

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

Form #4

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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Board of Optometry TITLE NUMBER: 14

CITE AUTHORITY: W. Va. Code 30-8-2a, and 30-8-2b.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Expanded Prescriptive Authority

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

E. Clifton Hye, III
Authorized Signature

**TITLE 14
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF EXAMINERS IN OPTOMETRY**

**SERIES 2
EXPANDED PRESCRIPTIVE AUTHORITY**

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14-2-1. General.

1.1. Scope. – This legislative rule establishes the requirements, procedures and standards for the certification and re-certification of individual optometrists ~~and~~ with expanded prescriptive drug formulary, by the West Virginia Board of Examiners in Optometry, regarding prescriptive authority and expanded prescriptive authority, as defined in W. Va. Code 30-8-2a. and 30-8-2b.

1.2. Authority. – W. Va. Code 30-8-2a. And 30-8-2b.

1.3. Filing Date - July 27, 2001

1.4. Effective Date -

14-2-2. Certification.

2.1. In order to be permitted to prescribe oral drugs under the provisions of WV Code 30-8-2a and 30-8-2b, a registered optometrist shall apply to the Board for certification. In order to qualify for certification, an optometrist:

2.1.a. Shall have previously attained topical therapeutic certification;

2.1.b. Shall satisfactorily complete, and pass an examination in, a course in clinical pharmacology as applied to optometry. This course shall have particular emphasis on the administration of oral pharmaceutical agents for the purpose of examination of the human eye, and analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa. In addition, the course shall include instruction on the clinical use of Schedule III, IV, and V agents. This course shall consist of a minimum of 30 hours ~~of instruction~~ in clinical systemic pharmacology. The course shall be taught by (1) a school or college of optometry or a medical school, accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education, (2) a federally sponsored health education center; or (3) other non-profit continuing education agencies in cooperation with appropriate optometry or medical school faculty. All courses of instruction shall be approved by the Board; and

2.1.c. Shall pass an examination relating to the treatment and management of ocular disease, which is prepared, administered, and graded by the National Board of Examiners in Optometry or other nationally recognized optometric organization as approved by the board.

14-2-3. Re-certification.

3.1. Each optometrist applying for ~~annual~~ re-certification shall ~~furnish to~~ have available for the Board, satisfactory evidence that he or she has acquired the continuing education hours required under the Board of Optometry Rule, Rules of the West Virginia Board of Optometry, 14CSR 1,

to renew his or her ~~annual~~ biennial registration. Of those required hours, an optometrist certified under the provisions of this rule shall furnish the Board ~~with~~ satisfactory evidence that at least six (6) hours of the required hours were acquired in educational optometric programs in ocular pathology or therapeutic pharmacological agents

14-2-4. Insurance.

4.1. All optometrists certified under this rule shall carry liability insurance coverage in an amount of not less than one million dollars (\$1,000,000). No optometrist shall practice under the provisions of this rule unless and until he or she has submitted to the board evidence of the liability insurance coverage in an amount not less than one million dollars (\$1,000,000).

4.2.—It ~~will be~~ is the responsibility of each individual optometrist to furnish proof of current liability insurance coverage to the Board upon application for certification and re-certification.

14-2-5. Procedures for Certification.

5.1. The educational and training requirements for certification by the Board shall be from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education.

14.2.6. Fees.

6.1. The administrative fee for the certification of an individual optometrist for an expanded scope of practice prescriptive authority is \$200.00.

6.2. ~~The administrative fee for the re-certification of an individual optometrist for an expanded scope of practice prescriptive authority is \$200.00.~~

14.2.7. Drug Formulary.

7.1. Optometrists certified under the provisions of this rule may prescribe the drugs set forth in WV Code 30-8-2a and this section.

7.2. WV Code 30-8-2b authorizes the Board to develop a formulary of categories of oral drugs to be considered rational to the diagnosis and treatment of visual defects or abnormal conditions of the human eye and its appendages. The categories shall include:

7.2.a. Antihistamines;

7.2.b. Oral Corticosteroids, ~~shall~~ may be prescribed for a duration of no more than six days; ~~and for the purpose of treatment of visual defects or abnormal conditions of the human eye and its appendages.~~

7.2.c. Analgesics, provided that no oral narcotic analgesic ~~shall~~ may be prescribed for a duration of more than three days; ~~and for the purpose of treatment of visual defects or abnormal conditions of the human eye and its appendages.~~

7.2.d. Nutritional Supplements.

