

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark in this box

2001 JUL 18 A 9:04

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: West Virginia Bd. of Optometry TITLE NUMBER: 14

CITE AUTHORITY: Chapter 30-Article 8

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rules of the WV 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.

*E. Clepton Hays, OD*  
Authorized Signature

7-17-01



# West Virginia Board Of Optometry

101 Michael Street

Clarksburg, West Virginia 26301-3937

Phone: (304) 627-2106

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June 5, 2001

Secretary of State  
State of West Virginia  
Building 1, Suite 157K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0771

RE: Title 14- Series 1  
Legislative Rule

Dear Sirs:

The Board has approved the filing of Title 14-Series 1- Rules of the West Virginia Board of Optometry as a legislative rule to remove fees and to update language

Please fax us the cover page for this rule when the comment period begins.

Sincerely,

A handwritten signature in cursive script that reads "E. Clifton Hyre, O.D." with a small flourish at the end.

Clifton Hyre, O. D.  
President

Enclosure  
CH/bp

## 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.

**CIRCUMSTANCES REQUIRING RULE**  
**TITLE 14-SERIES 1-The Rules of the West Virginia Board of Optometry**

All fees were removed from Chapter 30-Article 8 – Optometrists of the State Code in the 2001 Legislative Session. This rule deletes Board fees from 14-1 in order to place them in a separate legislative rule and updates language.

**SUMMARY OF PROPOSED RULE, 14-SERIES 1  
RULES FOR THE WEST VIRGINIA BOARD OF OPTOMETRY**

This rule establishes the operation of the West Virginia Board of Optometry and the requirements, procedures and responsibilities for licensure as an optometrist. The changes to this rule deletes outdated language, changes the renewal period from annual to biennial, increases required continuing education hours, and changes the Board examinations from two per year to one per year.

■  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 14-Series 1-The Rules of the West Virginia Board of Optometry

Type of Rule:      Legislative                    Interpretive                    Procedural

Agency: West Virginia Board of Optometry

Address: 101 Michael Street

Clarksburg, WV 26301-3937

1. Effect of Proposed rule:     None

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:     None

3. Objectives of These Rules:     To update language and remove outdated fees.

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

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government: **None**

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: **None**

C. Economic Impact on Citizens/Public at Large. **None**

Date: June 5, 2001

Signature of Agency Head or Authorized Representative:

E. Clepton Hays, O.D.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule.)

DATE July 17, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Optometry  
101 Michael Street  
(304)627-2106 Clarksburg, WV 26301-3937

LEGISLATIVE RULE TITLE: 14-1

1. Authorizing statute(s) citation Chapter 30-Article 8

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

June 11, 2001 (Comment Period)

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

Newspapers and mailings

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

July 16, 2001

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

Attached

No comments received X

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

- f. 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)

Clifton Hyre, O. D. , President

101 Michael Street

Clarksburg, WV 26301-3937

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

Barbara L. Palmer, Administrative Secretary

West Virginia Board of Optometry

101 Michael Street

Clarksburg, WV 26301-3937

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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.
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- b. Date of hearing or comment period:

July 16, 2001 Comment Period ends at 12 NOON.

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

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d. Attach findings and determinations and reasons:

Attached 

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TITLE 14  
LEGISLATIVE RULES  
WEST VIRGINIA BOARD OF OPTOMETRY

FILED

SERIES 1  
RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY

2001 JUL 18 A 9:04

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. -- June 8, 2001

1.4. Effective Date. --

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

2.1. Before any person shall be permitted to 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 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 2 inches by 2 inches in size.

~~2.2. The application shall contain the signatures of three (3) individuals who attest to the good moral character of the applicant and in addition to these signatures a letter from each of these individuals shall accompany the application form. Each signature on the application form shall be sworn to before any officer legally qualified to administer oaths.~~

2.2. 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, or which hereafter are adopted, by the Board.

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

2.4. 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.

2.5. ~~A certification of graduation from a high school, or its equivalent, and 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.~~

2.6. 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.

2.7. The applicant shall file the completed application and examination fee with the secretary of the Board not later than ~~ten (10)~~ thirty (30) days prior to the first day of the examination dates. ~~However, it is recommended that applications be in the hands of the secretary thirty (30) days prior to the examination dates to facilitate processing time and assurance of permission of the applicant to take the examination.~~ In the event an applicant intends to retake the examination, the fee (if applicable) and the notice of his or her intention to retake the examination shall also be in the secretary's office ~~ten (10)~~ thirty (30) days prior to the examination dates. The completed application, records and fees are to be mailed to the secretary in one (1) parcel and all transcripts ~~when so designated~~ are to be left unsealed.

