

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2010 JUL 30 PM 5:12

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: WV Board of Optometry TITLE NUMBER: 14CSR4

CITE AUTHORITY: §30-8-1, et. seq.

AMENDMENT TO AN EXISTING RULE: YES  NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14CSR4

TITLE OF RULE BEING AMENDED: Disciplinary and Complaint Procedures For Optometrists

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

  
Authorized Signature

**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: July 30, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Optometry, 179 Summers Street, Charleston, WV 25301, 304-558-5901

LEGISLATIVE RULE TITLE: 14CSR4 Disciplinary and Complaint Procedures for Optometrists

1. Authorizing statute(s) citation §30-8-1, et seq

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 25, 2010

b. What other notice, including advertising, did you give of the hearing?  
A memo was mailed to all licensees directing them to our web site, www.wvbo.org, where the proposed rules were posted. Notice was given by phone and hand delivery of the rules to the West Virginia Optometric Association, and notice was given by phone contact and an e-mail was sent to the West Virginia Academy of Ophthalmologists informing them of the posting on the web site.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 26, 2010 at noon

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

Attached xx No comments received \_\_\_\_\_

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

July 30, 2010 at 2:00 p.m.

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

Pamela Carper, 179 Summers Street, Suite 231, Charleston, WV 25301, 304-558-5901 The cell phone number is 304-546-2907.

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Gregory Moore, O.D., President, WV Board of Optometry, 179 Summers Street, Suite 231, Charleston, WV 25301, 304-558-5901 or 304-768-7902 or contact Pam Carper listed above.

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

n/a

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

n/a

d. Attach findings and determinations and reasons:

Attached n/a

WEST VIRGINIA BOARD OF OPTOMETRY

14CSR4

**Disciplinary and Complaint Procedures for Optometrists**

Summary

The amendment brings §14-4 into compliance with the passage of Senate Bill 230, W. Va. Code §30-8 during the 2010 Legislative Session.

- The amendment allows a Board member to serve as investigator of a complaint at the Board's discretion.
- The amendment allows the executive secretary or the Board's designee to issue subpoenas in compliance with Senate Bill 230.
- It includes the methods of discipline included in Senate Bill 230.
- It allows the board to stay enforcement of an adverse finding and put the licensee on probation.
- The amendment allows the Board to assess administrative costs to the licensee if the license is found to have violated the laws or rules of the Board.

WEST VIRGINIA BOARD OF OPTOMETRY

**14CSR4**

**Disciplinary and Complaint Procedures for Optometrists**

Circumstances

The amendment is written in order to comply with the requirements of Senate Bill 230 passed during the 2010 Legislative Session rewriting the Board's enabling statute, W. Va. Code §30-8.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Disciplinary and Complaint Procedures for Optometrists

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Board of Optometry

Address: 179 Summers Street, Suite 231  
Charleston, WV 25301

Phone Number: 304-558-5901 Email: wvbdopt@verizon.net

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Complaints are about 7 per year or 2% of licensees and time. 2% of personal services is \$760. Average attorney cost is \$5000. 2% of current expenses is \$782. 2% of revenue is \$2340.

About 28% of all complaints go to the negotiation stage and violations. A Board member serves as our investigator on a volunteer basis. The attorney is only called in when a violation seems likely. Therefore the administrative cost provision would recapture \$5213 attorney fees and personal services costs and \$219 in current expenses.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	6,542.00	6,542.00	1,110.00
Personal Services	5,760.00	5,213.00	547.00
Current Expenses	782.00	219.00	563.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	2,340.00	2,340.00	2,340.00

Rule Title: Disciplinary and Complaint Procedures for Optometrists §14-4

Rule Title:

Disciplinary and Complaint Procedures for Optometrists

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

Complaints are about 7 per year.  $7/294 = .023$  or 2%. It takes about 2% of staff time and current expenses ( $\$38000 \times 2\% - \$760$ ) (current expenses  $\$39076 \times 2\% - 781.52$  or  $\$782$ ). 2% of revenue is  $\$2340$  ( $\$117000 \times 2\% = \$2340$ ).

About 2 of 7 complaint cases go to negotiation and violation ( $2/7 = 28\%$ ). The attorney is usually called in when violation seems likely. The administrative cost provision would recapture  $\$5000$  is attorney costs,  $\$213$  is personal services and  $\$219$  in current expenses.

This would mean that the costs to the Board for complaints would be reduced by  $\$5432$  by the administrative cost recapture. This would bring total cost of complaints to  $\$1110.00$  after implementation of the amendment.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 7/30/10

Signature of Agency Head or Authorized Representative





TITLE 14  
PROCEDURAL RULE  
WEST VIRGINIA BOARD OF OPTOMETRY

SERIES 4  
DISCIPLINARY AND COMPLAINT PROCEDURES FOR OPTOMETRISTS

FILED  
2010 JUL 30 PM 5:12  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§14-4-1. General.**

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.**

2.1 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 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.

