

WEST VIRGINIA SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUN 19 10 44 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Optometry TITLE NUMBER: 14

RULE TYPE: Legislative; CITE AUTHORITY HB4062

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Title 14 Series 1

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 19, 2000 AT 12:00 NOON.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Board of Optometry

101 Michael Street

Clarksburg, WV 26301-3937

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

x E. Clifton Hays

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$5.00



WEST VIRGINIA BOARD OF EXAMINERS IN OPTOMETRY

101 Michael Street
Clarksburg, West Virginia 26301-3937
Phone: (304) 627-2106 Fax: (304) 627-2282
e-mail: wvbdopt@westvirginia.net

June 13, 2000

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

RE: Title 14-1 Amendment

Dear sir:

Provisions of House Bill 4062, passed February 15, 2000; effective, ninety (90) days from passage, supersede Title 14-1-9 and Title 14-1-10-Legislative Rules of the West Virginia Board of Optometry.

Therefore, an amendment to the current rules are necessary.

As president of the Board, I approve the filing of this amendment.

Sincerely,

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

E. Clifton Hyre, O. D.
President

Summary of Changes to Title 14 Series 1

Deletion of Title 14-1-9 Filing of Charges. and Title 14-1-10 Complaints of Violation. is superseded by provisions in H.B. 4062, passed February 15, 2000; effective, ninety (90) days from passage. Title 14-3-Contested case hearing procedures and Title 14-4-Disciplinary and complaint procedures replaces Title 14-1-9 & 10.

Circumstances Requiring Changes to Title 14 Series 1

House Bill 4062, passed February 15, 2000; effective, ninety (90) days from passage, specifies a procedure for the investigation and resolution of complaints against optometrists which supersedes those specified in Title 14-1-9 Filing of Charges. and Title 14-1-10-Complaint of Violation.

FISCAL NOTE FOR PROPOSED RULES
FISCAL NOTE FOR PROPOSED RULES

Rule Title: TITLE 14 SERIES -1. 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	NA	NA	NA	NA	NA
PERSONAL SERVICES	NA	NA	NA	NA	NA
CURRENT EXPENSE	NA	NA	NA	NA	NA
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	NA	NA	NA	NA	NA

2. Explanation of Above Estimates: Title 14-1 amended to comply with HB4062, passed February 15, 2000, effective ninety (90) days from passage.

3. Objectives of These Rules: Objective of this amendment is to comply with HB4062 passed February 15, 2000, effective, ninety (90) days from passage.

Rule Title: Title 14 Series 1 Section 9-Filing of Charges and
Title 14 Series 1 Section 10-Complaints of Violation

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government: NA

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:
NA

C. Economic Impact on Citizens/Public at Large. NA

Date: June 17, 2000

Signature of Agency Head or Authorized Representative:

E. Blifton Heye, O.D.

TITLE 14
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF OPTOMETRY

FILED

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SERIES 1
RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§14-1-1. General.

1.1. Scope. -- These rules establish 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 et. seq.

1.3. Filing Date. --

1.4. Effective Date. --

§14-1-2. Administration.

2.1. The West Virginia State Board of Examiners in Optometry (hereinafter referred to as the Board) shall consist of five (5) optometrists, actively engaged in the practice of optometry in the State of West Virginia and appointed as governed by section two, article eight, chapter thirty of the West Virginia Code.

2.2. When appointed by the Governor, Board members shall qualify by taking the constitutional oath of office. The term of office shall be for three (3) years, however, a member whose term of office has expired shall continue to serve as a member until his office is filled by appointment by the Governor.

2.3. At the annual meeting in July of each year the Board shall elect a president and secretary-treasurer.

2.4. The president shall have power to appoint committees from the Board membership and the duties of such committees shall be to consider such matters, pertaining to the enforcement of the Optometry Laws of this State and the regulations promulgated in accordance therewith, as shall be referred to said committees and they shall make recommendations to the Board with respect thereto. The president shall preside over all meetings of the Board and shall be ex officio chairman of all committees.

