

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

Form #3

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2009 JUL 31 PM 5:27

SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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

AGENCY: West Virginia Board of Osteopathy TITLE NUMBER: 24

CITE AUTHORITY: West Virginia Code §30-1-4

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Licensing Procedures for Osteopathic Physicians

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 31, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* WV Board of Osteopathy

334 Penco Road

Weirton, WV 26062

LEGISLATIVE RULE TITLE: Licensing Procedures for Osteopathic Physicians

1. Authorizing statute(s) citation W. Va. Code §30-1-4

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

June 1, 2009

b. What other notice, including advertising, did you give of the hearing?  
Copies of the rule were sent to all osteopathic physicians and surgeons licensed by the WV Board of Osteopathy.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 1, 2009

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)

July 31, 2009

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

Cheryl Schreiber, Executive Secretary

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West Virginia Board of Osteopathy, 334 Penco Road, Weirton, WV 26062

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t. 304-723-4638 F - 304-723-6723

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- 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)

Doren Burrell, Senior Assistant Attorney General

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Office of the Attorney General

State Capital, Room E-26

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Charleston, WV 25305

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T- 304-558-2522 F - 304-558-2525

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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

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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**WEST VIRGINIA BOARD OF OSTEOPATHY**  
**LICENSING PROCEDURES FOR OSTEOPATHIC PHYSICIANS**  
**Title 24, Series 1**

**SUMMARY OF PROPOSED RULE**

This rule changes the current licensing rule of the West Virginia Board of Osteopathy in six principal respects:

1. It opens up the requirements for admission to practice in this State,
2. It makes new provisions for the renewal of educational permits and the documentation required therefor,
3. It eliminates archaic language relating to a state-administered test that is no longer offered,
4. It relaxes the continuing medical education requirement for active duty military personnel and for physicians participating in residency programs.
5. It spells out the duties of licensees and permit holders to maintain current contact information with the Board, and
6. It redefines professional misconduct with regard to the prescription of Controlled Substances and to sexual relations with a patient.

The specific changes are as follows:

## **I. Requirements for Admission**

As an alternative to the previous requirement of at least one year of postdoctoral training in a program approved by the American Osteopathic Association, potential licensees may instead complete at least one year of training in a program approved by the Accreditation Council of Graduate Medical Education and complete additional continuing education coursework in osteopathic manipulative treatment.

The amendments to the rule specify the documentation that is required for this new requirement and explain the flexibility with which the continuing education classes may be completed.

## **II. Educational Permits**

Physicians participating in a intern or residency program may now obtain a renewable education permit instead of an unrestricted license so long as they are practicing solely within the scope of their training program.

### **III. Deletion of State Examination Provisions**

The Board of Osteopathy no longer provides a state-administered examination. References to this type of examination have been deleted from the Board's rule.

### **IV. Changes in Continuing Education Requirements**

#### ***A. Waiver for Military Personnel on Active Duty***

The Board of Osteopathy proposes to waive the continuing education requirements for persons on active duty in the military deployed outside of the US during a certain portion of their license period.

#### ***B. Substitution of Residency Training***

The Board has historically given credit to physicians participating in residency programs as a substitute for continuing medical education hours. This rule contains an amendment to articulate this practice and its application.

### **V. Duties to Provide Contact Information**

The Board of Osteopathy requires a valid residential address for service of process upon licensees and permit holders. This rule will require those persons to notify the Board of changes to their residential address. Additionally, since an educational permit terminates upon the departure of a physician from his or her program, permit holders will be required to notify the Board in any change of status in an approved training program.

### **VI. Clarification of Misconduct Definitions**

#### ***A. Sexual Relations with a Patient***

This rule is being amended to specify that it is misconduct to have any sexual relations with a patient who is not a spouse of the physician.

#### ***B. Prescription of Controlled Substances***

This rule is being amended to clarify the circumstances under which it is professional misconduct for a physician to prescribe controlled substances to a patient. This includes a definition of "immediate family member" to explain who may not receive prescriptions from an osteopathic physician.

# WEST VIRGINIA BOARD OF OSTEOPATHY

## LICENSING PROCEDURES FOR OSTEOPATHIC PHYSICIANS

### Title 24, Series 1

#### STATEMENT OF CIRCUMSTANCES FOR PROPOSED RULE

A bill passed during the 2009 Regular Session of the Legislature (S.B. 526) changed the requirements to be licensed as an osteopathic physician in West Virginia. Under this new law, osteopathic physicians may complete post-doctoral clinical training in a program approved by an alternate accreditation agency, the Accreditation Council for Graduate Medical Education along with continuing education classes in osteopathic manipulative treatment. This rule is being amended to bring all of the Board's licensing requirements and procedures into conformity with the new law. The proposed amendments provide greater detail as to what education options are acceptable as license qualifications and greater detail as to how and when the continuing educational classes may be completed.

The new law also provides for a renewable, educational permit to be used for the registration of physician interns and residents while they are completing their required post-doctoral clinic training. This rule will update the requirements for these permits and for their renewal.

Since the Board of Osteopathy no longer administers its own examination for prospective licensees and has, for many years, relied on a national examination standard, the Board is also taking this opportunity to remove all provisions relating to a state-administered examination.

The Board has various legal functions that require it to provide official, legal notice to those people holding permits or licenses issued by the Board. For this reason the Board needs accurate information as to where those individuals reside and as to their status within a training program. Therefore, the Board seeks to specify the duty of licensees and permit holders to update their personal contact information upon any change of address or program status.

Lastly, there have been questions and challenges raised about possibly ambiguous wording relating to two types of professional misconduct offenses: sexual relations with a patient and the prescribing of Controlled Substances. In these two areas, the Board proposes amendments to define more clearly the types of misconduct that may result in a disciplinary action against a licensee or permit holder.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Licensing Procedures for Osteopathic Physicians

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Board of Osteopathy

Address: 334 Penco Road  
Weirton, WV 26062

Phone Number: 304-723-4638 Email: bdosteo@mail.wvnet.edu

**Fiscal Note Summary**

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

The proposed amendments to the rule will not have any fiscal impact on the general revenues of the State.

The West Virginia Board of Osteopathy operates solely from funds in a special revenue account generated from fees charged by the agency. This proposed rule changes the requirements for training and licensure, which are likely to cause an initial drop in revenue, but the increased opportunities created by the rule changes should increase the overall number of osteopathic physicians licensed in this state, and thereby offset the initial loss in subsequent years.

**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	4,000.00	2,000.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: Licensing Procedures for Osteopathic Physicians

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

All operating funds for the Board of Osteopathy come from fees charged for services rendered by the Board.

Since the proposed amendments in this rule will allow resident physicians to pay a less-expensive educational permit in lieu of licensure, the Board of Osteopathy anticipates that approximately 40 resident physicians will pay the lesser fee in the first year that the rule becomes effective. This number of residents is likely to stay the same in subsequent years, but as a greater overall number of physicians become fully licensed, there will be a corresponding increase in revenue generated from fees for unrestricted licenses. The net effect over time becomes an even balance in revenue.

#### MEMORANDUM

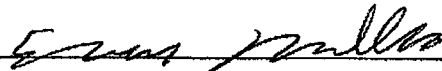
Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Under prior law, the Board required physicians in residency programs to be fully licensed. As a result of changes to the W.Va. Code in the 2009 Regular Session of the Legislature, those physicians may practice within the scope of their residency program under an educational permit. Since the fee for a permit is lower than the fee for an unrestricted license, there is a potential for the Board revenue to decrease. However, since the legislation and this rule open up licensing opportunities to more physician residents, the net effect on the Board's revenue is likely to be even once the rule is fully implemented.

NOTE: The West Virginia Board of Osteopathy operates entirely under a special revenue account. This rule will not have any effect on the General Revenue of the State.

Date: 6/11/09

Signature of Agency Head or Authorized Representative



TITLE 24  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF OSTEOPATHY

SERIES 1  
LICENSING PROCEDURES FOR OSTEOPATHIC PHYSICIANS

RECEIVED  
2000 JUL 31 PM 6:27  
SECRETARY OF STATE  
OFFICE OF THE SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**§24-1-1. General.**

- 1.1. Scope. -- This rule establishes the operation of the Board and the regulation and licensing of osteopathic physicians.
- 1.2. Authority. -- W. Va. Code §30-1-4.
- 1.3. Filing Date. --
- 1.4. Effective Date. -- .

**§24-1-2. Application and Enforcement.**

This rule implements W. Va. Code §30-14-1, et seq.

**§24-1-3. Definitions.**

3.1. Affiliate. -- A member of a group of two (2) or more fully accredited health care institutions legally united by an agreement of affiliation, conceived to enhance the potential of all participants in the provision of health care and medical education.

3.2. AOA. -- American Osteopathic Association

3.3. 3.3. Approved program of post-graduate clinical training -- a program of clinical training approved by, or subject to approval by, the American Osteopathic Association or approved by the Accreditation Council for Graduate Medical Education for the purposes of intern or resident training;

~~3.3.~~ 3.4. Board. -- The West Virginia Board of Osteopathy established in W. Va. Code §30-14-1.

~~3.4.~~ 3.5. Crimes involving moral turpitude. -- Those crimes which have dishonesty as a fundamental and necessary element; including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud or misrepresentation.

~~3.5.~~ 3.6. Immediate family -- a person within one degree of kinship of a physician or any relative living in the physician's household.

~~3.5.~~ 3.7. Medicine. -- Osteopathic medicine

~~3.6.~~ 3.8. State Boards Examination. -- The examination sponsored and administered by the West Virginia Board of Osteopathy.

~~3.7.~~ 3.9. NBOME. -- The National Board of Osteopathic Medical Examiners.

3-8. 3.10. Probation. -- Conditions and requirements imposed upon a licensee for a period of time that the Board, in its discretion, determines to be justified under any provision of law. A licensee placed on probation may continue to practice subject to limitations imposed by the Board, including the requirement that the licensee appear before the Board, or an officer or agent of the Board at such times and places as are designated by the Board. A licensee may be placed on probation without a previous or concurrent suspension or revocation of his or her license.

