensee for a reasonable charge or the dispensing of contact lenses that deliver pharmaceutical agents, provided, there is no mark up on the cost of the pharmaceutical agents provided in the injection or in the contact lenses that deliver pharmaceutical agents. Nothing in this rule shall prohibit a properly certified optometrist from charging a usual and customary fee for performing the injection or fitting the contact lenses that deliver pharmaceutical agents.*

The Board is confident that these changes adequately clarifies its intention to permit properly certified licensees to utilize appropriate oral, topical and injection medications, and medicated contact lenses and to have the ability to be compensated for the wholesale cost of any medications and, in the case of injections and medicated contact lenses, be compensated a customary fee for services rendered.

**COMMENT(S): THE W. VA. CODE §30-8-15 DOES NOT AUTHORIZE THE DISPENSATION OF PHARMACEUTICALS BY INJECTION, ONLY THE ADMINISTRATION OF PHARMACEUTICALS BY INJECTION.**

The Board has submitted amendments addressing this comment, please see previous response.

**COMMENT: WILL THE BOARD PUT LIMITS ON LENGTH OF USE OF THE NEW DRUGS ADDED BY THE BOARD?**

As addressed above, the Board has amended the language 14CSR2-6.2.i requiring the Board to maintain a list at the board office of any new drug or new drug application that has been shown to be effective in the treatment of the eye or its appendages. By law those drugs will be limited for that purpose and the dosing and duration will be subject to those limitations.

**COMMENT(S): WHERE WILL OPTOMETRISTS GET ADDITIONAL TRAINING FOR THE NEW DRUGS ADDED TO THE FORMULARY BY THE BOARD?**

The Board has amended 14CSR2 to include language regarding the training for new drugs and/or new drug indications that are approved by the Board. This language states:

***§14-2-8. Education and Training on the Use of New Drugs and New Drug Indications.***

*8.1. Additional education and training may be required by the Board as it deems appropriate when it adds new drugs or new drug indications.*

*8.2 This training may be provided through an accredited optometry school or approved post-graduate training.*

*8.3 A list of Board required training for new drugs or new drug indications will be maintained by the Board for public inspection.*

**COMMENT(S): WILL THE BOARD REQUIRE COLLABORATION OR CONSULTATION WITH THE PATIENT'S PRIMARY CARE PHYSICIAN BEFORE PRESCRIBING ORAL MEDICATIONS?**

There is no requirement contained within state law requiring collaboration or consultation with a patient's primary care physician before prescribing oral medications; however, optometrists certified to prescribe oral medications are well versed in the systemic interactions of medications used for the eye and its appendages and, when appropriate, co-manage patients with other providers.

**COMMENT(S): THE ORAL FORMULARY IS ILLEGAL BECAUSE THE OPTOMETRIST CANNOT PRESCRIBE SYSTEMIC AGENTS THAT HAVE SYSTEMIC EFFECTS SUCH AS ORAL ANTIBIOTICS AND NONSTEROIDAL ANT-INFLAMMATORY DRUGS.**

Optometrists have had the ability, through legislation, to prescribe oral antibiotics and non-steroidal anti-inflammatory drugs since 1997.

**14CSR5 FEE SCHEDULE**

**COMMENT: THE BOARD HAS MADE A LARGE INCREASE IN YEARLY LICENSE FEES.**

After reviewing this comment, the Board is of the opinion that the commenter had misread the fee schedule citing one time certificate fees as annual fees. The increase in the license renewal fee is \$75 per year. This is a 23% increase. The Board currently administers licensure, monitoring and investigation of complaints received, disciplinary action, and compliance with all state regulations and financial requirements of a state

agency. The Board has governed four forms of licensure and permit. Senate Bill 230 authorized four new scope programs and three new types of permits.