2.5. The secretary-treasurer shall make and keep records of all meetings, shall keep records of examination results on the applicants, receive all moneys due the Board and account with a financial statement at the regular annual meeting in July of each year. In addition to this financial statement he shall have a regular audit by a representative of the Auditor's Office of the State of West Virginia every three (3) years or when turning over the records of the secretary's office to his successor and he shall execute a bond as required by law. Under the direction of the president he shall serve as chairman of the Committee on Examinations and will designate the subjects on examinations to members of the Board. He shall be empowered to represent the Board in attempting to eliminate a violation of the Code governing the practice of Optometry and he shall perform such other duties that may come with his office. The secretary-treasurer shall receive an annual salary of one thousand dollars (\$1,000), payable each quarter in the amount of two hundred fifty dollars (\$250) and four hundred dollars (\$400) for office help payable each quarter in the amount of one hundred dollars (\$100), plus the allotted Board member per diem

and expenses while attending Board meetings. He shall also receive office expenses which have been presented and allowed by the West Virginia Department of Finance and Administration.

§14-1-3. Meetings Of The Board.

3.1. The Board shall hold regular meetings at least twice a year at which time an examination of applicants for license shall be given. These meetings will be held on the second Sunday, Monday and Tuesday of February and July, unless otherwise directed by the president, but Tuesday is to be applicable when the president of the Board deems it advisable for purpose of further business session or the secretary for purpose of further examination of applicants taking the Board examinations or by majority vote of the members of the Board.

3.2. Special meetings of the Board shall be held upon request of a majority of the members of the Board or upon the call of the secretary as directed by the president. At least five (5) days notice of such meeting shall be given in writing setting forth the time and place of such meeting.

3.3. Three (3) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present, provided such period shall not be longer than three (3) successive days.

3.4. Whenever there are matters requiring action by the Board in the interim between meetings, the president may submit such matters to all members of the Board by mail and, if a vote is required, members may cast their votes by mailed ballots and such votes shall be recorded and shall have the same force and effect as if cast in a regular or special meeting. The president shall have authority to submit matters to the Board by mail at any time, at his discretion, and shall do so upon the written request of one or more members of the Board.

§14-1-4. Applications And Examinations.

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

4.2. Such application shall contain the signatures of three (3) persons 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.

4.3. In such application the applicant shall state that he will abide by the laws of this State regulating the practice of optometry and by the Rules and Regulations adopted, or which hereafter be adopted, by the Board.

4.4. Such application shall be subscribed by the applicant and sworn by him before any officer legally qualified to administer oaths.

4.5. Any person furnishing false information in such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the Board of the

falseness of such information, such license shall be subject to suspension, revocation or cancellation.

4.6. 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, which certified transcripts of record shall show the total number of hours of attendance, the subjects studied, the grades given and the date of graduation.

4.7. The completed application and examination fee must be filed with the secretary of the Board not later than ten (10) 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 examinations. In the event an applicant intends to retake said examination, the fee (if applicable) and the notice of his intention to retake said examination must also be in the secretary's office ten (10) 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.

4.8. The fee for taking the examination shall be fifty dollars (\$50.00). 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 original application. (West Virginia Code section six, article one, chapter thirty.)

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

§14-1-5. Rules For Examination.

5.1. Examination for a license to practice optometry in this State shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of the applicant. All applicants examined at the same time shall be given the same written examination. Each applicant shall be given due notice of the date and place of the examination and advised that his records have been received and are complete. If his records are incomplete he will also be so advised as to what records are missing or improper.

5.2. Prior to an examination the secretary of the Board or a member of the Board designated by the president should the secretary be absent, shall prepare a tentative schedule showing the time allotted to each subject and the order in which they will be given, said schedule to meet the approval of a majority of the members of the Board. This approved schedule will be made available to the applicants taking the examination. All applicants taking the examination will be cautioned to use good English and write in a legible manner.

5.3. The written examinations will start on the second Sunday of February and July at nine a.m., unless otherwise directed by the president, and each applicant will register with the secretary or his 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.

5.4. The examination shall be divided into six written parts. Each member of the Board will 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 appointed representative will 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 necessary by the Board. Applicants will also be given an oral examination by the Board during the period of the personal interview. 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. If three (3) subjects are failed the entire examination must be retaken.

5.5. Applicants shall not be permitted to bring books, notes, slide rules or other aids into the examination room, nor to communicate any words, or sign with another applicant while the examination is in progress. Anyone committing an untoward act during the examination will be immediately directed to leave the room and will fail the entire examination.

5.6. At the beginning of an examination each applicant shall be assigned a number by the secretary of the Board who shall have in his possession the only code showing the number assigned to each applicant and he is hereby forbidden to reveal the number as signed to any applicant to any member of the Board until after the examination is completed and such applicant has been graded and then only in a meeting of the Board. Applicants shall use the number assigned to them for purposes of identification throughout the examination and no applicant shall enter his or her name or other identifying mark, other than his or her number on any paper containing answers to the questions of any examination.