**§24-1-4. Qualifications and Application for a License to Practice Medicine and Surgery.**

4.1. An applicant for a license to practice osteopathic medicine and surgery shall complete an application provided by the Board. The applicant shall complete the application in full prior to the Board's consideration of the application.

4.2. An application for a license to practice medicine and surgery shall include the following:

4.2.1. A photograph taken within the previous 60 days which resembles the applicant;

4.2.2. Evidence of graduation from a medical school approved by the American Osteopathic Association;

4.2.3. A sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character, and that the applicant is physically and mentally capable of engaging in the practice of medicine;

4.2.4. Evidence of the completion of a minimum of one (1) year of postgraduate clinical training approved by the American Osteopathic Association under either of the following options:

a. Post-graduate, clinical training in a program approved by the American Osteopathic Association, which may also include a program approved under the Association's Resolution 42 procedure;

or

b. Post-graduate, clinical training in a program approved by the Accreditation Council for Graduate Medical Education and forty hours of continuing medical education in osteopathic medicine with osteopathic manipulative treatment in courses approved, and classified as Category 1A, by the American Osteopathic Association.

4.2.5. ~~A non-refundable cashier's check, money order or personal check payable~~ Complete payment to the Board ~~in~~ of the amount established by the Board under the West Virginia Board of Osteopathy rule Fees for Services Rendered By the Board of Osteopathy, Title 24 CSR 5. If the licensure fee is paid by personal check, the licensing process is not considered complete until the check has cleared the bank;

4.2.6. Any other documents as may be required by the Board.

4.3. An applicant for a license to practice medicine and surgery is required to obtain a passing score on all steps of the COMLEX-USA examination developed by NBOME ~~or the State Board sponsored exam.~~

4.4. The Board may accept an equivalent exam given by another Osteopathic State Board if the Board determines it to have equivalent standards to the COMLEX-USA examination developed by NBOME. The Board is not required, however, to accept these exams in lieu of the COMLEX-USA examination ~~NBOME~~.

4.5. The forty hours of continuing medical education specified in subdivision 4.2.4.b. of this rule may be completed through attendance at several courses, conducted at different times and locations, as long as the total instruction time is at least forty hours. A single, unbroken course or class is not required.

~~4.5.4.6.~~ All applicants for licensure to practice osteopathic medicine and surgery shall demonstrate their ability to communicate in the English language to the satisfaction of the Board.

~~4.6.4.7.~~ An applicant shall arrange for a personal interview with a member of the Board prior to his or her application being considered by the Board. The Board may require any applicant to appear before the Board at the meeting at which his or her application is to be considered. The purpose of the interview or required attendance at a Board meeting is ~~to verify the existence and identity of all required documents and information and to enable the Board~~ to clarify information contained in the application. The Board may require production of original documents at the interview or required attendance at a Board meeting.

~~4.7.4.8.~~ The application, together with all photocopied documents submitted with the application, become the property of the Board and shall not be returned.

~~4.8.4.9.~~ The burden of satisfying the Board of the applicant's qualifications for licensure is upon the applicant.

~~4.9.4.10.~~ A license to practice medicine and surgery in this State is valid for a term of two (2) years and shall be renewed by June 30 of the second year. The license shall be renewed upon the receipt of a non-refundable fee, established by the Board, together with an application provided by the Board.

#### **§24-1-5. Application for State Board Examination.**

~~5.1. An applicant for the state board exam shall complete an application on a form provided by the Board. The applicant shall complete the application in full prior to the examination.~~

~~5.2. An application for the state board exam must be received by the Board not later than sixty (60) days prior to the date of the examination.~~

~~5.3. The Board shall provide procedures for the state board exam to each approved applicant at least fifteen (15) days prior to the examination.~~

#### **§24-1-5. Duties of Licensees and Permit Holders.**

5.1. All licensees and holders of permits issued by the Board have a duty to provide valid contact information, consisting of a telephone number and a residence address where official notifications may be delivered. If any of the contact information changes, the person must notify the Board of the change in writing within thirty (30) days of the change.

5.2. A licensee or permit holder may also provide an alternate address, such as a business address, to the Board to serve as a public address of record, but the person must still provide a valid residential address.

5.3. The holder of an educational permit has a duty to notify the Board in writing within five (5) days if he or she leaves his or her post-doctoral, clinical training program.

**§24-1-6. Qualifications for the Issuance of a License to Practice Medicine and Surgery by Reciprocal Endorsement.**

6.1. An applicant for a license to practice osteopathic medicine and surgery by reciprocal endorsement from another state, or the District of Columbia, shall provide proof of licensure in that jurisdiction under licensure requirements substantially similar to those existing in this State, and proof that he or she has the requisite qualifications to provide the same standard of care as a physician initially licensed in this State. These requirements and qualifications are specifically enumerated in this section. An applicant for a license to practice osteopathic medicine and surgery by reciprocal endorsement shall:

6.1.1 Provide evidence of graduation from an AOA accredited medical school;

6.1.2. Provide proof of successful completion of ~~at least one (1) year of postgraduate clinical training in a program approved by the AOA~~ either:

a. A minimum of one year of post-graduate, clinical training in a program approved by the American Osteopathic Association ( including programs approved by the Association under its Resolution 42 procedure );

or

b. A minimum of one year of post-graduate, clinical training in a program approved by the Accreditation Council for Graduate Medical Education and forty hours of continuing medical education in osteopathic medicine with osteopathic manipulative treatment in courses approved, and classified as Category 1A, by the American Osteopathic Association.

6.1.3. Provide a sworn notarized statement from another physician that the applicant is of good moral character and is physically and mentally capable of engaging in the practice of medicine and surgery; and

6.1.4. Have successfully passed all steps of the COMLEX-USA examination developed by NBOME exam, or equivalent state osteopathic exam.

6.2. The forty hours of continuing medical education specified in subdivision 6.1.2.b. of this rule may be completed through attendance at several courses, conducted at different times and locations, as long as the total instruction time is at least forty hours. A single, unbroken course or class is not required.

**§24-1-7. License to Practice Medicine and Surgery by Reciprocal Endorsement; Application Required.**

7.1. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall complete an application on forms provided by the Board. The applicant shall complete all parts of the application, in full, prior to being reviewed by the Board.

7.2. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide a statement that he or she is in good standing in the jurisdiction in which he or she is licensed, and that he or she has no medical disciplinary action pending against him or her.

7.3. An application for a license to practice medicine and surgery by reciprocal endorsement must be received by the Board no later than thirty (30) days prior to the meeting of the Board at which the application will be reviewed.

7.4. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting during which his or her application is to be considered. The purpose of the interview or required attendance at a Board meeting is to verify the existence and the identity of all required documents and information and to enable the Board to clarify any information contained in the application. The Board may require production of original documents at the interview or required attendance at a Board meeting.

7.5. An applicant shall have available for review by a Board member, or by the Board, if the applicant appears at the meeting, the following original documents:

7.5.1. His or her medical school diploma;

7.5.2. A document attesting to the successful completion of the required minimum of one (1) year AOA approved postgraduate clinical training;

7.5.3. A certified copy of the scores attained by the applicant on the COMLEX-USA examination developed by NBOME or State Board; the scores shall meet the requirements established in subsection 4.4 of this rule.

7.5.4. A sworn notarized statement on a form provided by the Board stating that the applicant is of good moral character, and is physically and mentally capable of engaging in the practice of medicine and surgery;

7.5.5. A statement that the applicant is in good standing in each jurisdiction in which he or she is licensed to practice and that he or she has no medical disciplinary action pending; and

7.5.6. Any other documents required by the Board.

7.6. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide all photocopied documents to the Board. The photocopies shall be attached to the application and made a part of the application. The application, together with all photocopied documents submitted with the application, become the property of the Board and shall not be returned.

7.7. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall submit a ~~cashier's check, money order, or personal check payable to the Board;~~ payment of a non-refundable fee, in an amount as established by the Board under the West Virginia Board of Osteopathy rule Fees for Services Rendered By the Board of Osteopathy Title 24 CSR 5. If it is paid by personal check, licensing process is not considered complete until the check has cleared the bank.

~~7.8. An applicant for a license to practice medicine and surgery by reciprocal endorsement whose application is complete, may request a temporary license to practice until the next regular meeting of the Board, by meeting the qualifications of the Board, by paying an additional non-refundable fee in an amount established, by the Board, and by appearing before a member of the Board for a personal interview.~~

~~7.9.~~ 7.8. An applicant for a license to practice medicine and surgery by reciprocal endorsement has the burden of demonstrating to the satisfaction of the Board that the applicant has the requisite qualifications of a physician initially licensed in this State.

**§24-1-8. Temporary Permit to Practice Osteopathic Medicine and Surgery; Qualifications.**

8.1. An applicant for a temporary permit to practice medicine and surgery:

8.1.1. Shall submit evidence that he or she is a graduate of a medical school approved by the AOA;

8.1.2. Shall be able to demonstrate to the satisfaction of the Board the ability to communicate in the English language;

8.1.3. Shall submit evidence that he or she is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine;

8.1.4. Shall have completed one year of an approved program of postgraduate education approved by the AOA; Provided that, if the postgraduate program has only been approved by the ACGME, the applicant shall also have commenced taking a minimum of forty hours of continuing medical education in osteopathic medicine with osteopathic manipulative treatment in courses approved, and classified as Category 1A, by the American Osteopathic Association.

8.1.5. Shall practice in an area of need, as determined by the Board. The Board may consider specialty need in a given area.

8.2. The issuance of a temporary permit shall not be interpreted or construed as the Board's approval of the applicant for licensure. Each person who seeks licensure shall meet all regular licensure requirements established by law in order to be licensed.