### 14CSR10 CONTINUING EDUCATION

**COMMENT: CAN THE CONTINUING EDUCATION REQUIREMENT CONTINUE TO BE FULFILLED EVERY TWO YEARS?**

The Board has taken this concern under consideration and has made an amendment to 14CSR1 and 14CSR10. The original language in 14CSR10-2.3 in the proposed rule stated that:

*The evidence shall show his or her attendance or time teaching continuing education as a Board approved instructor for a minimum of twenty (20) hours during the preceding year at educational optometric programs covering one or more of the subjects approved by the Board including the following requirements:*

- (a) a minimum of six (6) hours of study in pharmacology or therapeutics courses;*
- (b) a maximum of three (3) hours of study in practice management;*
- (c) a maximum of five (5) hours of optometric study may be taken by correspondence, or via the internet;*

This language has been amended and now reads as follows:

*The evidence shall show his or her attendance or time teaching continuing education as a Board approved instructor for a minimum of forty (40) hours for each two (2) year cycle beginning with the dates July 1, 2008 to June 30, 2010 at educational optometric programs covering one or more of the subjects approved by the Board including the following requirements:*

- (a) a minimum of twelve (12) hours of study in pharmacology or therapeutics courses;*
- (b) a maximum of six (6) hours of study in practice management;*
- (c) a maximum of ten (10) hours of optometric study may be taken by correspondence, or via the internet;*

**COMMENT: 14CSR10-2.3(E) ON BASIC LIFE SUPPORT DOES NOT COMPLY WITH THE W.VA. CODE**

The Board has taken this comment under consideration and has made an amendment to comply with §30-8-15(b)(3). The proposed amendment to 14CSR10-2.3(e) states:

*In addition to the above listed continuing education requirements, any licensee who has been granted an Injectable Pharmaceutical Agents Certificate shall obtain and maintain current certification from the American Red Cross, American Heart Association or their successor organizations in basic life support.*

The Board submits the amended language is in compliance with the newly enacted provisions of West Virginia Code § 30-8-1 *et seq.*

**14CSR11 INJECTABLE PHARMACEUTICAL AGENTS CERTIFICATE**

**COMMENT(S): 14CSR11 VIOLATES THE INTENT OF THE LEGISLATURE. IT ONLY INTENDED EPINEPHRINE.**

The intent and will of the Legislature is expressed in Enrolled Senate Bill 230 signed into law by the Governor. Senate Bill 230 §30-8-15(b) says,

“(b) Additional pharmaceutical agents by injection may be included in the rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. These rules shall provide, at a minimum, for the following:”

**COMMENT(S): THERE IS NO FORMULARY FOR PHARMACEUTICALS BY INJECTION.**

In response to the comment, the Board submits that West Virginia Code §30-8-15 does not require a formulary for pharmaceuticals administered by injection. The fact that the legislature refused to add a formulary for topical medications warrants mention. The legislature entrusted the Board with the sole authority to add to the oral formulary demonstrating a confidence in this Board's ability to regulate the practice of optometry, including the utilization of pharmaceutical agents effective in the treatment and management of the eye and its appendages, regardless of route of administration, as mandated by law.

**COMMENT(S): 14CSR11-7.1.6 SAYS THAT NOTHING SHALL PERMIT A LICENSEE TO DELEGATE TO A NON-CERTIFIED OR NON-LICENSED CLINICIAN. THIS MAY BE INTERPRETED THAT AN OPTOMETRIST MAY DELEGATE TO A LICENSED CLINICIAN SUCH AS A REGISTERED NURSE.**

The intent of this proposed rule was to permit an optometrist properly certified to prescribe and administer injections, the ability to write orders for injections which a properly credentialed nurse may administer. This rule was not proposed to permit non-certified optometrists to prescribe an injection and delegate the administration of injections to someone who is certified to give injections. The Board submits the following language to as clarification of this issue:

**§14-11-9. Delegation.**

9.1. *Nothing in this rule or W. Va. Code shall permit a licensee who has not been certified to administer injections of pharmaceutical agents by the Board to delegate to any individual the administration of pharmaceutical agents through injection.*

**COMMENT(S): 14CSR11 DOES NOT INCLUDE THE STATUTORY PROVISION RESTRICTING OPTOMETRISTS FROM INJECTING INTO THE GLOBE OF THE EYE.**

Although the Board deems the restriction found in West Virginia Code §30-8-15 prohibiting optometrists from injecting into the globe of the eye as sufficient, the Board has taken this concern into consideration and has amended 14CSR11 to include the prohibition of injections into the globe in the rule.