5.7. 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 own examination papers which must be preserved for a period of thirty (30) days after final grading and results announced to the applicant.

5.8. At the direction of the president, the secretary or his appointed representative shall be empowered to conduct the examination without a quorum of the Board being present.

§14-1-6. Colleges Of Optometry.

6.1. A college of optometry to be approved by the Board must maintain high scholastic and professional standards and must also be approved by the Council on Education of the American Optometric Association.

6.2. No College of Optometry shall be approved by the Board unless such 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 preoptometry 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.

6.3. The secretary shall keep an up-to-date list of all Colleges of Optometry recognized by the Board, such list to be available to anyone desiring it.

§14-1-7. Licenses.

7.1. Any person who passes the examination and meets the requirements of the Board shall be issued a license to practice the profession of optometry in this State. The fee for issuing this

license shall be five dollars (\$5.00) to be paid by check or money order made payable to the secretary-treasurer of the Board. If any duly registered optometrist in this State desires a duplicate certificate issued, there will be a five dollar (\$5.00) charge for this certificate.

7.2. When an applicant is examined by the Board and found qualified to practice the profession of optometry in this State he will be notified by letter by the secretary. In this letter the secretary will also advise the applicant of the required five dollar (\$5.00) certificate fee and the twenty dollar (\$20.00) renewal fee for the fiscal year as of that date. If the applicant fails to pay the required fees after ninety (90) days, his records will be so marked and he will not be listed as a registered optometrist in this State. The secretary will make every effort to locate such applicants and will send a registered letter with receipt requested to the address given by the applicant.

7.3. A certificate issued by the Board will include 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. The picture sent by the applicant in the application requirements will be returned and may be used in connection with the certificate.

7.4. Every person practicing optometry in this State shall display his license renewal and certificate in his principal office. (Section six, article eight, chapter thirty of the West Virginia Code.)

§14-1-8. Renewals.

8.1. All registered optometrists who desire to continue in active practice shall, annually, on or before the first day of August, of each year, renew his certificate of registration and pay an annual renewal fee of twenty dollars (\$20.00) and submit proof of acquisition of all required continuing education hours. Any certificate of registration which has not been renewed during the month of August in any one year shall expire on the first day of September of that year. (Section seven, article eight, chapter thirty of the West Virginia Code.)

8.2. All renewal fees shall be paid by check or money order made payable to the secretary-treasurer of the Board on or before the first day of August.

8.3. Upon receipt of the renewal fee the secretary shall issue an annual renewal certificate card bearing the number of the license, the year for which renewed and such other information as the Board may deem necessary.

8.4. When an optometrist has failed to pay his annual renewal fee by August 15 of any one year, it shall be the duty of the secretary to notify this optometrist by registered mail at his last known address, that said fee is due and unpaid and cite the penalties of practicing optometry without said renewal. The secretary shall further advise this optometrist that his license to practice optometry will become void on the following first day of September. (Section ten, article eight, chapter thirty of the West Virginia Code.)

8.5. The secretary of the Board shall make every effort to notify all optometrists of the renewal clause as set forth in section seven, article eight, chapter thirty of the West Virginia Code, but failure to receive such notification does not exempt anyone should he not receive such notification and should not meet the qualifications as set forth. Renewal notification is a courtesy of the Board extended to all registered optometrists in this State.

8.6. Every optometrist shall display his renewal certificate in a conspicuous place in the principal office where he practices optometry. If an optometrist practices his profession in more than one (1) office (branch office) he shall be required to have an additional renewal card for

each office, obtained upon request to the secretary. Every optometrist will be required to notify the secretary of any branch office and address.

8.7. Branch office. -- Section six, article eight, chapter thirty of the West Virginia Code provides: "Every person practicing optometry shall display his certificate of registration or exemption in a conspicuous place in the principal office wherein he practices optometry and whenever required, shall exhibit such certificate to the Board of Examiners or its authorized representatives. And whenever practicing the profession of optometry outside or away from said office or place of business, he shall deliver to each customer or person so fitted with glasses a bill of purchase which shall contain his signature, home post office address and the number of his certificate or registration or exemption, together with a specification of the lenses furnished."