3.5. "Investigator" means a person 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.**

4.1. 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 or unlicensed individual or entity engaged in the practice of optometry with a violation of W. Va. Code §§30-8-1 et seq. or of conduct which would be a violation 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 or unlicensed individual or entity engaged in the practice of optometry 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 or unlicensed individual or entity engaged in the practice of optometry 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 unlicensed individual or entity engaged in the practice of optometry 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 unlicensed individuals or entities engaged in the practice of optometry shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or unlicensed individual or entity engaged in the practice of optometry to keep the Board informed of his or her current address.

5.9. Upon receipt of a licensee's or unlicensed individual or entity engaged in the practice of optometry'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 a Board member or an investigator for review and investigation.

5.12. Upon receipt of a complaint the 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 investigator's findings and recommendations. The investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, or unlicensed individual or entity engaged in the practice of optometry 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, executive secretary or the Board's designee may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The investigator may request the Board, ~~or~~ its president, investigating committee or chairperson, or executive secretary or the Board's designee 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 or unlicensed individual or entity engaged in the practice of optometry 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 investigator, the committee or investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

#### §14-4-6. Methods of Discipline.

6.1.. When the Board finds that any applicant is unqualified to be granted a license or finds that any licensee or permittee should be disciplined pursuant to W. Va. Code §30-8-1 et. seq. or rules of the Board, the Board may take

any of the actions listed in W. Va. Code §30-8-18.

6.2. In addition to and in conjunction with the foregoing actions, the Board may make a finding adverse to the licensee or applicant, but withhold imposition of judgment and penalty, or it may impose the judgment and penalty but suspend or otherwise stay enforcement thereof and place the applicant, licensee or permittee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. In its discretion, the Board may restore and reissue a license to practice optometry issued under W. Va. Code §30-8-1 et seq., or any antecedent law, and as a condition of reinstatement, it may impose any disciplinary or corrective measure(s) provided for in this rule or in the W. Va. Code §30-8-1 et. seq. The provisions of §14-4-6.2 shall not apply to revoked licenses.

6.3. The Board may assess administrative costs to the licensee if the licensee is found to have violated the provisions of W. Va. Code §§30-8-1 et. seq. or the Board's rules, 14CSR. Any costs which are assessed shall be placed in the special account of the Board.

#### §14-4-6 7. Contested Case Hearings.

67.1. The Board may refuse to renew a license, suspend or revoke a license or bring an action in a court of competent jurisdiction to enforce the provisions of W. Va. Code §30-8 against an unlicensed individual or entity engaged in the practice of optometry if it determines there is probable cause to believe that the optometrist's or unlicensed individual or entity engaged in the practice of optometry's conduct, practices or acts constitute an immediate danger to the public.

#### §14-4-7 8. Appeals.

78.1. Any applicant or unlicensed individual or entity engaged in the practice of optometry who has had his or her application for a license denied or had court action taken against him or her 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.

**§14-4-89. Court Action and the Unlicensed Practice Of Optometry.**

89.1. The Board may institute, in its own name, proceedings to temporarily or permanently restrain and enjoin the practice of optometry by the following:

89.1.1. An individual who is not licensed to practice optometry pursuant to Chapter 30-8, or who is involved in conduct not specifically exempted from the requirement of Chapter 30-8; or

89.1.2. An individual who was previously licensed by the Board to practice optometry but is currently practicing optometry in violation of Chapter 30-8, regardless of whether the respondent has been convicted of violating the penal provisions thereof.

89.2. Petition for injunction filed under subsection (1) of this section may be filed in Kanawha Circuit Court or the circuit court of the county in which said violation occurred, and the Board shall not be required to pay any costs or filing fees or furnish any bond in connection therewith.

89.2.1. In the petition, it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of optometry in violation of Chapter 30-8. No showing of damage or injury shall be required.

89.2.2. Issuance of an injunction shall enjoin any act specified under Chapter 30-8 and shall remain in place as long as necessary to prevent the unlawful practice of optometry.

89.2.3. Issuance of an injunction shall not relieve the respondent from being subject to any other proceeding under law provided by Chapter 30-8 or otherwise.

89.2.4. Violation of an injunction or restraining order shall be punished as a contempt without the intervention of a jury.

89.3. Any person who violates any of the provisions of Chapter 30-8 or the rules of the board shall be guilty of a Class A misdemeanor and shall pay a fine not to exceed five thousand dollars (\$5,000) per violation.