14.2.8. Restrictions.

8.1. An optometrist may not establish a pharmacy in an optometric office or sell pharmaceutical agents prescribed in treatment unless there is a licensed pharmacist on staff and present when these the prescriptions are filled. However, nothing in this section or in any other provision of law prohibits an optometrist who is certified under the provisions of this rule from administering or supplying pharmaceutical agents to a patient, without charge for the pharmaceutical agents, to initiate appropriate treatment.

8.2. Any optometrist practicing under the authority of this rule shall be held to the same standards of care as that of other health care practitioners providing similar services.

8.3. No optometrist shall practice under the provisions of this rule unless and until he or she submits to the board evidence of satisfactory completion of all of the education requirements of sub-divisions 2.1.a., 2.1.b. and 2.1.c. of this rule and ~~have~~ has been certified by the board as educationally qualified.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Examiners in Optometry

Subject: Expanded Prescriptive Authority, 14CSR2

PERTINENT DATES

Filed for public comment: June 27, 2001
Public comment period ended: July 27, 2001
Filed following public comment period: July 27, 2001
Filed LRMRC: July 27, 2001
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 3 relates to recertification. It has been amended to reflect the Boards's biennial rather than annual registration.

Section 6 relates to fees. The administrative fee for the recertification for expanded scope of practice prescriptive authority of \$200 has been deleted.

Section 7 relates to the drug formulary. It has been amended to add the following drugs which are not contained in either the current rule or the statute: antifibrinolytics; anxiolytics; hyperosmothics; imunosuppresants; and nutritional supplements. Additionally, time restrictions on the prescribing of analgesics and corticosteroids have been deleted.

AUTHORITY

Statutory authority: W.Va. Code, §30-8-2a and 2b, which provide as follows:

§30-8-2a.

Notwithstanding the provisions of section two of this article, the board of optometry may grant qualified optometrists prescriptive authority for oral antibiotics, oral nonsteroidal anti-inflammatory drugs, and oral carbonic anhydrase inhibitors: *Provided*, That the board has proposed rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, defining a certification process for individual optometrists that provide standards for education, training and adequate insurance coverage determined by the board to be conditions precedent to certification authorizing the individual optometrist to prescribe drugs excluded pursuant to the provisions of section two of this article but authorized by this section, and the optometrist desiring to employ the use of these pharmaceutical agents has met the necessary qualifications as established by rule.

§30-8-2b.

Notwithstanding the provisions of section two of this article, on or before the thirty-first day of December, one thousand nine hundred ninety-seven, the board of optometry shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, defining a certification process and drug formulary which is authorized by this section, except that no emergency rules may be proposed. The board shall provide a formulary

classifying those categories of oral drugs rational to the diagnosis and treatment of conditions or diseases of the human eye and its appendages, which may be prescribed by optometrists from Schedules III, IV and V of the Uniform Controlled Substances Act, article two, chapter sixty-a of this code. The board shall consult with other appropriate boards, including the board of pharmacy, in the development of the formulary. The rules shall further provide for individual certification of optometrists for this expanded scope of prescriptive authority. The rules shall provide standards for education and training determined by the board to be conditions precedent to individual certification authorizing an optometrist to prescribe drugs excluded pursuant to the provisions of section two of this article and included in a drug formulary to be adopted by the board; procedures for certification by the board of education and training courses; procedure standards for certification and recertification of individual optometrists for an expanded scope of practice prescriptive authority, which shall include a continuing education requirement; administrative fees necessary for the certification and recertification; procedures and standards for certification and training courses; procedures and standards for determining successful completion of education and training; and standards to ensure adequate insurance coverage, as well as compliance with the provisions of this section.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Counsel does not have a medical background and therefore is not qualified to determine whether or not the drugs added to the formulary are those which may be prescribed by an optometrist or should be prescribed only by a physician. The Board received comments from the Board of Medicine and the West Virginia Academy of Ophthalmology expressing concerns regarding the additions. The Academy also attached to its comments a memo of understanding and agreement on modifications to Board's rule, Expanded Prescriptive Authority, 14CSR2, signed by various stakeholders that, though not legally binding, would seem to preclude at least some of the amendments proposed by the Board. The Committee must make the determination regarding the expansion of the drug formulary.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.