~~§14-1-9. Filing Of Charges.~~

~~9.1. Any person or persons may file with the Board charges of violation of any of the optometric laws of this State or of any Rules and Regulations of the Board against any optometrist or anyone violating the optometry laws. Such charges must be in writing and set forth the following information:~~

~~—(a) The name and office address of the optometrist charged.~~

~~—(b) The nature of the acts charged.~~

~~—(c) The time and place where such acts are alleged to have occurred.~~

~~—(d) A list of persons, if any, who witnessed such acts.~~

~~—(e) The charges should be set out in sufficient details as to enable the optometrist charged to meet the same.~~

~~—(f) Any photographs, letters, advertisements or other documents used as a basis for the charges should be attached thereto.~~

~~9.2. The president of the Board shall appoint a committee of such number as he deems necessary to consider all charges filed with the Board, and, if in the opinion of the committee the alleged acts or conduct set forth in said charges, if true, would constitute a violation of any of the optometry laws of this State or of any Rule and Regulation of the Board, the president shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing to be served on the optometrist charged or his counsel. As this section is in accord with article one, chapter thirty of the Code of West Virginia, the optometrist charged shall be served with a notice of the above hearing at least thirty (30) days prior to such hearing and that he may appear with witnesses and counsel at such hearing.~~

~~9.3. Hearsay and belief that a certain optometrist or person committed certain acts at a certain time and place shall not be used as the basis for filing charges.~~

~~9.4. After hearing all evidence the Board shall determine the charges upon their merits and may, in its discretion, cancel, revoke or suspend the license of the optometrist charged if the Board determines such charges are true and if it is in the power of the Board to revoke or suspend said license. (Section eight, article one, chapter thirty of the West Virginia Code.)~~

~~9.5. An optometrist whose license has been revoked may have recourse according to section nine, article one, chapter thirty of Review of Circuit Court and Supreme Court.~~

~~§14-1-10. Complaints Of Violation.~~

~~10.1. Complaints that a layperson, firm or corporation is practicing optometry without a license or otherwise violating the optometry laws of this State may be made to the Board by letter setting forth the following information:~~

- ~~— (a) The name and address of the person, firm or corporation so violating the law.~~
- ~~— (b) The nature of the violation.~~
- ~~— (c) The time and place where the violation occurred.~~
- ~~— (d) A list of persons, if any, who witnessed the violation.~~
- ~~— (e) Any photographs, letters, advertisements or other documents, if available.~~

~~10.2. The president shall appoint a committee of such number as he deems necessary to consider all such complaints of violation, and, if in the opinion of the committee the complaint sets forth facts which, if true would constitute a violation of the optometry laws of this State, the committee shall proceed to investigate the complaint.~~

~~10.3. The committee shall make a report in writing to the president of the findings of their investigation along with their suggestions and recommendations.~~

~~10.4. If the Board is of the opinion that the findings of investigation justify that action be taken, it shall notify the proper authorities of the county wherein the violation is alleged to have occurred and request the cooperation of his office in the prosecution of the offender or offenders. The Attorney General of this State shall also be notified of this action.~~

§14-1-11. 9. Unlawful Use Of The Prefix "Doctor" Or "Dr."

~~11.9.1. Section twenty-one, article ten, chapter sixty-one of the Code of West Virginia states: "Unlawful use of the prefix "Doctor" or "Dr.". -- It shall be unlawful for any person to use the prefix "Doctor" or "Dr." in connection with his 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 holds. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each such offense not less than ten (10) nor more than five hundred dollars (\$500), or imprisoned in the county jail not more than twelve (12) months, or both fined and imprisoned, in the discretion of the court.~~

§14-1-12. 10 General Rules.

~~12-10.1. All Rules and Regulations heretofore adopted by the West Virginia Board of Optometry are hereby repealed and rescinded insofar as such rules, or any of them, or any provision thereof, is, or are inconsistent herewith.~~

~~12-10.2. The Rules and Regulations shall forthwith be published and distributed to each optometrist licensed by this Board and practicing in the State of West Virginia and each optometrist shall be held to have knowledge of the contents thereof.~~

~~12-10.3. These Rules and Regulations may be amended from time to time and such amendments shall be published and distributed in the same manner as these Rules and Regulations.~~

~~12-10.4. The following rules shall govern the attendance of educational optometric programs for annual license renewal:~~

It will be the responsibility of each registered optometrist to ensure that evidence of compliance with the education requirements prescribed by Section 12.4 of these rules of the West Virginia Board of Optometry at the time he applies for renewal of license.

