

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

AUG 15 10 01 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: West Virginia Board of Optometry TITLE NUMBER: 14

CITE AUTHORITY H. B. 4062

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Disciplinary and Complaint
Procedures for Optometrists

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

E. Clifford Neale, AS

SUMMARY OF PROPOSED RULE, 14-4

Legislative rule 14-4 provides the West Virginia Board of Optometry the necessary procedures for denial, probation, limitation, discipline, suspension or revocation of licenses based on provisions from HB4062.

Circumstances Requiring Rule 14-4

HB 4062, passed February 15, 2000; effective, 90 days from passage; provides that the West Virginia Board of Examiners in Optometry propose legislative rules for the implementation of the provisions of the new law.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 9, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Optometry

LEGISLATIVE RULE TITLE: 14-4

1. Authorizing statute(s) citation H.B. 4062

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 19, 2000 (Comment Period)

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Began June 19, 2000 and Comment Period ended July 19, 2000
at noon.

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

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact) August 15, 2000

required together with the reasons therefor?

August 15, 2000

d. Attach findings and determinations and reasons:

Attached (See Attached)

FISCAL NOTE FOR PROPOSED RULES

Rule Title: TITLE 14 SERIES 4-RULES FOR DISCIPLINARY AND COMPLAINT PROCEDURES FOR OPTOMETRISTS

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	N/A	N/A	N/A	N/A	N/A
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: NA

3. Objectives of These Rules: HB4062, passed February 15, 2000, effective 90 days from passage, provides that the West Virginia Board of Optometry propose legislative rules for the implementation of the provision of the new law. Rule 14-4 provides WV Board of Optometry procedures for discipline and complaints.

Rule Title: TITLE 14 SERIES 4--RULES FOR DISCIPLINARY AND COMPLAINT
PROCEDURES FOR OPTOMETRISTS

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.
Title 14-4
Disciplinary and complaint procedures as provided
in HB4062 will allow the public at large a more
effective means of filing complaints.

Date: June 17, 2000

Signature of Agency Head or Authorized Representative:

E. Lipton Nease, OD

TITLE 14
LEGISLATIVE RULE
BOARD OF OPTOMETRY
SERIES 4

FILED

DISCIPLINARY AND COMPLAINT PROCEDURES FOR OPTOMETRISTS

AUG 15 10 05 AM '00

§14-4-1. General.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against optometrists.

1.2. Authority. -- W. Va. Code §§30-8-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

§14-4-2. Application.

This rule applies to all licensed optometrists.

§14-4-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1 "Applicant" means any person making application for an original or renewal license or a temporary permit pursuant to W. Va. Code §30-8-1 et seq.

3.2. "Board" means the West Virginia Board of Optometry.

3.3. "License" means a license issued by the Board pursuant to W. Va. Code §30-8-1 et seq.

3.4. "Optometrist" means a person who practices optometry as defined in W. Va. Code §30-8-2.

3.5. "Ethics investigator" means a person licensed to practice optometry in this state, and who is hired by the Board for the purpose of reviewing complaints against optometrists.

§14-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Optometrists.

The Board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Board, upon satisfactory proof that a licensee has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-8-1 et seq. or the rules of the Board.

§ 14-4-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges an optometrist with a violation of W. Va. Code §30-8-1 et seq. or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the optometrist against whom the complaint is lodged;

5.1.2. The date of care;

5.1.3. The name of any person who may have treated the patient after the alleged incident; and,

5.1.4. The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.

5.2. A complaint against an optometrist shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-8-1 et seq. or the rules of the Board.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees, or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or applicants to keep the Board informed of his or her current address.

5.9. Upon receipt of a licensee's or applicant's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.2 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its president to issue a subpoena or subpoena duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which an optometrist may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or an ethics investigator, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§14-4-6. Contested Case Hearings.

6.1. The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that the optometrist's conduct, practices or acts constitute an immediate danger to the public.

§14-4-7. Appeals.

7.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-6-1 et seq. and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

West Virginia State Medical Association

WRITTEN COMMENTS

To: The West Virginia Board of Examiners in Optometry
From: The West Virginia State Medical Association
The West Virginia Academy of Ophthalmology
Date: July 19, 2000
Re: Written Comments to Legislative Rules - Title 14 - Series 1 and 4
Sent Via Facsimile

Thank you for providing the opportunity to submit comments and suggestions to the proposed legislative rules the Board of Optometry has filed with the Secretary of State. These comments are being filed jointly on behalf of the West Virginia State Medical Association and the West Virginia Academy of Ophthalmology.