2.8. The fee for taking the examination is ~~fifty dollars (\$50.00)~~ shall be determined by rule. ~~An applicant failing to pass an examination satisfactory to the Board shall, at either the first or second succeeding examination conducted by the Board, be entitled to a reexamination without further cost, but one (1) such reexamination shall exhaust his privilege under his or her original application. (West Virginia Code section six, article one, chapter thirty.)~~

2.9. ~~If an application has been received~~ Receipt of an application by the secretary, ~~and the processing of records processed for an applicant's qualification to take the examination, and if an examination has been prepared, failure of the applicant to appear will constitute~~ constitutes the same as taking the examination ~~but without grades~~ when an applicant fails to appear. ~~The applicant will be is entitled to take a second examination at no cost.~~ This section does not apply if an applicant has notified the secretary of his or her inability to appear for examination due to acceptable extenuating circumstances.

### **§14-1-3. Rules For Examination.**

3.1 The Board shall conduct, ~~in writing,~~ examinations for a license to practice optometry in this State ~~and by any other means as the Board shall determines~~ adequate to ascertain the qualifications of the applicant. ~~All applicants examined at the same time shall be given the same written examination.~~ The Board shall give each applicant due notice of the date, time and place of the examination and advised that his or her records have been received and are complete. If his or her records are incomplete he or she will also be ~~so~~ advised as to what records are missing or improper.

3.2. 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 shall make the approved schedule available to the applicants ~~the approved schedule~~ taking the examination. ~~The secretary shall caution all applicants taking the examination to use good English and write in a legible manner.~~

3.3. The written examinations shall start on the second Sunday of February and July at nine a.m., unless otherwise directed by the president, and each applicant will ~~shall~~ register with the secretary or his or her representative, at eight thirty a.m. This pre-examination time will be used familiarizing the applicants with the examination procedure, scheduling and answering any questions put by the applicants. Once an examination starts no questions will be permitted by the applicant until his paper has been turned over to the secretary.

3.4. The examination shall be divided into six written parts. Each member of the Board will ~~shall~~ be given one or more subjects to prepare for each examination and the questions for these subjects are to be submitted to the secretary at least thirty (30) days prior to the examination. The secretary or his or her appointed representative will ~~shall~~ then have all subjects prepared in individual jackets for uniform examinations. The examination subjects will include: Anatomy and Physiology, Pathology, Theoretical Optometry, Pharmacology and Contact Lenses, or any other subject ~~deemed considered necessary~~ by the Board. Applicants will ~~shall~~ also be given an oral examination by the Board during the period of the personal interview. An applicant must pass each examination subject must be passed with a minimum grade of seventy-five percent (75%): Provided, That if three (3) subjects are eighty percent (80%) or higher and the failed subjects are not lower than seventy percent (70%), the applicant will only be required to retake the two (2) examination subjects failed. Provided, that if the applicant achieves a minimum grade of eighty percent (80%), he or she is only required to retake the two (2) examination subjects failed. If three (3) subjects are failed the entire examination must be retaken. If the applicant fails three (3) subjects, he or she shall retake the entire examination.

3.4. 3.5. 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 results announced to the applicant.

3.5. 3.6. 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.

#### §14-1-4. Colleges Of Optometry.

4.1. A college of optometry, to be approved by the Board, must shall maintain high scholastic and professional standards and must also be approved by the Council on Optometric Education (COE) of the American Optometric Association.

~~4.2. No College of Optometry shall be approved by the Board unless the college requires at least two (2) years of pre-optometry work at the college or university level and at least three (3) years work in the College of Optometry., or at least one (1) year pre-optometry work at the college or university level at least four (4) years work in the College of Optometry, West Virginia Code section five, article eight, chapter thirty~~

4.2 3. The secretary shall keep an up-to-date list of all Colleges of Optometry approved by the Board, and make the list available upon request to anyone desiring it.

#### §14-1-5. Licenses.

5.1 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. In this letter the secretary shall also advise the applicant of the required ~~five-dollar (\$5.00)~~ certificate fee and the annual ~~twenty-dollar (\$20.00)~~ renewal fee. If the applicant fails to pay the required fees within ninety (90) days, his or her records will be so marked and he or she shall not be listed as a registered optometrist in this State. The secretary shall make every effort to locate such applicant and will send a registered letter with receipt requested to the address given by the applicant.

5.2. 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 ~~five-dollars (\$5.00)~~ to be paid by check or money order made payable to the West Virginia Board of Optometry.