Such evidence must show his attendance for a minimum of eight (8) hours during the preceding year at educational optometric programs covering one or more of the subjects taught in optometry colleges approved by the Optometry Board.

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.

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.

Educational programs which will be approved as meeting the minimum standards include the following: (This approval is based on past performances and continued maintenance of minimum standards.)

- (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.

Evidence of attendance shall be furnished by the sponsoring organization to each registrant at the program signed by its secretary or chairman showing date and place of meeting, speaker or instructor and hours in attendance. This evidence must accompany registrant's application for renewal of license when made to the secretary of the West Virginia State Board (Of Optometry). To be granted exemption from the required attendance, a registrant must file a sworn affidavit containing valid reasons for noncompliance with the Secretary of the West Virginia State Board of Optometry when he applies for renewal of license.

Other meetings or seminars either within or without the State of West Virginia that may be approved in advance by the Board with such request for approval to be made to the Board at least thirty (30) days prior to said meeting or seminar.

12-10.5. 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.

Any optometrist licensed to practice in West Virginia must satisfactorily complete a Board approved course in pharmaceuticals.

Prior Board approval in writing of said course is a requisite.

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.

~~12-10.6.~~ A drug log, to be specified by the Board, shall be maintained by any optometrist utilizing pharmaceuticals. Said log will include the following in order: Patient's name, date, drug, dosage and purpose of application and shall be available to the Board at any and all times.

~~12-10.7.~~ It shall be unlawful for any optometrist certified by the Board to utilize pharmaceuticals to, in any way whatsoever, hold himself forth as being superior or different from any optometrist not so certified, violation of said rule to be punishable by revocation of the right to use pharmaceuticals.

~~12-10.8.~~ 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.

~~12-10.9.~~ 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.

TITLE 14
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF OPTOMETRY

FILED

SERIES 1
RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY

JUN 19 10 45 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§14-1-1. General.

1.1. Scope. -- These rules establish 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 et. seq.

1.3. Filing Date. --

1.4. Effective Date. --

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2.4. The president shall have power to appoint committees from the Board membership and the duties of such committees shall be to consider such matters, pertaining to the enforcement of the Optometry Laws of this State and the regulations promulgated in accordance therewith, as shall be referred to said committees and they shall make recommendations to the Board with respect thereto. The president shall preside over all meetings of the Board and shall be ex officio chairman of all committees.

2.5. The secretary-treasurer shall make and keep records of all meetings, shall keep records of examination results on the applicants, receive all moneys due the Board and account with a financial statement at the regular annual meeting in July of each year. In addition to this financial statement he shall have a regular audit by a representative of the Auditor's Office of the State of West Virginia every three (3) years or when turning over the records of the secretary's office to his successor and he shall execute a bond as required by law. Under the direction of the president he shall serve as chairman of the Committee on Examinations and will designate the subjects on examinations to members of the Board. He shall be empowered to represent the Board in attempting to eliminate a violation of the Code governing the practice of Optometry and he shall perform such other duties that may come with his office. The secretary-treasurer shall receive an annual salary of one thousand dollars (\$1,000), payable each quarter in the amount of two hundred fifty dollars (\$250) and four hundred dollars (\$400) for office help payable each quarter in the amount of one hundred dollars (\$100), plus the allotted Board member per diem

and expenses while attending Board meetings. He shall also receive office expenses which have been presented and allowed by the West Virginia Department of Finance and Administration.

§14-1-3. Meetings Of The Board.

3.1. The Board shall hold regular meetings at least twice a year at which time an examination of applicants for license shall be given. These meetings will be held on the second Sunday, Monday and Tuesday of February and July, unless otherwise directed by the president, but Tuesday is to be applicable when the president of the Board deems it advisable for purpose of further business session or the secretary for purpose of further examination of applicants taking the Board examinations or by majority vote of the members of the Board.

3.2. Special meetings of the Board shall be held upon request of a majority of the members of the Board or upon the call of the secretary as directed by the president. At least five (5) days notice of such meeting shall be given in writing setting forth the time and place of such meeting.

3.3. Three (3) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present, provided such period shall not be longer than three (3) successive days.

3.4. Whenever there are matters requiring action by the Board in the interim between meetings, the president may submit such matters to all members of the Board by mail and, if a vote is required, members may cast their votes by mailed ballots and such votes shall be recorded and shall have the same force and effect as if cast in a regular or special meeting. The president shall have authority to submit matters to the Board by mail at any time, at his discretion, and shall do so upon the written request of one or more members of the Board.

