

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

Form #2 ~

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WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: WV Board of Optometry TITLE NUMBER: 14-1  
RULE TYPE: Legislative CITE AUTHORITY: Chapter 30-8  
AMENDMENT TO AN EXISTING RULE: YES xx NO \_\_\_\_\_  
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14-1  
TITLE OF RULE BEING AMENDED: RULES OF THE WEST VIRGINIA BOARD OF OPOTMETRY

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 AUGUST 27, 2004 AT 9:00 a.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Optometry  
723 Kanawha Boulevard, Suite 804  
Charleston, WV 25301-2733

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

Authorized Signature



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

TITLE 14  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF OPTOMETRY

SERIES 1  
RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY

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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. Applications And Examinations.**

2.1. 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 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. 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.

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. 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 Any applicant who enrolls in a postgraduate optometry program on or after May 1, 2005 must submit a certified copy of the certificate of completion from an accredited one year optometric residency program with his/her application.

~~2.6.~~ 2.7 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.~~ 2.8 The applicant shall file the completed application and examination fee with the secretary of the Board 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 office 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 are to be left sealed.

~~2.8.~~ 2.9 The fee for taking the examination

shall be determined by the Board's rule, Schedule of Fees, 14CSR5.

2.9. 2.10 Receipt of an application by the secretary, the processing of records for an applicant's qualification to take the examination, and an examination prepared, 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 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, examinations for a license to practice optometry in this State by any means the Board determines adequate to ascertain the qualifications of the applicant. 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.

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 taking the examination.

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

3.4. 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.

3.5. 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.

#### **§14-1-4. Colleges Of Optometry.**

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

4.2. 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.

#### **§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 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 shall make every effort to locate the applicant and shall 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 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 to include the licensee's name in full, 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.

#### **§14-1-6. Renewals.**

6.1. A registered optometrist who desires to continue in a ctive practice shall, biennially, on or before the thirty first day of July, of the year of expiration, renew his or her certificate of registration and pay a biennial renewal fee and 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 expires on the first day of September.

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

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

6.4 All patient treatment records for the active biennial licensure period shall be made available for audit by the Board or representatives so designated by the Board; provided that any designation and audit shall be performed in accordance with national HIPPA requirements and applicable state laws.

~~6.4.~~ 6.5. When an optometrist has failed to pay his or her biennial renewal fee by July 31<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 secretary shall further advise the optometrist that his or her license to practice optometry expires on the following first day of September.

~~6.5.~~ 6.6. The secretary of the Board 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.

~~6.6.~~ 6.7. 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. 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 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 forty hours during the preceding two years 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) 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;

(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, speaker or instructor 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.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules of the West Virginia Board of Optometry

Type of Rule: XX Legislative      Interpretive      Procedural

Agency: WV Board of Optometry

Address: 723 Kanawha Blvd, Suite 804

Charleston, WV 25301-2733

1. Effect of Proposed rule:

	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:

The optometric residency provision will not come into play until 2010 at the earliest since postgraduate optometric education takes 4 years, and that impact will be on applicants, not state government. The only possible cost of the patient treatment record audit would be mailing the record requests and the volunteer time of the Board members reviewing the records.

3. Objectives of These Rules:

The objective of both provisions is to ensure a more excellent quality of optometric care. The Board found the quality of answers from applicants who have completed a one year residency to be much better than those of students testing immediately after optometric school graduation. The patient treatment record audit provision is to support a peer review program. The Board is building a peer review process patterned after the Maryland Optometric Peer Review Program. The purpose is to ensure that citizens are receiving proper optometric care, and that documentation of the care is appropriate and thorough.

Rule Title: Rules of the West Virginia Board of Optometry

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The negative economic impact on state government will be minimal as cited previously. There may be a positive impact if any violations of standards of practice or rules of optometry are violated. Fines may be imposed if appropriate.

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

The optometric residency rule will make an impact on optometric students and applicants. The cost will be for one additional year of professional training. Accredited optometric schools do not require a residency at the present time. Residencies are accredited through the Accreditation Council on Optometric Education. This provision goes into effect May 1, 2005 for postgraduate optometry students, and therefore no certificate of residency would be needed until 2010 (4 years + 1 year residency). New students will be aware of the cost at the beginning of their schooling so they may plan for the cost. Living expenses will have to be met. Preliminary research indicates that there may be a positive impact for students choosing to do a residency. The Student Loan Corporation currently **allows interest to accrue** and will only waive re-payment of loans based on **financial hardship** during optometric residency because it is not an academic requirement. It is felt that making residency a licensing requirement may cause the Student Loan Corporation to allow a one year deferral of repayment and accumulation of interest.

There would be a minimal cost associated with the patient treatment record audit provision. Optometrists would pay the cost for copying the patient treatment records requested and mailing them to the Board.

C. Economic Impact on Citizens/Public at Large.

There should be no direct cost to citizens.

Date: 7/28/04

Signature of Agency Head or Authorized Representative:

Jack E. Seay

# WEST VIRGINIA BOARD OF OPTOMETRY

## Proposed Rule Amendment 14-1

### A Brief Summary

The purpose of the amendment is to establish a new optometric residency pre-requisite for applicants and to allow the board of Optometry to obtain patient treatment records for random audit by the Board.

14-1-2.6 requires an applicant who enrolls in a pre-optometry program on or after May 1, 2005 to submit a certified certificate of completion from a one year optometric residency program as a pre-requisite for examination.

14-6.4 allows the Board or a representative designated by the Board to obtain patient treatment records for random audit by the Board during the active biennial license period.

FILED

TITLE 14  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF OPTOMETRY

2004 JUL 28 P 3:47

SERIES 1  
RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY  
OFFICE OF THE WEST VIRGINIA SECRETARY OF STATE

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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 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. 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.

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~~2.6.~~ 2.7 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.

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~~2.8.~~ 2.9 The fee for taking the examination shall be determined by the Board's rule,

Schedule of Fees, 14CSR5.

~~2.9.~~ 2.10 Receipt of an application by the secretary, the processing of records for an applicant's qualification to take the examination, and an examination prepared, 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 of his or her inability to appear for examination due to acceptable extenuating circumstances.

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

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of the Board being present.

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5.3. The Board shall issue a certificate to include the licensee's name in full, 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.

#### **§14-1-6. Renewals.**

6.1. A registered optometrist who desires to

continue in active practice shall, biennially, on or before the thirty first day of July, of the year of expiration, renew his or her certificate of registration and pay a biennial renewal fee and 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 expires on the first day of September.

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

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

6.4 All patient treatment records for the active biennial licensure period shall be made available for audit by the Board or representatives so designated by the Board; provided that any designation and audit shall be performed in accordance with national HIPPA requirements and applicable state laws.

~~6.4.~~ 6.5. When an optometrist has failed to pay his or her biennial renewal fee by July 31<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 secretary shall further advise the optometrist that his or her license to practice optometry expires on the following first day of September.

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(g) Southeastern Educational Congress;

(h) National Contact Lens Congress;

(i) Optometric Center of New York;  
and

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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, speaker or instructor 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.