**COMMENT(S): 14CSR11 DOES NOT PROVIDE SPECIFICS.**

While overly broad, the Board has considered this concern and has made amendments to the rule as it deemed appropriate. *See Agency Approved Rule for full proposed language.*

**COMMENT(S): INJECTION LOCATIONS AND TYPES ARE NOT LISTED.**

The Board has examined the rule and amended the bill include that use of pharmaceuticals by injection by licensees are those which are to be considered rational to the diagnosis and treatment of the human eye and its appendages as defined in West Virginia Code § 30-8-3(a). As with oral medications a list will be kept on file in the board office available for viewing by the public upon request listing and site or agent for which optometrists are certified to provide through accredited schools and colleges of optometry.

**COMMENT(S): THE REPORTING REQUIREMENTS ARE INADEQUATE.**

The Board has taken this concern under consideration and has made amendments to the bill to deal with this concern. Specifically the language of 14CSR11-6 states:

**§14-11-8. Reporting.**

8.1. *Each licensee who possesses a certificate to administer pharmaceutical agents by injection shall comply with the following reporting requirements.*

8.2. *Any reporting that may contain patient Protected Health Information (PHI), shall be done in accordance with the Health*

*Insurance Portability and Accountability Act (HIPAA) patient privacy requirements.*

*8.3. The licensee shall document in the patient's record that the patient's primary care provider was notified of any injection given to the patient for record documentation. This notification may be made by fax, documented phone call, standard U.S. mail or the licensee may provide a written statement to the patient regarding the injection(s) with instruction to the patient to the listed injection information to his or her current primary care provider.*

*8.3.1. The above reporting procedure serves to inform the patient's primary care physician as to the rationale and outcome of a licensee's treatment, report any adverse outcomes, and assist in collaborative care of common patients. In no event shall such reporting be construed as permission or approval of an order for treatment by injection.*

*8.4. A log book of all injections given shall be maintained including:*

*8.4.1. The patient's initials, age, gender and race;*

*8.4.2. A statement indicating the purpose of the injection;*

*8.4.3. The name of the medication administered and the type and location of the injection;*

*8.4.4. The treatment guidelines followed which must be compliant with the guidelines approved by the Board.*

*8.4.5. The name and certification or licensure level of any persons working in conjunction with the licensee to administer agents through injections;*

*8.4.6. How the primary care provider was notified that the patient had been given an injection.*

*8.5. A copy of the injection log book shall be submitted to the Board upon request. This log book may be requested at any time by the Board with or without cause.*

*8.6. The Board may request the licensee to supply the complete medical record for any of the patients listed in the log book for review.*

*The Board may also request an audit of the licensee's full records to ensure compliance with injection certificate requirements.*

8.7. *If a patient has an adverse event related to the administration of any agent through injection, the licensee must provide the Board with an incident report listing the details of the adverse event and the measures used to correct that event. This report must be received by the Board within 5 business days of the resolution of the adverse event.*

**COMMENT(S): W. VA. CODE §30-8-15 AUTHORIZES THE ADMINISTRATION OF PHARMACEUTICALS BY INJECTION, NOT THE DISPENSATION OF THOSE AGENTS.**

As previously discussed in the aforementioned response to the dispensing of oral and topical medications, the Board has considered this comment and has made an amendment to the rule to address this issue. The amended proposed language provides that:

*9.1.b. Nothing within this rule or the W. Va. Code prohibits the administration of pharmaceuticals by injection to a patient by a certified licensee for a reasonable charge or the dispensing of contact lenses that deliver pharmaceutical agents, provided, there is no mark up on the cost of the pharmaceutical agents provided in the injection or in the contact lenses that deliver pharmaceutical agents. Nothing in this rule shall prohibit a properly certified optometrist from charging a usual and customary fee for administering the injection or fitting the contact lenses that delivers pharmaceutical agents.*

**COMMENT: THERE IS NO PROVISION FOR A LIST OF COURSES APPROVED BY THE BOARD FOR INJECTION.**

The Board has examined this concern and has amended 14CSR11 to address this issue. Specifically the Board has amended language of 14CSR11-3.3 states:

3.2 *The Board shall accept any course for certification that is provided by or through a school or college of optometry accredited by the Accreditation Council on Optometric Education or its successor organization certifying that the optometrist is competent in providing the administration of pharmaceuticals by injection.*