§14-1-4. Applications And Examinations.

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

4.2. Such application shall contain the signatures of three (3) persons 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.

4.3. In such application the applicant shall state that he will abide by the laws of this State regulating the practice of optometry and by the Rules and Regulations adopted, or which hereafter be adopted, by the Board.

4.4. Such application shall be subscribed by the applicant and sworn by him before any officer legally qualified to administer oaths.

4.5. Any person furnishing false information in such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the Board of the

falseness of such information, such license shall be subject to suspension, revocation or cancellation.

4.6. 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, which certified transcripts of record shall show the total number of hours of attendance, the subjects studied, the grades given and the date of graduation.

4.7. The completed application and examination fee must be filed with the secretary of the Board not later than ten (10) 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 examinations. In the event an applicant intends to retake said examination, the fee (if applicable) and the notice of his intention to retake said examination must also be in the secretary's office ten (10) 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.

4.8. The fee for taking the examination shall be fifty dollars (\$50.00). 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 original application. (West Virginia Code section six, article one, chapter thirty.)

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

§14-1-5. Rules For Examination.

5.1. Examination for a license to practice optometry in this State shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of the applicant. All applicants examined at the same time shall be given the same written examination. Each applicant shall be given due notice of the date and place of the examination and advised that his records have been received and are complete. If his records are incomplete he will also be so advised as to what records are missing or improper.

5.2. Prior to an examination the secretary of the Board or a member of the Board designated by the president should the secretary be absent, shall prepare a tentative schedule showing the time allotted to each subject and the order in which they will be given, said schedule to meet the approval of a majority of the members of the Board. This approved schedule will be made available to the applicants taking the examination. All applicants taking the examination will be cautioned to use good English and write in a legible manner.

5.3. The written examinations will start on the second Sunday of February and July at nine a.m., unless otherwise directed by the president, and each applicant will register with the secretary or his 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.

5.4. The examination shall be divided into six written parts. Each member of the Board will 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 appointed representative will 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 necessary by the Board. Applicants will also be given an oral examination by the Board during the period of the personal interview. 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. If three (3) subjects are failed the entire examination must be retaken.

5.5. Applicants shall not be permitted to bring books, notes, slide rules or other aids into the examination room, nor to communicate any words, or sign with another applicant while the examination is in progress. Anyone committing an untoward act during the examination will be immediately directed to leave the room and will fail the entire examination.

5.6. At the beginning of an examination each applicant shall be assigned a number by the secretary of the Board who shall have in his possession the only code showing the number assigned to each applicant and he is hereby forbidden to reveal the number as signed to any applicant to any member of the Board until after the examination is completed and such applicant has been graded and then only in a meeting of the Board. Applicants shall use the number assigned to them for purposes of identification throughout the examination and no applicant shall enter his or her name or other identifying mark, other than his or her number on any paper containing answers to the questions of any examination.

5.7. 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 own examination papers which must be preserved for a period of thirty (30) days after final grading and results announced to the applicant.

5.8. At the direction of the president, the secretary or his appointed representative shall be empowered to conduct the examination without a quorum of the Board being present.

§14-1-6. Colleges Of Optometry.

6.1. A college of optometry to be approved by the Board must maintain high scholastic and professional standards and must also be approved by the Council on Education of the American Optometric Association.

6.2. No College of Optometry shall be approved by the Board unless such 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 preoptometry 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.

6.3. The secretary shall keep an up-to-date list of all Colleges of Optometry recognized by the Board, such list to be available to anyone desiring it.

§14-1-7. Licenses.

7.1. Any person who passes the examination and meets the requirements of the Board shall be issued a license to practice the profession of optometry in this State. The fee for issuing this

license shall be five dollars (\$5.00) to be paid by check or money order made payable to the secretary-treasurer of the Board. If any duly registered optometrist in this State desires a duplicate certificate issued, there will be a five dollar (\$5.00) charge for this certificate.

7.2. When an applicant is examined by the Board and found qualified to practice the profession of optometry in this State he will be notified by letter by the secretary. In this letter the secretary will also advise the applicant of the required five dollar (\$5.00) certificate fee and the twenty dollar (\$20.00) renewal fee for the fiscal year as of that date. If the applicant fails to pay the required fees after ninety (90) days, his records will be so marked and he will not be listed as a registered optometrist in this State. The secretary will make every effort to locate such applicants and will send a registered letter with receipt requested to the address given by the applicant.