**§24-1-9. Temporary Permit to Practice Osteopathic Medicine and Surgery; Application Required.**

9.1. An applicant for a temporary permit to practice medicine and surgery in West Virginia shall submit an application on a form prescribed and provided by the Board. The form shall be completed and submitted at least thirty (30) days in advance of the date on which the expected practice will begin, together with the following documents:

9.1.1. Evidence of graduation from a medical school accredited by the AOA;

9.1.2. A photograph taken within 60 days which resembles the applicant;

9.1.3. A letter from a physician fully licensed to practice osteopathic medicine and surgery in West Virginia who has agreed to supervise the applicant, if considered necessary by the Board;

9.1.4. A non-refundable fee in an amount established by the West Virginia Board of Osteopathy rule Fees for Services Rendered By the Board of Osteopathy, Title 24 CSR 5.

9.1.5. A sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character, and is physically and mentally capable of engaging in the practice of medicine and surgery;

9.1.6. Proof of completion of an AOA approved internship one year of an approved program of post-graduate clinical training; and

9.1.7. Any other documents required by the Board.

9.2. The application, together with all photocopied documents submitted with it, become the property of the Board and shall not be returned.

9.3. An applicant for a temporary permit shall arrange for a personal interview with a member of the Board prior to the meeting at which his or her application is to be considered. The Board may require that an applicant be present at the meeting during which his or her application will be reviewed. The purpose of that interview or required attendance at a Board meeting is ~~to verify the existence and the identity of all required documents and to enable the Board~~ to clarify any information contained in the application. The Board may require production of original documents at the interview or required attendance at a Board meeting.

**§24-1-10. Temporary Permit to Practice Osteopathic Medicine and Surgery; Conditions of Practice.**

10.1. A physician granted a temporary permit to practice osteopathic medicine shall abide by all acceptable Rules and laws of the State of West Virginia governing the practice of osteopathic medicine and surgery in this State.

10.2. Physicians granted a temporary permit to practice osteopathic medicine and surgery shall practice only in the location specified by the Board and under the supervision of a licensed physician approved by the Board.

10.3. A physician who has been issued a temporary permit to practice osteopathic medicine and surgery may apply to the Board for a new temporary permit if the permit holder wishes to change the conditions of the practice as specified in the original application and as further specified in the permit. The Board considers the application for a new temporary permit a transfer, and the application shall be accompanied by letters setting forth any and all reasons for change in conditions. The required documents shall be completed by all parties as in the original application and shall be sent to the Board, together with the application and a non-refundable fee.

**§24-1-11. Temporary Permit to Practice Osteopathic Medicine and Surgery; Examination Required.**

11.1. Every physician who holds a temporary permit to practice osteopathic medicine and surgery in the State of West Virginia ~~shall take the State Board Exam or~~ and who has not satisfactorily completed all steps of the COMLEX-USA examination developed by NBOME, or equivalent state osteopathic exam, shall take and pass all uncompleted portions of the COMLEX-USA examination at the next scheduled exam available examination date following after issuance of the temporary permit.

11.2. ~~If the holder of the temporary permit fails to take the State Board Exam required examinations within the time specified in the section, the Board shall revoke his or her temporary permit to practice medicine and surgery~~ the permit automatically expires.

11.3 If the holder of the temporary permit takes the required examination, but does not pass, the holder may request an extension of the temporary permit until the next available examination date. At the discretion of the Board, additional extensions may be granted, but in no event will the Board extend a temporary permit more than one year after the original date of issuance.

**§24-1-12. Application Forms and Processing.**

12.1. Application forms for licensure may include, but not be limited to, requirements for the following information; as considered necessary by the Board:

- 12.1.1. An AOA bibliographical printout;
- 12.1.2. A Federation of State licensing Boards derogatory information sheet regarding other state Board actions;
- 12.1.3. A list of all states where the physician has had a license, even if the license is not active;
- 12.1.4. A list of all hospitals where the physician has had privileges in the last five (5) years;
- 12.1.5. The applicant's medical school;
- 12.1.6. A list of all training programs, including post graduate training programs;
- 12.1.7. The state from which the physician is requesting endorsement, with specific references to that state's examination and grades;
- 12.1.8. A copy of the individual's birth certificate, passport or baptismal, to be used in identifying the applicant and the appropriate spelling of his or her name;
- 12.1.9. A copy of a marriage license, divorce decree or court order, to document a name change; and
- 12.1.10. The place and date of the applicant's birth.

12.2. In the event the Board's staff finds derogatory information during the processing of an application, the information shall be presented to the Board for its review and the determination as to whether an individual should be scheduled for an interview during a regular Board meeting or if the staff should obtain additional information.

12.3. It is the applicant's responsibility to mail all necessary forms to selective institutions for response to the Board.

12.4. Completed verification forms shall be mailed directly from institutions.

12.5. The Board reserves the right to obtain additional information through oral or written examinations, psychiatric evaluation, physical examination or other tests as may be necessary to determine the competency of the applicant. Any additional tests, exams etc., are the financial responsibility of the applicant.

12.6. The Board reserves the right to require applicants who have not sat for or passed a written examination for licensure in the past ten (10) years to take an oral competency or practical skills examination in their field practice prior to issuing a license or to retake a written exam if considered necessary.

#### **§24-1-13. Educational Training Permits.**

13.1. ~~All~~ A graduate medical trainees who seeks to participate in a post-graduate, clinical program involving osteopathic practice in this State, and who has not been licensed in this jurisdiction or any other, shall secure an educational training permit. The permit grants the graduate medical trainee permission to participate in the training program and restricts him or her to the confines of the training institution, its affiliates and affiliated community hospitals. ~~The permit may grant to those graduates who are enrolled in an~~

~~AOA approved institution a rotating internship; or those that have fulfilled the rotating internship requirement may apply to continue practicing under the educational training permit only until the next available date to take the licensing exam. A graduate medical trainee may not use an educational permit to practice outside of the scope of the training program. Outside practice may only be conducted under a regular license to practice osteopathic medicine and surgery.~~

13.2. The permits are not a license to practice, nor a promise by the Board to issue a license upon completion of training.

13.3. Specific requirements for an educational training permit are as follows:

13.3.1. The applicant shall submit a completed application for an educational training permit to the Board sixty (60) days in advance of July 1, or by another date by special permission;

13.3.2. An application for an educational training permit shall include proof that the applicant is a graduate of a medical school approved by the AOA;

13.3.3. An application for an educational training permit shall include a sworn and notarized statement from another physician that the applicant is of good moral character, and that he or she is physically and mentally capable of engaging in the practice of osteopathic medicine and surgery;

13.3.4. An applicant for an educational training permit shall be able to demonstrate to the satisfaction of the Board his or her ability to communicate in the English language; and

13.3.5. An application for an educational training permit shall be accompanied by a non-refundable fee in an amount established by the Board under the West Virginia Board of Osteopathy rule Fees for Services Rendered By the Board of Osteopathy Title 24 CSR 5.

~~13.3.6. A graduate of a United States AOA approved medical school who does not have a license without restriction in West Virginia and who has been accepted into an approved program of graduate medical education in this State shall have an initial interview with a member of the Board or the Board's designated representative.~~

13.3.6. An application for an educational permit, or renewal of an educational permit, shall include verification or written acknowledgment from the director of an approved program of post-graduate clinical training that the applicant is a current participant, in good standing, in the program.

~~13.4. The educational training permit is valid only for twelve (12) consecutive months, but the Board may extend the permit when an extension is warranted. An educational permit expires on the last day of June following issuance of the permit. The permits automatically expire and become void if the trainee leaves the training program for any reason.~~

~~13.5. Approval of participation in graduate medical education for all qualified applicants shall be made by the Board on an annual basis. Educational permits may also be suspended or revoked by the Board at any time upon the same grounds as an osteopathic license may be suspended or revoked, as specified in section 24-1-18 of this rule.~~

13.6. The application, together with the photocopied documents submitted with the application, become the property of the Board and shall not be returned.

13.7. The issuance of an educational ~~training~~ permit shall not be interpreted or construed as the Board's approval of an applicant for licensure upon the applicant's completion of the educational training program. Each person who seeks licensure shall fulfill all requirements established by law in order to be licensed.

13.8. An educational permit is only available for graduates who have never previously been licensed to practice osteopathic medicine in any jurisdiction.

**§24-1-14. Written Examination; Examinee Conduct.**

~~14.1. An applicant for license who requires a written examination shall take the NBOME or State Board sponsored examination, as required by the Board.~~

~~14.2. The conduct of examinees during the examination is governed by written guidelines issued by the NBOME or the State Board.~~

**§24-1-15. License Renewal; Renewal Applications Form.**

15.1. A licensee shall renew his or her license every two (2) years, by submitting a renewal application form and paying a non-refundable renewal fee in an amount established by the Board under the West Virginia Board of Osteopathy rule Fees for Services Rendered By the Board of Osteopathy Title 24 CSR 5. The Board shall mail forms to each known licensee at his or her last known address. However, licensees are solely responsible for acquiring and submitting renewal application forms. A physician who fails to acquire and submit a renewal application may not practice on an expired license. The renewal application, together with all documents submitted with the application, become the property of the Board and shall not be returned.

15.2. The Board's renewal application form shall include a request for the following information:

~~15.2.1. The applicant's name, date of birth, home and principal business address and telephone numbers;~~

~~15.2.2. Personal characteristics of the applicant, such as sex and race;~~

~~15.2.3. 15.2.2. A statement of the applicant's medical training and work experience;~~

~~15.2.4. 15.2.3. A statement concerning any disciplinary action taken against the applicant in the last two (2) years;~~

~~15.2.5. 15.2.4. A statement concerning any civil litigation related to the practice of medicine or any criminal litigation commenced against the applicant in the last two (2) years;~~

~~15.2.6. 15.2.5. A statement describing the applicant's present ability to possess or dispense controlled substances;~~

~~15.2.7. 15.2.6. A statement regarding disciplinary actions of the other jurisdictions in which the applicant is licensed to practice medicine;~~

~~15.2.8. 15.2.7. Documentation of a minimum of thirty-two (32) hours of AOA approved Continuing Medical Education, of which at least 50% must be category 1 or CME hours in standard heart saver courses~~

obtained during the preceding two (2) year licensing period pursuant to W. Va. Code §30-14-10.