We hope the Board carefully considers the following comments.

Title 14 - Series 1

4.1 – The rule should be amended to require additional background information on the applicant. In particular, an applicant should be required to provide a complete practice history that includes information on any license suspension, revocation or other disciplinary action taken against the applicant in another state. Detailed information of any criminal history should also be required.

5.4 – Is there available a national examination for Optometrists similar to the United States Medical Licensing Examination (physicians) or the National Bar Examination (lawyers) which utilizes a standardized test that could be used as part of the applicant's licensing process in West Virginia?

6.2 – The meaning and scope of the word "work" as used here is vague and ambiguous. The word should be more clearly defined to mean, at a minimum, the satisfactory completion of the course work with a passing grade and a minimum number of credit hours completed. Alternatively, the Board may wish to upgrade the educational requirements to mandate the completion of a Baccalaureate Degree prior to admission to a college of optometry.

7.2 and 8.1 – The fee structure (\$20.00 annually) seems insufficient to generate adequate revenues to pay for a fully staffed and operational governing board.

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Charles Medical State WV

WVSMA



Committed to Excellence



July 19, 2000 10:19 AM

The Board of Medicine collects a \$300 bi-annual fee on over 3,000 active practicing physicians in West Virginia to cover its costs.

9.1 – The rule should be amended to prohibit any person from using the title or designation “physician.” This would help alleviate the problem that arose in Morgantown where several Optometrists listed themselves in the telephone Yellow Pages under “Physicians.”

10.4 – The continuing education requirement (8 hours) is low in comparison to the educational requirements required by many other professional governing boards. The total hours required should be increased. A restriction, however, should be inserted permitting only a small portion of the total hours required be obtained in non-clinical education such as office management programs. A certain number of hours should be required in the area of pharmacological therapeutics.

Title 14, Series 4

5.1.3, 5.1.4 – It is unclear the reasoning behind the required disclosure of the name of any person who “may” have “treated” the patient after the alleged incident. A similar disclosure applies to health care institutions. The use of the word “may” seems vague and the extent to which the word “treated” applies to any medical treatment would lead to the disclosure of irrelevant information.

Thank you again for the opportunity to submit these comments. We appreciate the important responsibility the Board has to help maintain the highest level of professional standards to ensure patient safety for the benefit of every West Virginian.



AUG. 07 2000

WEST VIRGINIA BOARD OF EXAMINERS IN OPTOMETRY

101 Michael Street
Clarksburg, West Virginia 26301-3937
(304) 627-2106
Fax: (304) 627-2106

August 5, 2000

A handwritten signature in cursive, appearing to read "C. Cooper", written over a horizontal line.

Mr. Evan Jenkins
Executive Director
West Virginia State Medical Association
P.O. Box 4106
Charleston, WV 25364

Re: Comments on Title 14 - Series 1 and 4

Dear Mr. Jenkins:

Following are written comments in follow up of my conversation with your government relations specialist, Ms. Amy K. Tolliver.

Generally, the proposed modification of the Title 14 rules is an attempt to comply with HB 4062, passed by the legislature last session, i.e., a standardization of complaint procedures across all state boards.

It is the Board's intent to modify the remaining rules after changing our law in the next session of the legislature. The changes we intend are strictly technical in nature in that we wish to transfer such things as our license fee, scheduled meeting dates, fines, etc. from our law into rules where they will be easier to modify. We specifically intend to address several of the issues you raise, i.e., license fee, continuing education requirements, etc.

We appreciate your comments and I must admit that you raised some points we need to examine more closely, i.e., 4.1, and 6.2.

The answer to 5.4 is yes. We currently require the passage of all three parts of the National Board of Optometry in lieu of the itemization in 5.4.

AUG. 07 2000



WEST VIRGINIA BOARD OF EXAMINERS IN OPTOMETRY

101 Michael Street
Clarksburg, West Virginia 26301-3937
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We agree whole-heartedly with your analysis of 7.2 and 8.1. These articles are the primary motivation for modifying Chapter 31 and the attendant rules.

We disagree with your suggestion concerning 9.1, which is covered by 14-1-11. The optometrists in question were well aware they were in violation of the optometry law.

The Board approved the use of the term optometric physician one or two years ago as better describing our expanded scope of practice..

Sincerely,

A handwritten signature in cursive script that reads "Clifton Hyre".

Clifton Hyre, O.D.
President, West Virginia Board
Of Optometric Examiners