3.3 *The Board, at its discretion, may approve courses provided through organizations other than accredited schools or colleges of optometry certifying that the optometrist is competent in providing the administration of pharmaceuticals by injection if, and only if, the course meets the following minimum criteria:*

3.3.1. *Each course shall include indications, contra-indications, medications, techniques, risks, benefits and sharps management;*

3.3.2. *Each course shall contain appropriate follow up and management of any adverse reactions caused by an injection;*

3.3.3. *Each course shall teach the procedures of injection on human subjects in a closely supervised environment with a proficiency assessment examination.*

The Board is of the opinion that this language is responsive to the comment.

**COMMENT: 14CSR11-3.4 ALLOWS GRADUATES POST 2011 TO BE CERTIFIED IN INJECTIONS WITHOUT CHECKING THEIR COURSES TAKEN.**

This provision has two conditions: (1) graduation from an accredited school or college of optometry and (2) passage of Part III of the National Board of Examiners in 2011 or later. One hundred percent (100%) of accredited schools and colleges of optometry must provide this in the curriculum for students graduating in 2011. Those students will sit for the National Board of Examiners in Optometry Examination Part III, Clinical Skills, which will include testing of injection techniques on human subjects.

**COMMENT(S): 14CSR11 INCLUDES CONTINUING EDUCATION IN BASIC LIFE SUPPORT AS LISTED IN W. VA. CODE §30-8-15(3) BUT HAS NOT INCLUDED CONTINUING EDUCATION IN INJECTIONS AS LISTED IN W. VA. CODE §30-8-15(4).**

The Board has examined this comment and determined that the appropriate action is to make an amendment to 14CSR10-2.3.d. Therefore that proposed rule has been amended to the requiring:

*[A] minimum of two (2) hours of instruction in administering pharmaceutical agents by injection for those licensees who hold an Injectable Pharmaceutical Agents Certificate.*

In making this amendment, the Board has mandated a specific number of hours per reporting period for all licensees with the certification to administer injections.

**COMMENT(S): THE TREATMENT GUIDELINES LISTED IN 14CSR11 ARE VAGUE AND NOT DEFINITIVE AS REQUIRED IN W. VA. CODE 30-8-15(B)(2).**

The Board has examined this concern and has amended the rule to address this concern. *See Agency Approved Rule for full proposed language.*

**COMMENT: THE AMA CONSIDERS INJECTIONS TO BE SURGERY, AND W. VA. CODE PROHIBITS SURGERY BY OPTOMETRISTS.**

In considering this comment, the Board directs the commenter to West Virginia Code § 30-8-9(a)(7)(A-G) which states in pertinent part that a licensee may:

(A) [r]emove a foreign body from the ocular surface and adnexa utilizing a non-intrusive method; (B) [r]emove a foreign body, external eye, conjunctive, superficial, using topical anesthesia; (C) [r]emove embedded foreign bodies or concretions from conjunctiva, using topical anesthesia, not involving sclera; (D) [r]emove corneal foreign body not through to the second layer of the cornea using topical anesthesia; (E) [e]pilation of lashes by forceps; (F) [c]losure of punctum by plug; and (G) [d]ilation of the lacrimal puncta with or without irrigation.

That code section describes seven procedures optometrists are permitted to perform which are coded as surgical procedures. Further, West Virginia Code §30-8-9(a)(11) also states "those procedures permitted by the board prior to January 1, 2010 shall be permitted." Finally, West Virginia Code §30-8-9(b)(1) provides that a licensee may not "[p]erform surgery except as provided in this article or by legislative rule." Additionally, while the AMA is a highly respected organization, the Legislature has authorized properly certified optometrists to administer injections under certain conditions. Further, it appears that this comment is an attempt to undermine the Legislature's directive to the Board to make its rules congruent with the newly enacted changes to the laws governing the practice of optometry.

**COMMENT: HOW MANY CLINICALLY SUPERVISED INJECTIONS MUST LICENSEES PERFORM?**

In reviewing this comment, the Board has amended its proposed rule to clearly require this training to be through an accredited school or college of optometry. *See above response regarding 14CSR11-3.3.* The Board deems it prudent to note that specifics of such training will undoubtedly change with the advent of new science and technology. Requiring this training and certification to be done through an accredited school or college of optometry ensures the board and the legislature that the training is appropriate.