~~15.2.9.~~ 15.2.8. The number of malpractice settlements made or judgments against the applicant in the last two ~~(2)~~ five (5) years;

~~15.2.10.~~ 15.2.9. Any treatment received for mental illness, chemical substance, alcohol dependency or other impairment in the last two (2) years; and

~~15.2.11.~~ 15.2.10. Any limitations of hospital privileges in the last two (2) years.

15.3. A licensee who fails to timely renew his or her license shall submit a new application with required documentation in order to reinstate his or her license pursuant to W.Va.Code §30-14-10.

15.4. A licensee who is deployed outside of the United States on active duty in the armed forces of the United States for six months or more of his or her most recent license period may be exempted from the continuing medical education requirement for that license period and his or her application for renewal of license will not be denied for failure to satisfy this requirement.

15.5. A licensee participating in a clinical residency program for more than nine months out of his or her most recent licensing period may substitute a verification of his or her participation in lieu of documentation of the Continuing Medical Education hours specified in subdivision 15.2.8 of this rule.

**§24-1-16. Policy Regarding License Applicants for New Licensure, License Renewal, or License Reactivation Who Have Had a License Revoked or Surrendered in Another State.**

16.1. If an osteopathic physician has had his or her license revoked or surrendered in another state, the Board shall not issue or reactivate a license until the physician shows that he or she is eligible for licensure in the state where the action was taken. This does not include licenses which were not renewed at renewal times and were in good standing.

16.2. This policy is also applicable to physicians applying for a training an educational permit.

**§24-1-17. License Exemptions.**

17.1. In addition to exemptions provided by law, any duly licensed nonresident physician who participates in a continuing medical education course within the State is not required to be licensed in this state.

17.2. Physicians duly licensed in another state may transmit medical instructions by radio to personnel in this State in emergency situations.

**§24-1-18. Causes For Denial, Probation, Limitation, Discipline, Suspension Or Revocation of Licenses of Osteopathic Physicians.**

18.1. The Board may deny an application for a license, place a licensee on probation, suspend a license, limit or restrict a license or revoke any license issued by the Board, upon satisfactory proof that the licensee has:

18.1.1. Knowingly made, or presented or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other material in connection with an application for a

license;

18.1.2. Been or is involved in fraud, forgery, deception, collusion or conspiracy in connection with an examination for a license;

18.1.3. Become addicted to a controlled substance;

18.1.4. Become a chronic or persistent alcoholic;

18.1.5. Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member of the public;

18.1.6. Willfully violated a confidential communication;

18.1.7. Had his or her license to practice osteopathic medicine in any other state, territory, jurisdiction or foreign nation revoked, suspended, restricted or limited, or otherwise acted against, or has been subjected to any other disciplinary action by the licensing authority thereof, or has been denied licensure in any other state, territory, jurisdiction, or foreign nation;

18.1.8. Been or is unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals or any other type of substance, or by reason of any physical or mental abnormality;

18.1.9. Demonstrated a lack of professional competence to practice osteopathic medicine with a reasonable degree of skill and safety for patients. In this connection, the Board may consider repeated acts of a physician indicating his or her failure to properly treat a patient and may require the physician to submit to inquiries or examinations, written or oral, by members of the Board, or by other physicians licensed to practice medicine in this State, as the Board considers necessary to determine the professional qualifications of the licensee;

18.1.10. Engaged in unprofessional conduct, including, but not limited to, any departure from, or failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the osteopathic medical profession, irrespective of whether or not a patient is injured by the conduct, or has committed any act contrary to honesty, justice or good morals, whether the act is committed in the course of his or her practice and whether committed within or without this State;

18.1.11. Been convicted of or found guilty of a crime in any jurisdiction which directly relates to the practice of medicine or to the ability to practice medicine. Any plea of nolo contendere is considered conviction for purposes of this rule;

18.1.12. Advertised, practiced or attempted to practice under a name other than his or her own;

18.1.13. Failed to report to the Board any person whom the licensee knows is in violation of this rule or of provisions of W. Va. Code §30-14-3, or 30-14A-1;

18.1.14. Aided, assisted, procured or advised any unlicensed person to practice medicine contrary to this rule or the W. Va. Code §30-14-3, or 30-14A-1;

18.1.15. Failed to perform any statutory or legal obligation placed upon a licensed physician;

18.1.16. Made or filed a report which the licensee knows to be false; intentionally or negligently failed to file a report or record required by state or federal law or willfully impeded or obstructed the filing or induced another person to do so. The reports or records shall include only those which are signed in the capacity as a licensed physician;

18.1.17. Paid or received any commission, bonus, kickback or rebate, or engaged in any split-fee arrangement in any form whatsoever with a physician, podiatrist, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The provisions of this subdivision shall not be construed to prevent a physician from receiving a fee for professional consultation services;

18.1.18. Engaged in sexual contact with a current patient who is not a spouse of the physician or exercised influence within a patient-physician relationship for purposes of engaging a patient in sexual activity;

18.1.19. Made deceptive, untrue or fraudulent representations in the practice of osteopathic medicine or employed a trick or scheme in the practice of osteopathic medicine when the trick or scheme fails to conform to the generally prevailing standards of treatment in the medical community;

18.1.20. Solicited patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or by overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate response from the recipient;

18.1.21. Failed to keep written records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and test results and treatment rendered, if any;

18.1.22. Exercised influence on the patient or client in such a manner as to exploit the patient or client for the financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances or drugs and the promoting or advertising on any prescription form of a community pharmacy. For the purposes of this subdivision, it is legally presumed that prescribing, dispensing, administering, mixing or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities, is not in the best interests of the patient and is not in the course of the physician's professional practice, without regard to his or her intent;

18.1.23. Prescribed, dispensed or administered any medicinal drug appearing on any schedule set forth in W. Va. Code §§60A-1-101 to 60A-7-707 by the physician to himself or herself, except one prescribed, dispensed or administered to the physician by another practitioner authorized to prescribe, dispense or administer medicinal drugs;

18.1.24. Engaged in malpractice or failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent physician engaged in the same or a similar specialty as being acceptable under similar conditions and circumstances;

18.1.25. Performed any procedure or prescribed any therapy which, by the prevailing standards of medical practice in the community, would constitute experimentation on a human subject, without first obtaining full, informed and written consent from the patient;

18.1.26. Practiced or offered to practice medicine and surgery beyond the scope permitted by law or accepted and performed professional responsibilities which the licensee knows or has reason to know he or

she is not competent to perform;

18.1.27. Delegated professional responsibilities to a person whom the licensee knew or had reason to know is not qualified by training, experience or licensure to perform the responsibilities;

18.1.28. Violated or attempted to violate any law or lawfully promulgated rule or regulation of this State, any other state, the Board, the United States or any other lawful authority (without regard to whether the violation is criminally punishable), which relates to or in part regulates the practice of osteopathic medicine, when the licensee or applicant knows or should know that the action is violative of the law, rule or regulation; or has violated a lawful order of the Board; or has failed to comply with a lawfully issued subpoena of the Board; or has violated an order of any court entered pursuant to any proceedings commenced by the Board;

18.1.29. Presigned blank prescription forms;

18.1.30. Prescribed, ordered, dispensed, administered, supplied, sold or given any drug which is an amphetamine or sympathomimetic amine drug and a compound designated as a Schedule II controlled substance under W. Va. Code §60A-1-101 to 60A-1-707, to or for any person except for;

a. The treatment of narcolepsy; attention deficit disorder, which is a behavioral syndrome characterized by inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional liability and impulsivity; or drug-induced brain dysfunction;

b. The differential diagnostic psychiatric evaluation of depression or the treatment of depression or the treatment of depression shown to be refractory to other therapeutic modalities;

c. The clinical investigation of the effects of the drugs or compounds when an investigative protocol for the drugs or compounds is submitted to, reviewed and approved by the Board before the investigation is begun; or

d. The treatment of obesity, when consistent with excessive appetite, for periods not to exceed two weeks per six week period;

18.1.31. Knowingly maintained a professional connection or association with any person who is in violation of the W. Va. Code §§30-14-3 or 30-14A-1 or the rules of the Board; or has knowingly aided, assisted, procured or advised any person to practice medicine contrary to the W. Va. Code §§30-14-3 or 30-14A-1 or to the Rules of the Board; or knowingly performed any act which in any way aids, assists, procures, advises or encourages any unlicensed person or entity to practice osteopathic medicine; or has divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation or other entity for bringing or referring a patient; or has engaged in the practice of medicine as an officer or employee of any corporation other than one organized and existing pursuant to the W. Va. Code §30-14-3, except as a licensed physician, intern or resident of a hospital or teaching institution licensed by this State;

18.1.32. Offered, undertaken or agreed to cure or treat disease by a secret method, procedure, treatment or medicine; or has treated, operated or prescribed for any human condition, by a method, means, or procedure which the licensee has refused to divulge upon demand of the Board;

18.1.33. Engaged in false or deceptive advertising. "False or Deceptive Advertising" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results or

includes representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived; or

18.1.34. Engaged in advertising that is not in the public interest. Advertising that is not in the public interest includes the following, with the exceptions specifically listed:

- a. Advertising that has the effect of intimidating or exerting undue pressure;
- b. Advertising that uses testimonials;
- c. Advertising which is false, deceptive, misleading, sensational or flamboyant;
- d. Advertising which guarantees satisfaction or a cure;
- e. Advertising which offers gratuitous services or discounts, the purpose of which is to deceive the public. This subdivision does not apply to advertising which contains an offer to negotiate fees, nor to advertising in conjunction with an established policy or program of free care for patients; and
- f. Advertising which makes claims of professional superiority which a licensee is unable to substantiate.