7.3. A certificate issued by the Board will include 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. The picture sent by the applicant in the application requirements will be returned and may be used in connection with the certificate.

7.4. Every person practicing optometry in this State shall display his license renewal and certificate in his principal office. (Section six, article eight, chapter thirty of the West Virginia Code.)

§14-1-8. Renewals.

8.1. All registered optometrists who desire to continue in active practice shall, annually, on or before the first day of August, of each year, renew his certificate of registration and pay an annual renewal fee of twenty dollars (\$20.00) and submit proof of acquisition of all required continuing education hours. Any certificate of registration which has not been renewed during the month of August in any one year shall expire on the first day of September of that year. (Section seven, article eight, chapter thirty of the West Virginia Code.)

8.2. All renewal fees shall be paid by check or money order made payable to the secretary-treasurer of the Board on or before the first day of August.

8.3. Upon receipt of the renewal fee the secretary shall issue an annual renewal certificate card bearing the number of the license, the year for which renewed and such other information as the Board may deem necessary.

8.4. When an optometrist has failed to pay his annual renewal fee by August 15 of any one year, it shall be the duty of the secretary to notify this optometrist by registered mail at his last known address, that said fee is due and unpaid and cite the penalties of practicing optometry without said renewal. The secretary shall further advise this optometrist that his license to practice optometry will become void on the following first day of September. (Section ten, article eight, chapter thirty of the West Virginia Code.)

8.5. The secretary of the Board shall make every effort to notify all optometrists of the renewal clause as set forth in section seven, article eight, chapter thirty of the West Virginia Code, but failure to receive such notification does not exempt anyone should he not receive such notification and should not meet the qualifications as set forth. Renewal notification is a courtesy of the Board extended to all registered optometrists in this State.

8.6. Every optometrist shall display his renewal certificate in a conspicuous place in the principal office where he practices optometry. If an optometrist practices his profession in more than one (1) office (branch office) he shall be required to have an additional renewal card for

each office, obtained upon request to the secretary. Every optometrist will be required to notify the secretary of any branch office and address.

8.7. Branch office. -- Section six, article eight, chapter thirty of the West Virginia Code provides: "Every person practicing optometry shall display his certificate of registration or exemption in a conspicuous place in the principal office wherein he practices optometry and whenever required, shall exhibit such certificate to the Board of Examiners or its authorized representatives. And whenever practicing the profession of optometry outside or away from said office or place of business, he shall deliver to each customer or person so fitted with glasses a bill of purchase which shall contain his signature, home post office address and the number of his certificate or registration or exemption, together with a specification of the lenses furnished."

~~§14-1-9. Filing Of Charges.~~

~~9.1. Any person or persons may file with the Board charges of violation of any of the optometric laws of this State or of any Rules and Regulations of the Board against any optometrist or anyone violating the optometry laws. Such charges must be in writing and set forth the following information:~~

- ~~— (a) The name and office address of the optometrist charged.~~
- ~~— (b) The nature of the acts charged.~~
- ~~— (c) The time and place where such acts are alleged to have occurred.~~
- ~~— (d) A list of persons, if any, who witnessed such acts.~~
- ~~— (e) The charges should be set out in sufficient details as to enable the optometrist charged to meet the same.~~
- ~~— (f) Any photographs, letters, advertisements or other documents used as a basis for the charges should be attached thereto.~~

~~9.2. The president of the Board shall appoint a committee of such number as he deems necessary to consider all charges filed with the Board, and, if in the opinion of the committee the alleged acts or conduct set forth in said charges, if true, would constitute a violation of any of the optometry laws of this State or of any Rule and Regulation of the Board, the president shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing to be served on the optometrist charged or his counsel. As this section is in accord with article one, chapter thirty of the Code of West Virginia, the optometrist charged shall be served with a notice of the above hearing at least thirty (30) days prior to such hearing and that he may appear with witnesses and counsel at such hearing.~~

~~9.3. Hearsay and belief that a certain optometrist or person committed certain acts at a certain time and place shall not be used as the basis for filing charges.~~

~~9.4. After hearing all evidence the Board shall determine the charges upon their merits and may, in its discretion, cancel, revoke or suspend the license of the optometrist charged if the Board determines such charges are true and if it is in the power of the Board to revoke or suspend said license. (Section eight, article one, chapter thirty of the West Virginia Code.)~~

~~9.5. An optometrist whose license has been revoked may have recourse according to section nine, article one, chapter thirty of Review of Circuit Court and Supreme Court.~~