5.3 The Board shall issue a certificate ~~which~~ to includes the licensee's name in full, ~~the name of the county of the licensee's choice,~~ a certificate 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. ~~The picture sent by the applicant in the application requirements will be returned and may be used in connection with the certificate.~~

~~5.4. Every person practicing optometry in this State shall display his or her license renewal and certificate in his or her principal office.~~

#### **§14-1-6. Renewals.**

6.1. All registered optometrists who desire to continue in active practice shall, ~~annually~~ biennially, on or before the thirty first day of July August, of each the year of expiration, renew his or her certificate of registration and pay an ~~annual~~ a biennial renewal fee of ~~twenty-dollars (\$20.00)~~ and ~~submit~~ maintain proof of acquisition of all required continuing education hours for random audit. Any certificate of registration which has not been renewed during the month of August ~~in any one year shall expire~~ expires on the first day of September ~~of that year~~

6.2. ~~All~~ Renewal fees shall be paid by check or money order made payable to the West Virginia Board of Optometry ~~secretary-treasurer of the Board.~~

6.3. Upon receipt of the renewal fee the secretary shall issue ~~an annual~~ a biennial renewal certificate card bearing the number of the license, the years for which renewed and any other information as the Board considers necessary.

6.4. When an optometrist has failed to pay his or her ~~annual~~ biennial renewal fee by July 31<sup>st</sup> August 15 of ~~any one~~ 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 secretary shall further advise the optometrist that his or her license to practice optometry expires on the following first day of September.

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

6.6. 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 be required to have an additional renewal card for each office, obtained upon request to the secretary. Every optometrist shall notify the secretary of any branch office and address.

#### **§14-1-7. Unlawful Use Of The Prefix "Doctor" Or "Dr."**

7.1. 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 ~~show~~ maintain evidence of meeting the education requirements when he or she applies for renewal of his or her license.

8.3. The evidence shall show his or her attendance for a minimum of ~~eight (8)~~ forty hours during the preceding two years at educational optometric programs covering one or more of the subjects ~~taught in optometry colleges~~ approved by the Optometry Board.

~~8.4. Speakers, lecturers and others participating in the presentation of the program must be recognized as possessing requisite qualifications and being expert and of recognized repute in their field.~~

~~8.5. Instruction courses sponsored by individuals or institutions for commercial purposes are not recognized; nor are any programs in which the speaker advertises or urges the use of any particular ophthalmic product or appliance.~~

8.4 6. 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 7. 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, speaker or instructor and hours in attendance. ~~The registrant shall submit evidence of attendance with the application for renewal of his or her license, to the Board. 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 valid 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 8. Upon request for approval from the registrant, the Board may approve meetings or seminars either within or without the State of West Virginia, at least thirty (30) days prior to the meeting or seminar.

#### **~~§14-1-9. Diagnostic and Therapeutic Pharmaceutical Agents.~~**

~~9.1. In recognition of the special course of study in pharmacology taken by those optometrists licensed to practice in West Virginia, the West Virginia Board of Optometry recognizes as certification to utilize diagnostic and therapeutic pharmaceuticals the satisfactory completion of those courses given by the Pennsylvania College of Optometry in West Virginia during the periods of February through May 1975 and February through June 1976.~~

~~9.2. Any optometrist licensed to practice in West Virginia shall satisfactorily complete a Board approved course in pharmaceuticals. The optometrist shall obtain written approval from the Board prior to taking the course.~~

~~9.3 2. All optometrists who qualify and become certified to use pharmaceutical agents must also provide a notarized statement verifying that they have, a Slit Lamp and Visual Field Testing Device, as a part of their office testing equipment.~~

~~9.4 A drug log, to be specified by the Board, shall be maintained by any optometrist utilizing pharmaceuticals. The log shall include the following in order: the patient's name, date of treatment, drug, dosage and purpose of application and shall be available to the Board at any and all times.~~

~~9.5. It shall be is unlawful for any optometrist certified by the Board to utilize pharmaceuticals to, in any way whatsoever, hold himself or herself forth as being superior or different from any optometrist not so certified, violation of said this rule to be punishable by revocation of the right to use pharmaceuticals.~~

~~12.8. These rules shall become effective May 20, 1976, in compliance with Enrolled Committee Substitute for House Bill No. 1005 and upon individual receipt of written certification by the Secretary of the Board.~~

~~12.9. If any article, section, subsection, sentence, clause or phrase of these Rules and~~

~~Regulations be held invalid, the same shall not affect the validity of any other article, section, subsection, sentence, clause or part thereof.~~