# WEST VIRGINIA BOARD OF OPTOMETRY

179 Summers Street, Suite 231

Charleston, WV 25301

Phone: (304) 558-5901

Fax: (304) 558-5908

e-mail: [wvbdopt@verizon.net](mailto:wvbdopt@verizon.net)

## MEMORANDUM

TO: All Licensees

FROM: Gregory Moore, O.D., President

DATE: June 28, 2010

RE: Board Rules Filed For Comment Last Week

The Board has been working on rule amendments and two new rules to comply with Senate Bill 230 which passed during the 2010 Legislative Session. The bill completely re-wrote the Board's enabling statute, W. Va. Code, §30-8.

New provisions needed to be written to implement the privileges gained. We have made amendments to the Board's existing rules, §14-1 through §14-8. The Board is also proposing three new rules, §14-9, §14-10 and §14-11. These rules outline the certificate procedure to prescribe contact lenses that contain and deliver pharmaceutical agents required by SB 230, separate the continuing education provisions currently listed in §14-1 with some modernization of the rule and a new specific procedure for course pre-approval, and a rule outlining the procedures required to obtain the privilege to use injections for substances other than epinephrine as required by SB 230. These provisions are listed in §30-8-15 of SB 230.

The proposed rules are posted on our web site, [www.wvbo.org](http://www.wvbo.org) in two places. The first is just under the Board's mission statement beside the Annual Report and Education and Training of Optometrists. The second posting is under "Laws and Regulations Governing Optometry" under proposed rules. We have also posted the full text of SB 230 so you may refer to the requirements listed requiring the changes to the rules. The language to be eliminated is struck through and the new language is underlined. There are no underlines or strike throughs in §14-9 through §14-11 because they are new rules.

The Board welcomes and values your opinion. Please review the proposed rules and let us know of your recommendations or concerns. Please send your written comments to the Board by e-mail to [wvbdopt@verizon.net](mailto:wvbdopt@verizon.net), by postal mail at 179 Summers Street, Suite 231, Charleston, WV 25301, or by fax at 304-558-5908. The Board office phone number is 304-558-5901 if you have any questions.

Once again, we value your opinion. Please review these proposals and give us your input. **The last date we can receive your comments for §14-11, Injection Certificate, is Friday, July 23, at 5:00 p.m. The last day we may receive comments for the rest of the rules is noon on Monday, July 26.** Thank you for your time and attention.

### MISSION STATEMENT

To ensure that all applicants for licensure and all Doctors of Optometry currently licensed, practice their profession in a manner that benefits and protects the public, and to ensure that the highest quality optometric eye and vision care is provided in a professional, competent, and ethical manner.

**Laws**

- Senate Bill 230 Chapter 30-8
- Chapter 30 - Article 8 Optometrists
- 14-1 Rules Of The West Virginia Board of Optometry
- 14-2 Expanded Prescriptive Authority Procedures for Optometrists
- 14-3 Contested Case Hearing Procedure
- 14-4 Disciplinary and Complaint Procedures for Optometrists
- 14-5 Schedule of Fees
- 14-6 Examination and Scoring Policy
- 14-7 Administration and Board Meeting
- 14-8 Licensure by Endorsement

**Proposed Rules**

- Senate Bill 230 Chapter 30-8
- 14-1 Rules of the West Virginia Board of Optometry
- 14-2 Oral Pharmaceuticals
- 14.3 Contested Case Hearing Procedures
- 14.4 Disciplinary and Complaint Procedures
- 14.5 Schedule of Fees
- 14.6 Examination and Scoring Policy
- 14.7 Administration and Board Meetings
- 14.8 Licensure by Endorsement
- 14.9 Contact Lenses that Contain and Deliver Pharmaceutical Agents Certificate
- 14.10 Continuing Education
- 14.11 Injectable Pharmaceutical Agents Certificate

**Optometrist List**  
Click here to start, or call the board office for more information

West Virginia Board of Optometry  
179 Summers Street, Suite 231  
Charleston, WV 25301  
Phone: (304) 558-5901  
Fax: (304) 558-5908  
Email: [wvbdopt@frontier.com](mailto:wvbdopt@frontier.com)

To view PDF's you will need the free Adobe Acrobat Reader



**Adobe Reader**  
download

Click here to log in to the  
**Member Account Manager**

Website design by Dream Catcher, LLC

## West Virginia Board of Optometry

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**From:** West Virginia Board of Optometry [wvbdopt@verizon.net]  
**Sent:** Thursday, June 24, 2010 6:12 PM  
**To:** Nancy Tonkin (nancy.tonkin@wvtmg.com)  
**Subject:** Rules

**Attachments:** 14-11 Proposed Rule Injections 062410.doc

The injection rule was filed today. All of the rules were sent to our web master to be posted on our web site. Guess which one has a broken link? I have sent an email to Dream Catcher to correct it. They are usually pretty fast. It should be up by tomorrow. Here is a copy until then.

Have a good evening,

*Pamela Carper*

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