18.2. As used in section 18.1.5. of this rule, "Dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof" includes, but is not limited to:

18.2.1. Prescribing or dispensing any "Controlled Substance" as defined in W. Va. Code §§60A-1-101 to 60A-1-707:

- a. With the intent or knowledge that a controlled substance will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose;
- b. With the intent to evade any law with respect to the sale, use or disposition of the controlled substance;
- c. For the licensee's personal use,
- d. ~~or For the use of his or her immediate family when the licensee knows or has reason to know that an abuse of the controlled substance is occurring, or may result from the practice; or for any period of treatment, or sequence of such periods, exceeding three days;~~
- e. Without making an in-person examination of the patient at least once out of every six months for the duration of the treatment;
- f. Without making and keeping documentation of the examination of the patient, diagnosis, basis for treatment, and treatment plan, in a manner consistent with ;
- dg. In amounts that the licensee knows or has reason to know, under the attendant circumstances, that the amounts so prescribed or dispensed are excessive under accepted and prevailing medical practice standards; or
- h. When the licensee knows, or has reason to know, that an abuse or improper diversion of the prescribed or dispensed substance is occurring or is likely to occur.

18.2.2. Issuing or publishing in any manner whatsoever, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member of the public, including, but not limited to:

a. Any representation in which the licensee claims that he or she is able to cure or treat manifestly incurable diseases, ailments or infirmities by any method, procedure, treatment or medicine which the licensee knows or has reason to know has little or no therapeutic value; or

b. Any representation in which the licensee claims that he or she is able and willing to treat diseases, ailments or infirmities under a system or school of practice; other than that for which he or she holds a certificate or license granted by the Board; other than that for which he or she holds a degree or diploma from a school otherwise recognized as accredited by the Board; or which he or she professes to be self-taught;

18.2.3. A serious act, or a pattern of acts committed during the course of his or her medical practice which, under the attendant circumstances, would be considered to be gross incompetence, gross ignorance, gross negligence or malpractice, including the performance of any unnecessary service or procedure;

18.2.4. Conduct which is calculated to bring or has the effect of bringing the osteopathic medical profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical practice within the state, and any departure from or failure to conform to the principles of medical ethics of the AOA. For the purposes of this subsection, actual injury to a patient need not be established;

18.2.5. Any charges or fees for any type of service rendered within 72 hours of the initial visit, if the licensee advertises free service, free examination or free treatment;

18.2.6. The administration of anabolic steroids for other than therapeutic purposes;

18.2.7. The use of chelation therapy for diseases and conditions other than acute hypercalcemia, lead poisoning, and intoxications caused by some other heavy metals;

18.2.8. Charging or collecting an excessive, unconscionable fee.

a. The Board shall take into account the following factors:

1. The time and effort required for performing services rendered;
2. The novelty and difficulty of the procedure or treatment;
3. The skill required to perform the procedure or treatment properly;
4. Any requirements or conditions imposed by the patient or circumstances;
5. The nature and length of the professional relationship with the patient;
6. The experience, reputation, and ability of the licensee; and
7. The nature of the circumstances under which the services are provided.

## 24CSR1

b. In any case where it is found that an excessive, unconscionable fee has been charged, in addition to any actions taken, the Board may require the licensee to reduce or pay back the fee.

18.2.9. Failure by a licensee to report a known or observed violation of this rule, and/or the provisions of the W. Va. Code §§30-14-3, or 30-14A-1.

18.3. When the Board finds that any applicant is unqualified to be granted a license or finds that any licensee should be disciplined pursuant to the W. Va. Code §30-14-3 or 30-14A-1 or rules of the Board, the Board may proceed as described in the West Virginia Board of Osteopathy rule Disciplinary and Complaint Procedures Title 24 CSR 6.

### **§24-1-19. Severability.**

19.1. If any provision of this rule or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the provisions or application of this rule which can be given effect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.

**WEST VIRGINIA BOARD OF OSTEOPATHY**

**LICENSING PROCEDURES FOR OSTEOPATHIC PHYSICIANS**

**Title 24, Series 1**

**AGENCY'S RESPONSES TO PUBLIC COMMENTS**

The individual comments received by the agency are attached and addressed on the following pages.

**COMMENTS OF:** Carol DiMarco, D.O.

Dr. De Marco has suggested several semantic changes and has expressed a concern about a requirement of forty hours of continuing education to be attained over a course of years. Dr. DeMarco feels this would be an administrative burden.

**BOARD'S RESPONSE:**

The Board has accepted Dr. DeMarco's semantic changes and amended the rule accordingly.

As for the forty hour requirement, the Board does not believe the administrative record keeping requirement would justify the consolidation of these course into just one year.

**From:** "Board of Osteopathy" <bdosteo@mail.wvnet.edu>  
**To:** "Thomas Gilligan DO" <tgilligan@suddenlink.net>, "Bob Whitler" <bob.whitler@camc.org>, "Doren Burrell" <Doren.Burrell@wvago.gov>, "Douglas Wolfe" <drwolfe51@aol.com>, "Elizabeth Blatt" <ekblatt@suddenlink.net>, "Ernest Miller, D.O." <emillerjr26105@yahoo.com>  
**Date:** 6/23/2009 6:58:18 PM  
**Subject:** FW: "Licensing Procedures for Osteopathic Physicians."

Just received and thought I would forward it before I left this evening.  
Chris

-----Original Message-----

From: Bustamante, Sandy [mailto:SBustamante@osteopathic.org] On Behalf Of Trueblood Witt, Debbie  
Sent: Tuesday, June 23, 2009 4:33 PM  
To: bdosteo@mail.wvnet.edu  
Subject: "Licensing Procedures for Osteopathic Physicians."  
Importance: High

Would you please forward this letter to Ms. Schreiber as well as the Board Members in BOLD? Thank you for your assistance.

June 22, 2009

Ms. Cheryl D. Schreiber  
Executive Secretary  
West Virginia Board of Osteopathy  
334 Penco Road  
Weirton, WV 26062  
bdosteo@mail.wvnet.edu

Dear Ms. Schreiber:

Re: Draft Rules

The American Osteopathic Association (AOA) is writing to share our comments in regards to the proposed rules for Title 24, Series 1, "Licensing Procedures for Osteopathic Physicians." This language is reflective of a law that passed, the intention of which is to allow DOs participating in allopathic Graduate Medical Education (GME) to be licensed, with the provision that they must have 40 hours of AOA CME in OMM/OMT.

The AOA represents its professional family of more than 67,000 osteopathic physicians (D.O.s) and 16,000 osteopathic medical students throughout the U.S., promotes public health, encourages scientific research, serves as the primary certifying body for DOs, and houses the accrediting agencies for all osteopathic medical colleges and health care facilities.

The AOA respectfully makes the following suggestions:

\* We recommend changing "levels" to, "steps" in relation to the parts of the COMLEX. This change should be made throughout the document, including sections 4.3, 6.1.4, and 11.1.

\* Additionally, we recommend changing, "NBOME Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA)" to, "the COMLEX-USA, developed by the NBOME." This change should be made throughout the document including sections 4.3, 4.4, 6.1.4, 7.5.3, and 11.1.

\* Finally, section 8.1.4 must be changed. It states, "Shall have completed one year of postgraduate education approved by the AOA." This temporary permit would allow those coming in from other states to begin practicing while their license is processed and it would allow for DOs participating in allopathic GME to practice while they attained 40 hours of AOA CME in OMM/OMT. In order for that to happen, the words "or by the ACGME" must be added to maintain consistency with the intent of the legislation. Additionally, we are concerned that a DO who may be working to attain his/her 40 hours of OMM/OMT training may do so over several years, which may create an administrative burden for the physician.

The AOA respectfully asks you to make these changes to the proposed rules. Thank you for your consideration. We look forward to working with you on this important public policy matter. Please feel free to contact us to

discuss this issue further. You can reach Debbie Trueblood Witt, AOA Manager of State Government Affairs, at <mailto:dtwitt@osteopathic.org> dtwitt@osteopathic.org or (800) 621-1773 ext. 8185.

Sincerely,

Carlo J. DiMarco, DO

President

CC: Larry A Wickless, DO, AOA President-Elect

Robert S. Juhasz, DO, Chair, AOA Department of Government Affairs

James J. Dearing, DO, Chair, AOA Bureau of State Government Affairs

John B. Crosby, JD, AOA Executive Director

Michael Mallie, AOA Associate Executive Director, Membership, and Governance

Linda Mascheri, AOA Director, Department of State, Specialty, and Socioeconomic Affairs

Diana Ewert, AOA Director, Division of Affiliate Affairs

Amy Brengle, AOA Executive Communications Coordinator

Mary Ann Rousa, AOA Communication Specialist

Ernest Miller, DO, President, West Virginia Board of Osteopathy

Douglas D. Wolfe, DO, Vice President, West Virginia Board of Osteopathy

Thomas L. Gilligan, DO, Secretary, West Virginia Board of Osteopathy

Elizabeth Blatt, PhD, Public Member, West Virginia Board of Osteopathy

Robert Whitler, Public Member, West Virginia Board of Osteopathy

Christine Wroniakm, Records Secretary, West Virginia Board of Osteopathy

Billy Cole, DO, President of the West Virginia Society of Osteopathic Medicine

Lorenzo Pence, DO, Associate Dean for GME, West Virginia School of Osteopathic Medicine

Penny Friske, Executive Director, West Virginia Society of Osteopathic

**COMMENTS OF: Zachary Comeaux, D.O.**

Dr. Comeaux has expressed concerns about the language of two new provisions specifying certain prohibited acts or unprofessional conduct with regard to prescribing controlled substances.

He questions whether the word "or" is appropriate in paragraph 18.2.1.e and also raises a question about a doctor's ability to prescribe a controlled substance in circumstances such as a phone-in refill.

He also questions the use of the words "knows or has reason to know" in another provision of the same subsection.

**BOARD'S RESPONSE:**

The Board finds merit in Dr. Comeaux's comments regarding paragraph 18.2.1.e. Since the Uniform Controlled Substances Act does allow phone-in prescriptions for certain classes of controlled substances, this provision will be changed so that an in-person examination is not required for every prescription, but that an in-person examination must be conducted at least once every six months. In addition, the requirement for making and keeping proper documentation has been moved to a separate paragraph.

The Board has decided to retain the words "knows or has reason to know" as these words have an established legal meaning, though they may not be part of the common vernacular. However, to make it clear that the rule contemplates a doctor having reason to know of abuse or diversion under specific circumstances, the Board has changed the reference to the controlled substance to that dispensed or prescribed by the physician.