**COMMENT: WILL LICENSEES WITH AN INJECTION CERTIFICATE BE INJECTING CHILDREN?**

A licensee who is properly certified through the Board to administer injections will only administer injections to children if trained to do so through accredited schools and colleges of optometry.

**COMMENT: WILL THE LICENSEE WITH AN INJECTIONS CERTIFICATE BE PERFORMING FLOURESCIN ANGIOGRAMS?**

A licensee who is properly certified through the Board to administer injections are only permitted to administer those injections taught and certified for through an accredited school or college of optometry.

**COMMENT: WILL THE BOARD REQUIRE A DISPENSING LICENSE TO DISPENSE PHARMACEUTICALS BY INJECTION?**

As discussed above, the Board has amended 14CSR9 to address the issue of optometrists "dispensing" pharmaceuticals. *See above response regarding 14CSR9-1.a & b.*

**COMMENT: ADVERSE REACTION TRAINING IS PROHIBITED BY LAW SINCE THAT IS A WHOLE BODY SYSTEMIC PROCEDURE.**

Throughout the process of enacting changes to West Virginia Code §30-8-1 *et seq.*, not only did the Legislature authorize the administration of injections by certified optometrists, it mandated that the Board determine the appropriate education and training to grant such certification. For the Board to permit licensees to hold certifications to administer injections, it is prudent for the Board to require adverse reaction training for those determined qualified for this certification. Any suggestion that training in recognizing and/or responding to an adverse reaction is, or should be, prohibited by law is irresponsible and rejected by this Board. Further, the Legislature provided in West Virginia Code §30-8-9(a)(4) that a licensee may "[a]dminister epinephrine by injection to treat emergency cases of anaphylaxis or anaphylactic shock[.]" which is an example of a whole body systemic procedure. This Board understands that the ability to administer injections is nothing to be taken lightly, and, in maintaining congruency with its legislative mandate to protect the public, will require any optometrist who seeks certification to inject pharmaceuticals to have such training.

**COMMENT(S): THERE IS NO NATIONAL STANDARD FOR TEACHING INJECTIONS IN ACCREDITED OPTOMETRY SCHOOLS. HOW WILL THE BOARD ENSURE PROPER INSTRUCTION?**

The legislature has clearly shown confidence in the accrediting bodies which oversee educational institutions as it requires that training be from institutions which are accredited, be it medical, dental, or optometry schools. By requiring training through accredited schools and colleges of optometry, the legislature, through the oversight of the board, is ensuring that the candidates are receiving the appropriate training.

**West Virginia Board of Optometry**

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**From:** David W. Harshberger, O.D. [dwharshberger@verizon.net]  
**Sent:** Tuesday, July 13, 2010 5:36 PM  
**To:** wvbdopt@verizon.net  
**Subject:** Re: RE: Proposed rules

Pamela,

Thank you for clearing up my questions about the fees; I thought that might be the way it would be, but wanted to make sure. I have no problem with paying a one time fee for the new certificates; I knew that would be necessary to cover the admin. costs. I also understand the overall increase for license renewal is necessary to cover costs. I still would prefer two year time frames for CE and license renewal, but I understand if money is going to be taken away if that happens, that realistically one year time frames will have to happen.

Thanks again for replying, and pass this note on to the Board as well.

Dave

On Jul 13, 2010, **West Virginia Board of Optometry** <wvbdopt@verizon.net> wrote:

I will forward your response to the Board for a reply. However, I thought I would clear up some things while they consider your request. If you are completing your 25 hour per year Ohio CE requirements most of those courses could be used for the West Virginia 20 hour requirement. West Virginia has a pre-approved list of sponsors of CE that probably fit your hours. Any course offered by the Ohio Optometric Association or other state optometric associations, AOA, SECO or is COPE approved automatically count toward your total. There are also other courses in Ohio that are pre-approved by the Board.