~~§14-1-10. Complaints Of Violation.~~

~~10.1. Complaints that a layperson, firm or corporation is practicing optometry without a license or otherwise violating the optometry laws of this State may be made to the Board by letter setting forth the following information:~~

- ~~—(a) The name and address of the person, firm or corporation so violating the law.~~
- ~~—(b) The nature of the violation.~~
- ~~—(c) The time and place where the violation occurred.~~
- ~~—(d) A list of persons, if any, who witnessed the violation.~~
- ~~—(e) Any photographs, letters, advertisements or other documents, if available.~~

~~10.2. The president shall appoint a committee of such number as he deems necessary to consider all such complaints of violation, and, if in the opinion of the committee the complaint sets forth facts which, if true would constitute a violation of the optometry laws of this State, the committee shall proceed to investigate the complaint.~~

~~10.3. The committee shall make a report in writing to the president of the findings of their investigation along with their suggestions and recommendations.~~

~~10.4. If the Board is of the opinion that the findings of investigation justify that action be taken, it shall notify the proper authorities of the county wherein the violation is alleged to have occurred and request the cooperation of his office in the prosecution of the offender or offenders. The Attorney General of this State shall also be notified of this action.~~

§14-1-11. 9. Unlawful Use Of The Prefix "Doctor" Or "Dr."

~~11.9.1. Section twenty-one, article ten, chapter sixty-one of the Code of West Virginia states: "Unlawful use of the prefix "Doctor" or "Dr.". -- It shall be unlawful for any person to use the prefix "Doctor" or "Dr." in connection with his 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 holds. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each such offense not less than ten (10) nor more than five hundred dollars (\$500), or imprisoned in the county jail not more than twelve (12) months, or both fined and imprisoned, in the discretion of the court.~~

§14-1-12. 10 General Rules.

~~12-10.1. All Rules and Regulations heretofore adopted by the West Virginia Board of Optometry are hereby repealed and rescinded insofar as such rules, or any of them, or any provision thereof, is, or are inconsistent herewith.~~

~~12-10.2. The Rules and Regulations shall forthwith be published and distributed to each optometrist licensed by this Board and practicing in the State of West Virginia and each optometrist shall be held to have knowledge of the contents thereof.~~

~~12-10.3. These Rules and Regulations may be amended from time to time and such amendments shall be published and distributed in the same manner as these Rules and Regulations.~~

~~12-10.4. The following rules shall govern the attendance of educational optometric programs for annual license renewal:~~

It will be the responsibility of each registered optometrist to ensure that evidence of compliance with the education requirements prescribed by Section 12.4 of these rules of the West Virginia Board of Optometry at the time he applies for renewal of license.

Such evidence must show his attendance for a minimum of eight (8) hours during the preceding year at educational optometric programs covering one or more of the subjects taught in optometry colleges approved by the Optometry Board.

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.

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.

Educational programs which will be approved as meeting the minimum standards include the following: (This approval is based on past performances and continued maintenance of minimum standards.)

- (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.

Evidence of attendance shall be furnished by the sponsoring organization to each registrant at the program signed by its secretary or chairman showing date and place of meeting, speaker or instructor and hours in attendance. This evidence must accompany registrant's application for renewal of license when made to the secretary of the West Virginia State Board (Of Optometry). To be granted exemption from the required attendance, a registrant must file a sworn affidavit containing valid reasons for noncompliance with the Secretary of the West Virginia State Board of Optometry when he applies for renewal of license.

Other meetings or seminars either within or without the State of West Virginia that may be approved in advance by the Board with such request for approval to be made to the Board at least thirty (30) days prior to said meeting or seminar.

~~12-10.5.~~ 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.

Any optometrist licensed to practice in West Virginia must satisfactorily complete a Board approved course in pharmaceuticals.

Prior Board approval in writing of said course is a requisite.

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.

~~42~~10.6. A drug log, to be specified by the Board, shall be maintained by any optometrist utilizing pharmaceuticals. Said log will include the following in order: Patient's name, date, drug, dosage and purpose of application and shall be available to the Board at any and all times.

~~42~~10.7. It shall be unlawful for any optometrist certified by the Board to utilize pharmaceuticals to, in any way whatsoever, hold himself forth as being superior or different from any optometrist not so certified, violation of said rule to be punishable by revocation of the right to use pharmaceuticals.

~~42~~10.8. 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.

~~42~~10.9. 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.