400 N. Jefferson  
Lewisburg, WV 24901  
June 6, 2009

Ernest Miller, DO  
President, WV Board of Osteopathy  
334 Penco Rd.  
Weirton, WV 26062

Hello, Dr. Miller,

Cruising through the recently mailed packet of Notice of Emergency Rules with the Header 24CSR1 I noticed several places where the intent of the wording was not clear to me. Others may have some of the same issues.

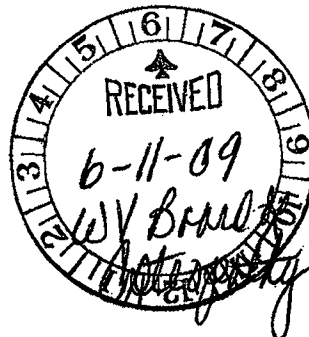
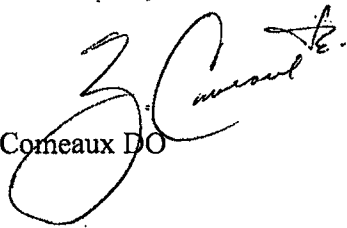
So, looking on page 15, under 24-1-18, 18.2.1 e I was not sure what "Without making an in-person examination of the patient or without making and keeping written records..." meant. I interpreted the "or" to be inclusive, that you needed to see all patients and record the encounter if you intended to prescribe. This would imply that if I receive a request for medication refill by phone while on call, I could not phone in a medication since I could not do a physical exam. What if it were my own patient? My colleague interpreted it to mean that I could phone in a prescription as long as I recorded the process. So, the "or" apparently can be interpreted as being inclusive or as offering alternative actions. You may need to clarify by making these conditions two sentences.

Just below, in 18.2.1 g, "When the licensee knows or has reason to know, that an abuse ..." Should that be "knows or has reason to suspect..."? As is, it doesn't make sense to me. We all have reason to know if abuse is occurring.

The accompanying documentation regarding the fee increases is not clear. We all want to be fair, I hope. How do we reconcile doubling of the fees and only expecting an 8% increase in projected revenues. Or, said otherwise, why should a need for an 8% increase in Board revenues require a 100% increase in application fees?

Thanks,

Zachary Comeaux DO



**COMMENTS OF:** Jo Clair Corcoran.

Ms. Corcoran requests that the Board include an exemption from licensure for volunteers in public service.

**BOARD'S RESPONSE:**

Although the Board is willing to consider such a provision, this would require a change in the West Virginia Code to be made by the Legislature.

**Board of Osteopathy**

**From:** Corcoran, Jo Claire [joclaire.corcoran@giv.com]  
**Sent:** Monday, June 29, 2009 10:00 AM  
**To:** bdosteo@mail.wvnet.edu  
**Subject:** FW: WV Board of Osteopathy Proposed Rules

Cheryl,

I wish to comment on Section 17 of your rules, which is for License Exemptions. I volunteer with an organization called Remote Area Medical (RAM), we are planning a medical expedition in the spring of 2010 in McDowell County. Your rules do not have a provision for volunteer practitioners who are licensed in other states to come into West Virginia to provide services to uninsured and needy persons on a limited time basis. I have attached a copy of the law from Tennessee which addresses volunteer medical practitioners from other states providing services. RAM is very particular regarding their recruitment of medical professionals, they must provide proof of current licensure with their volunteer application and RAM keeps those copies in a file at the site of the expedition.

**From:** Board of Osteopathy [mailto:bdosteo@mail.wvnet.edu]  
**Sent:** Friday, June 26, 2009 2:44 PM  
**To:** Corcoran, Jo Claire  
**Subject:** WV Board of Osteopathy Proposed Rules

Joclaire:

Per our discussion today, your volunteer agency will probably want to make a comment on our proposed rules, as we have no provision for physicians to volunteer.

Here is a link to the text of the rule, which has been published for public comment:

<http://www.wvsos.com/adlaw/proposed/24-01.pdf>

Possibly Section 17 of our Rules which is for License Exemptions could have a volunteer exemption added. Our comment period ends July 1 at noon. So if you wish to make a comment, we need to have it by that date, and if possible, the sooner, the better.

Thank you,  
Cheryl Schreiber  
Executive Secretary  
WV Board of Osteopathy  
304-723-4638  
304-723-6723 (Fax)



Please consider the environment before printing this email.

E-mail messages may contain viruses, worms, or other malicious code. By reading the message and The information in this email is confidential and may be legally privileged. It is intended sole

**COMMENTS OF: Joseph E.Schreiber, D.O.**

Dr. Schreiber has provided comments to specifically designated portions of the rule. Rather than summarize these comments, the Board will simply refer to his comments as he has numbered them.

**BOARD'S RESPONSE:**

- (1) The Board finds some merit in the comment and therefore the Board will change "osteopathic medicine and osteopathic manipulative treatment" to read as "osteopathic medicine with osteopathic manipulative treatment."
- (2) The Board has attempted to reword the cited portions of the rule in an attempt to clarify the licensing requirements in answer to this comment.
- (3) The Board finds merit in this comment and has reworded the subsection 5.3.
- (4) The Board finds merit in the comment and has reworded subsection 11.2 to provide for the automatic expiration on the temporary permit.
- (5) The comment refers to a perceived typographical error, but the wording is correct in the original version of the rule. No change is required.
- (6) This section has been renumbered in response to the comment.

Joseph E. Schreiber, D.O.  
334 Penco Road  
Weirton, WV 26062

6-29-09

Re: Proposed 24CSR1

Dear Board of Osteopathy,

This letter is to comment on the proposed rule changes; which I will address in the order in which they appear; but wish to draw particular attention to 24-1-13.1 / 24-1-13.8 which produces the most serious problem.

- ① 24-1-4.2.4b osteopathic medicine and osteopathic manipulative treatment make this appear to require 80 hrs (not 40) although it is obvious (to me) that is not the intent. Also, I do not believe the terminology is proper as per the A.O.A.
- ② 24-1-4.5 (and 2) fails to specify it refers to the 40 hrs of OMM/OMT  
(Note: This is important because some DO's have completed both A.O.A. & A.C.C.O.M. training programs. Don't punish such physicians with extra OMT/OMM courses!)
- ③ 24-1-5.3 the use of "registered" is not defined, or consistent with the rest of 24CSR1
- ④ 24-1-11.2 should say the <sup>year</sup> permit will automatically expire if fails to take test. Don't go thru revocation procedure (needless/wasteful/expensive)  
(You can do this. see 24-1-13.4)

(cont'd)

⑤ 24-1-13.1 seek, not seeks

⑥ 24-1-13.1 plus 24-1-13.8 Blocks all licensed Dr from being in residency programs.!!!

(ie reqs 'permits' to be in training, & 'permits' can't be issued to licensees)

This is clearly NOT the intent, or prior policy, & must be corrected.

⑦ 24-1-15.2.3 This ~~is~~ is used twice.  
The 2<sup>nd</sup> use should be 15.2.4

Thank you in advance for your consideration.

Sincerely  
JES chubov.70

**COMMENTS OF:** John Russell

Mr. Russell sent in a comment in response to the Emergency Rule filed in parallel with this one. His comment expresses concern about permitting practice by unlicensed physicians.

**BOARD'S RESPONSE:**

Mr. Russell does not refer to any particular portion of the rule and it appears that he has not read it at the time of his comment. The Board does not propose to allow unlicensed doctors to practice osteopathic medicine in this state.

**From:** "Board of Osteopathy" <bdosteo@mail.wvnet.edu>  
**To:** "Doren Burrell" <Doren.Burrell@wvago.gov>  
**Date:** 6/25/2009 10:44:53 AM  
**Subject:** FW: emergency rule

FYI.

-----Original Message-----

From: John Russell [mailto:wvbhpa@wvdsi.net]  
Sent: Thursday, June 25, 2009 9:48 AM  
To: bdosteo@mail.wvnet.edu  
Subject: emergency rule

I have heard about the proposed emergency rule which would allow unlicensed practitioners to begin engaging in healthcare practices which previously could only be performed by licensed practitioners. Let me state clearly for the record I am opposed to the notion of the emergency rule and I am quite frankly shocked, that the Board would consider it.

John Russell

Charleston, WV

**COMMENTS OF:** Suzanne Williams, D.O.

Dr. Williams has provided five pages of comments, some of a general nature and some with specific detail. In large part, Dr. Williams expresses concern about provisions for Temporary Permits.

**BOARD'S RESPONSE:**

The Board has reviewed Dr. Williams' comments regarding temporary permits and finds some merit in her suggestions for restrictions on temporary permits. This section of the law was created by the Legislature many years ago and has rarely been utilized by the Board. (Fewer than four times in the last ten years.) It seems that its original purpose has become obsolete, but it is still authorized and provided by the Code.

In response to Dr. Williams' comments, the Board has decided to modify the temporary permit requirements in three respects: holders of temporary permits must practice under the supervision of a licensed physician, a holder of the permit may seek an extension if that person fails the national examination but not for more than one year, and applicants must have completed at least one year of postgraduate clinical training equivalent to that required of licensed physicians.

Dr. Williams also refers frequently to "AOA R42" or American Osteopathic Association Resolution Number 42, a procedure for a postgraduate intern or resident to seek AOA approval of his or her postgraduate clinical program on an individual basis. Under this procedure, if the postgraduate trainee receives approval from the AOA, even after beginning in the program, then this would satisfy the licensing requirements of the statute which prompted the Board's changes to the licensing rules. The Board does not believe it necessary to provide a special case, condition or provision for programs approved through the Resolution 42 procedure.

Dr. Williams has also objected to changing the language of 24 CSR 1, §16.1 from a mandatory "shall" to a discretionary "may". After further consideration, the Board concurs with this comment and has decided to keep the original, mandatory language that previously existed in the rule.

In regard to the other provisions of Dr. Williams' comments, the Board has reviewed Dr. Williams' comments and has not found sufficient justification for any additional modification of the proposed rule.