The primary reason the Board is considering changing to an annual renewal is a provision in West Virginia Code that allows the state to take any of the Board's money that is over two years times the annual budget. Because we are on a biennial renewal any funds over the two year amount can be taken. That means if the Board has ANY funds left the state can take them. An example would be if we receive renewal fees toward the end of one fiscal year and the early part of the next renewal period we are in violation of the law and the state could take part of our future two year revenue. This possibility has become a reality as sister boards have had their funds taken. Since the economy has had its troubles, this has become a common practice across the nation. Please also keep in mind that the state gives us no funds. Only our fees support us.

The additional fees you cite are fees you have **already paid** or would pay **as a one time fee** to cover the processing, storage, and increased computer resources that would be needed for that increased privilege. The license certificate fee is charged to **new licensees** when they pass the exam or come in by endorsement. This fee has been in existence for some time. You already paid this fee. The Orals Certificate fee is paid one time as your credentials are documented and a new license certificate and card are issued, and the system is updated with your new privilege information. This fee has been in existence since the late '90's. You have also paid this fee and will not pay it again.

SB 230 directs the board to administer a certificate program for the privilege to prescribe and dispense contact lenses that deliver pharmaceuticals. This fee is set at \$50, just \$25 above license verification and covers the additional processing costs, adjustments to our web site and database and storage of this information on your new privilege. It is also a one time fee. The pharmaceuticals injection certificate is also established by SB 230. This fee is set at the same level as the orals certification fee to cover the cost of verification, certification adjustments to our database, etc. Once again, the orals fee has been in existence since the late 90's.

The way the rule would be applied would only require you to pay an additional \$75 per year. The other two one time fees would only be charged if you choose to pursue the certificates to prescribe and dispense contact lenses that deliver pharmaceuticals and the use of injections other than epinephrine.

Please keep in mind that SB 230 increased the programs the Board has to administer. These costs go beyond the initial processing and storage. The Board currently administers licensure, monitoring, discipline and compliance with all state regulations and financial requirements of a state agency. There are currently basically 4 forms of licensure and permit that we govern. SB 230 increases your scope of practice and adds four new scope programs and three new forms of permits. That increases the board's programs to govern by 175%.

I will forward your comments to the Board. They value every opinion and will consider your concerns carefully. I will forward an official response once the board has considered your concerns. Thank you for sharing your thoughts. They will be helpful to the Board as it considers the proposed rules.

Have a good afternoon,

*Pamela Carper*

West Virginia Board of Optometry

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**From:** David W. Harshberger, O.D. [dwharshberger@verizon.net]  
**Sent:** Saturday, July 10, 2010 6:14 PM  
**To:** wvbdopt@verizon.net  
**Subject:** Proposed rules  
WV Board of Optometry,

I have read SB 230 and the proposed rules listed on your site; I generally agree with the proposals, but have a few concerns. As I read it, the proposal is for WV Optometrists to return to annual license renewal, instead of the current biannual time frame. It also appears CE time requirements will revert to yearly instead of the current 2 year period. Is this correct?

In reading SB 230, Sec. 30-8-11(a) states that license renewal may be annually or biennially; also Sec. 30-8-11(c) states CE must be completed for license renewal, but gives no time frames. I personally prefer 2 year periods for both license renewal and CE reporting. It is much easier to only have to worry about renewing my license every other year. Also having 2 years to acquire the necessary CE gives doctors more flexibility. I have an Ohio license as well, and their requirements are yearly (and 25 hours); the past two years have been tough to comply with this, as family responsibilities have caused me to miss the summer meeting the last two years. I have had no problem meeting the WV requirements, mostly due to the 2 year time frame. I would recommend against reverting back to yearly time frame, especially since I suspect our number of hours will increase in the future with our increased scope of practice.

My other concern is with the fee schedule. Currently we pay \$650.00 for license renewal, good for two years. The proposed fee is \$400.00 for one year; there are also fees of \$200.00 for Orals Cert., \$50.00 for CL Delivery Pharm. Cert., \$200.00 Injections Cert., and \$100.00 License Card and Cert. Are some or all of these other fees included in the license fee? If all are, and we pay only \$400.00 per year, that is still an increase of \$75.00/year, or about 23%. If we were to pay all these fees, that would total \$950.00/year, an increase of \$625.00/year, or nearly a 300% increase! I think this issue needs to be clarified for all the WV O.D.s!

Thanks for your hard work on the rules, and your consideration of these suggestions.

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