With apologies for the color paper used. I ran out of plain white.  
Suzanne D. Williams M.Div., D.O.  
117D Shoestring Trail  
Clintonville, WV 24931  
Re Series 1 Proposed Rule Changes  
Short form of Comments mailed June 26, 2009

**Definitions:**

Under 24-1-3.3: the words "or subject of approval by" shall be struck. It is not unheard of for training programs to be closed during the process of approval or shortly thereafter, making that year of training of questionable merit.

Under 24-1-8 through and inclusive of 24-1-11

Patients who are in areas of need and to be served by Temporary Permit Holders are typically the most medically complicated patient population with the fewest resources available. Using Osteopathic Physicians who are not fully licensed carries the high probability of driving up healthcare costs due to unnecessary testing and referrals as well as subjecting patients to traveling to referral centers they might otherwise not need if evaluated by a fully licensed Osteopathic physician. This is the rationale for limiting the practice, scope and conditions as follows for:

**Temporary Permit Holders:**

1. Must be required to pass Part 3 of the NBOME (National Board of Osteopathic Medicine Exam) within 3 attempts (June, July, August and/or September) or by the month of October, whichever comes first after completion of their Osteopathic medical school graduation. During the period in which the Temporary Permit Holder is awaiting a passing score, they shall receive the supervision of a fully Licensed Osteopathic physician on a basis consistent with that received in outpatient training periods during their year of Internship (Post-Graduate Year number 1 (one).)
2. If the Temporary Permit Holder cannot pass Part 3 of their Licensing Board exam, a form of remediation must be completed consistent with the purpose stated by the NBOME: "The exam is a problem-based, symptom-based assessment such that

candidates are expected to demonstrate knowledge of clinical concepts and principles necessary for solving medical problems as independently practicing osteopathic generalist physicians.

3. Must be required to have their Resolution 42 Intern year approved prior to completion of that Intern year.

4. Must have 9 (nine) charts reviewed by a fully licensed Osteopathic Physician at minimum of every 2 (two) months for a period of 1 (one) year. These charts shall have had an office visit billed at Codes 99212 - 99214, 3 (three) of each office visit level.

5. Provision must be made as to how Pain Management can be handled without a DEA Permit in force. Similarly, provision must be made for prescribing Coumadin on an outpatient basis to ensure adequate attention is given to dosing and management of this medication carrying high risks.

6. Provision must be made in Series 5 as to the cost of application for and receipt of a Temporary Permit.

These changes are not inconsistent with those of other professional groups requiring the passage of a professional exam prior to independent practice. It shall also be noted that most Osteopathic Licensing Boards have removed any provision for a Temporary Permit.

Under 24-1-6.2

Rationale: Many patients expect and want to receive OMM/OMT from their Osteopathic Generalist Physician. After an ACGME training program, at minimum of 1 (one) year, many of these skills are lost. Therefore:

1. Must be required to have at minimum 9 (nine) hours of Osteopathic Manipulative Treatment (also called Osteopathic Manipulative Medicine) Continuing Medical Education Hours prior to being fully licensed to practice Osteopathic Medicine and Surgery in the State of West Virginia.

*Sue Ann Cullen M.D., D.O.*

Suzanne D. Williams M.Div., D.O.  
117D Shoestring Trail  
Clintonville, WV 24931

Comments re: Series 1 "Licensing Procedures for Osteopathic Physicians"

24-1-3 Numbers need corrected

24-3.3 Delete "subject to approval". Some programs shut down during internship; some shortly after a medical school grad enters one, making the quality of that program questionable.

24-1-4.4 Do not delete "postgraduate". That is what the intern year is and then is consistent with 4a and 4b. Re: "the Association's Resolution 42 procedure" see further comments re Resolution 42.

24-1-4.4 Change wording to "in lieu of completion of Parts 1 – 3 of the NBOME Comprehensive Osteopathic Medical Licensing Exam."

24-1-4.5 Clarification required as to whether or not this applicant can apply for a temporary permit.

24-1-6.2 Retain "at least one (1) year of postgraduate clinical training in a program approved by the AOA" since 2.a states "including programs approved by the Association under its Resolution 42 procedure." This puts the burden of responsibility on the applicant for such a year of postgraduate clinical training (PCT) within an ACGME program (Allopathic – M.D.) to apply at the start of their year of PCT since approval from the AOA is quite a lengthy process. It also places the burden of responsibility on the intern's shoulders to develop and present a lecture on osteopathic medicine or Osteopathic Principles and Practice in their home training program, among other curricular requirements under Resolution 42.

24-1-6.2 Delete "submitting the application for a license" and change to "a license being granted." Delete "a trainee" and substitute "a licensee". This paragraph needs close inspection to verify that the individual by Reciprocal Endorsement is obliged to function as a Licensee and not under a Temporary Permit. (Therefore, retain all of 24-1-7.8)

24-1-7.4 (along with 4.7) Retain "to verify the existence and identity of all required documents and information and to enable the Board" The Summary of the Proposed Rule states "specify the documentation that is required for this new requirement", thus

retention of wording as above "verify the existence and identity of all required documents and information and to enable the Board" is mandatory.

24-1-8 Insert 8.3 "Shall fulfill all of the requirements noted in 24-11-1." (amended. See below)

24-1-8 "Shall practice in an area of need." Contained within another subsection allows Permit Holders to practice in areas of the State most in need of fully qualified physicians given the poverty of these areas and the concomitant severity and complexity of illnesses in these areas.

24-1-10 Insert 10.4 "Shall practice under the supervision of a physician fully licensed to practice osteopathic medicine and surgery in West Virginia."

24-1-10.3 Insert a., b. c. to clarify what it would mean to "change the conditions of the practice as specified in the original permit and as further specified in the permit."

24-1-10 NOWHERE in the existence of Temporary Permit Holders creation is the fact of the absence of having a (Drug Enforcement Agency) DEA number addressed. This disallows the Permit Holder from prescribing many narcotics along with other medications controlled by the DEA.

24-1-11 This is the section that I, along with fully licensed osteopathic physicians and along with persons constituting a patient population object to most strenuously. Results of Part 3 of COMLEX-USA can take up to 10 (ten) weeks to return. If Part 3 is not passed, the Permit Holder has been in practice for 2 and ½ months. Retaking Part 3 "at the next available exam" allows another 2 and ½ months to pass awaiting results.

Furthermore, since "the next available exam following the issuance of the temporary permit" and the 10 (ten) weeks awaiting results is not until September of that year the Permit was issued, effectively the permit holder who has failed to pass Part 3 is in practice a full three months before being able to take "the next available examination."

24-1-11 (11.1 and 11.2 Do NOT give any time line by which Part 3 is actually passed. Potentially the Permit Holder can take Part 3 multiple times before passing. Given the fact that Part 3 is given less and less frequently in the course of a calendar year, the Permit Holder is in practice for a longer and longer period of time without becoming fully licensed. Other professions are held to strict guidelines as to how many times they can attempt to pass their licensing exam and in what time frame this must occur. The fact

See  
addendum  
p 4

that these proposed changes “open up the requirements for admission to practice in this State” (Summary of Proposed Rule) present a lowering of standards for the Osteopathic profession.

24-11-1.1 Since there is no “equivalent state osteopathic exam” this needs to be deleted.

24-1-13.1 Strike “who seeks to participate in”. This seems to imply that the trainee is applying under Resolution 24 to have an ACGME approved, extending the length of time in which the trainee can potentially practice. I really cannot say how many outlying clinics are within “the scope of the training program” (new language of 24-1-13.1), but again this seems to open up yet another loophole for practitioners who are not fully licensed to be functioning in rural areas of need.

24-1-13.4 Is in direct conflict with a sentence contained within the “West Virginia Board of Osteopathy Newsletter” May 8, 2009: “The original educational permit issued by be valid for a period of 15 (fifteen) months and subsequent educational permits issued to the same person ma be valid for not more than 12 (twelve) months.” If in fact, rural clinics are associated with educational training programs, this allows an individual without a full license to be in practice 2 (two) years and 3 (three) months. I object to this strenuously for many of the reasons associated with new language noted above, in particular over the fact that some of the State’s unhealthiest, most medically needy patients are in these rural areas.

24-1-12.6 This sentence needs to be examined closely and refined in light of AOA’s Resolution 24.

24-1-14.1 Do not strike. Instead reword “An applicant for a license who requires a written exam shall take and pass all portions of the NBOME unless there are medically certified reasons that this should be exempted.” It would appear from recent advertisements in local newspapers that there are increasing numbers of medical students at the West Virginia School of Osteopathic Medicine with various learning disabilities. Those graduates of any AOA approved Osteopathic Medical School who have any type of learning disabilities need to be medically certified as having such, not for purposes of discrimination, but for the purpose of giving a rationale as to why a written examination should be deferred. Since applicants for a license are asked about treatment for mental illness and drug addiction, then learning disabilities, also medical conditions should be

required to give information with an explanation required as with the aforementioned medical conditions.

LASTLY:

24-1-16.1 Especially in light of 24-1-15.3 - .6 inclusive and the majority of 24-1-18, the language of 24-1-16.1 needs to remain "shall".

Complex Part 3. Direct quotation from NBOME website

"Is problem-based, symptom-based assessment... candidates expected to demonstrate knowledge of clinical concepts and principles necessary for solving medical problems as independently practicing osteopathic generalist physicians."

Allowing Temporary Permit holders flies in the face of this standard set by the NBOME and therefore the ADA.

Submitted,

Shirley Wilcox M.D., D.O.

WNSOM class of 1992

Comments re Changes Proposed on an Emergency Basis re Series 1

SB 526 does not mandate the use of Resolution 42 (R42) of the American Osteopathic Association (AOA). The Summary of Proposed Rules “opens up the requirements for admission to practice in this State.” Opening up requirements should never be confused with a change in standards such as Resolution 42 allows.

Re: 24-1-4 and 24-1-6

In my conversations with the AOA “Intern Training Program” about the application of R42, it allows for Osteopathic medical school graduates (whether an in- or out-of-state graduate) to obtain the minimum of one (1) year of post-graduate training in an AOA or ACGME (i.e. American College of General Medical Examiners – Allopathic or M.D.) program along with programs approved under AOA R42. AOA R42 approval can be granted to either AOA or ACGME programs. (Parenthetically, it is regrettable that SB 562 passed unchallenged with respect to “programs subject of approval by the AOA.” Training programs do fail to be approved, making the quality of training received suspect)

Resolution 42 allows a medical school graduate to state that they are in the post-graduate program they are “due to need”. How clearly that “need” has to be spelled out is a matter of debate.

Per my conversation with the AOA “Intern Training Program”, R42 also allows an Osteopathic medical school graduate to begin their post-graduate training in a field such as Psychiatry or Pathology. Neither of these fields (among many others) offer the content in training that has parity with post-graduate programs geared towards the Osteopathic Generalist Practitioner.

Thus, my concern, along with the Osteopathic Licensing Board members of other states is that R42 allows a mechanism by which 1.the authority to grant approval of a training program’s parity to that of a generalists’ is granted to the AOA, and not the Licensing Board, that 2. it allows the trainee to invoke “special needs circumstances” without being detailed about that, 3. the Board utilizes the term “area of need”, not Health Professional Shortage Area, nor Medically Underserved Area/Population to determine where physicians are to go AND 4. that it allows an individual to return to the State to practice with one year of training that is inadequate to that of a General Practitioner’s and

inadequate to the needs of patients an Osteopathic Generalist is likely to see.. It is the case that other Osteopathic Licensing Boards are looking carefully at the inclusion and application of R42 due to its potential ramifications for quality healthcare in their states.

SB526 (which the Osteopathic Board actively sought introduction and passage of) gives a definition of "Permit" that opens a door insofar as it states "practice osteopathic medicine and surgery in the State while serving under special circumstances..." That sentence goes on in such a way that it is apparently the reason for the Board seeking to pass 24-1-13 on an emergency basis. I will address this later. The fact that this definition invokes "special circumstances", not at all defined, and that the Board is attempting to include R42 which also invokes, in effect, "special circumstances" ("need" – again without defining what constitutes the need and the Board uses the term "area of need" – which is almost all of the counties in West Virginia, see comments re HPSA, MUA/P) makes this quite a slippery slope towards healthcare of patients that is likely to be: 1. of lesser quality than that obtainable otherwise, due to the manner in which it was obtained (using R42), 2. fraught with the likelihood of increased litigation due to the circumstances of training acquired under R42 , 3. a cause of increased referrals and testing due to a lower "comfort level" because of the lack of a generalist's training, 4. resulting in increased healthcare costs, and 5. of minimal relevance to Osteopathy as a unique profession, particularly in regard to the use of Osteopathic Manipulative Treatment (OMT), also referred to as Osteopathic Manipulative Medicine. While 40 hours of continuing medical education classified as AOA 1A is required (24-1-6.2b and 24-1-4b), typically those only contain 6 - 9 hours of OMM/OMT.

The 3 entire portions of the Rule being considered for emergency passage seem to blur the lines considerably between what a Permit Holder is and a fully licensed Osteopathic physician. In reading through the proposed changes, because of how language is used, it would appear that those coming to practice in West Virginia under R42 might in fact be on par with a "Temporary Permit Holder" and those receiving an "Educational (Training) Permit" be able to practice in clinics outlying from their supervising programs' location. I will make the comment here re 24-1-13 that in ALL instances where the word "Training" has been struck, it should continue in usage. Since section 1-13 has to do with "trainees"

they are clearly in a training program. If for no other reasons than internal consistency, the word "training" should be retained. It needs to be clear as to when a post-graduate Osteopathic Physician's services can be billed for independently of their supervising physician in their training program.

Lastly, nowhere can I see that the Licensing Board has proven, with facts, statistics or data the need for implementation of 24-1-4, 24-1-6 and 24-1-13 on an emergency basis to **immediately** preserve the public peace, health, safety or welfare of the citizens of this State. While it is unfortunate to say the least that there is a dire shortage of physicians in the State, that has been true for a number of years and little has changed to make it an emergency state of affairs necessitating immediate or emergency change.

In fact, it is my belief that, if implemented as written, 24-1-4, 24-1-6, and 24-1-13 actually represent more of a risk to health of the people in West Virginia than a benefit. It is NOT true, as one Senator told me as we spoke about this legislation that "Some healthcare is better than no health care." All West Virginians deserve quality healthcare with means for ensuring that quality, not potentially eroding it with these emergency rules' passage.

Respectfully submitted,

Suzanne D. Williams M.Div. D.O.

June 30, 2009 15:37 PM (3:37 PM)

License #1632

West Virginia School of Osteopathic Medicine 1992

Board Certified: American Academy of Family Physicians and American Academy of

Osteopathic Family Physicians

**PETITION FILED BY: Suzanne Williams, D.O.**

In addition to submitting her own, individual comments, Dr. Williams has also submitted a petition containing the signatures of 38 people. The preamble to the petition refers to “new legislation” and the temporary permit process, does not make a specific comment or request other than to say that “Series 1 as written is not good for us.”

**BOARD’S RESPONSE:**

The temporary permit provisions are actually NOT new legislation or new regulation. These provisions have been present in the Code and the Board’s rules for more than eight years. However, in response to the comments submitted by Dr. Williams, the Board has reviewed these provisions and decided to put additional restrictions on temporary permits and the qualifications necessary to obtain one.

Although the Board has very rarely issued a temporary permit, the West Virginia Code provides for them and therefore the Board must comply. If temporary permits were to be eliminated, this would require an act of the Legislature.

## PLEASE READ

If new legislation is not challenged, the next Osteopathic physician you see may be practicing with a temporary permit NOT with a full license. He or she will have completed one year of clinical training, but may not have passed the final part of licensing exams in which they "demonstrate knowledge of clinical concepts and principles necessary for solving medical problems as independently practicing osteopathic generalist doctors." (Their year of training may have been at a program not yet approved.) These permit-holders will go to areas of need (West Virginians with multiple and complex medical problems). If this worries you, please sign below legibly and write your address. Please let the Osteopathic Licensing Board hear your voice that this pending legislation (Series 1 as written) is not good for us! \*\*Doctors for Quality Care - Suzanne Williams D.O.

NAME	ADDRESS
Debra Sizemore	P O Box 220, Williamsburg, WV 24991
Katasha Hunter	HC 40 Box 8 Williamsburg, WV 24991
Lola Mullins	Hc 68 Box 189A Trout, WV 24991
Bertta Brown	Lewisburg WV 24901
Colby Durham	216 Glade Street, Rainelle, WV 25962
Cindy M. Williams	P O Box 171 WSS WV 24986
GRANN D. MYFFER	PO. Box 777, Lewisburg WV 24901
Charles [unclear]	RT 1 Box 40A Lewisburg, WV 24901
Todd [unclear]	305 N. Jefferson St. Lewisburg, WV 24901
Jeffery [unclear]	P.O. Box 1847 Lewisburg, WV 24901
Michelle Morgan	Rt 2 Box 246 Ronceverte, WV 24970
Arge [unclear]	Brier Hill Ronceverte, WV 24970
Chris Ramsay	Rt 1 Box 426 Ronceverte WV 24970
David [unclear]	Rt 2 Box 357 Lewisburg, WV 24901
Shelli [unclear]	Lewisburg, WV 24901
Tyler Miller	HC 73 Box 48-A Alderson WV 24910
Doug B. Behest	RR 2 Box 172 F Lewisburg, WV 24901
Marilyn Erskine	605 Walker St. Ronceverte WV 24970
Marianne Walton	217 Glade St Rainelle WV 25962

This petition will be mailed to the Licensing Board proposing these changes. They must respond to them so that this petition and their responses go to the Committee that will determine if the legislation should pass unchanged, or with changes.

## PLEASE READ

If new legislation is not challenged, the next Osteopathic physician you see may be practicing with a temporary permit NOT with a full license. He or she will have completed one year of clinical training, but may not have passed the final part of licensing exams in which they "demonstrate knowledge of clinical concepts and principles necessary for solving medical problems as independently practicing osteopathic generalist doctors." (Their year of training may have been at a program not yet approved.) These permit-holders will go to areas of need (West Virginians with multiple and complex medical problems). If this worries you, please sign below legibly and write your address. Please let the Osteopathic Licensing Board hear your voice that this pending legislation (Series 1 as written) is not good for us! \*\*Doctors for Quality Care - Suzanne Williams D.O.

NAME	ADDRESS
Jessica Robinson	P.O. Box 1127 Rupert WV 25984
Marie A. Sanford	139A Shearwater Trail, #18 24931
Benny Weaver	HC69 Box 30, White Sulphur Springs WV 25986
Mary Kinsdale	300 N. Court St #7 Lewisburg, WV 24901
Cindy Lavender Bowe	221 S. Court St Lewisburg, WV 24901
Tommy Jany	Rt. 2, Box 130-B BUCKEYE, WV 24924
Dussan Adkin	HC60 Box 20 Williamsburg WV 24991
Lois Lewis	Rt. 2 Box 515-A Ronceverte, WV. 24970
Paul Heink	HC37 Box 220, Lewisburg, WV 24901
Ferry L. Bare	PO Box 312, - Ronceverte, WV 24970
John Wagoner	HC64 Box 346 - Hillsboro WV. 24946
Hope Pettrey	HC34 Box 39 Rupert, WV 25984
Shirley N. Andrews	200A Hartsook Clintonville, WV 24931
Peggy Williams	P.O. Box 35 Williamsburg, WV 24991
Patti Owens	HC37, Box 379, Frankford, W.V. 24938
Marcelle Adams	HC37, Box 379, Frankford, WV. 24938
Sandra Schmocker	HC 68 Box 149 Williamsburg WV 24991
Shirley Wurfy	Box 96 Williamsburg, WV 24991
Richard Wurfy	P.O. Box 96 Williamsburg WV 24991

This petition will be mailed to the Licensing Board proposing these changes. They must respond to them so that this petition and their responses go to the Committee that will determine if the legislation should pass unchanged, or with changes.