

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

Form #4

Do Not Mark In This Box

FILED

2009 OCT 23 AM 11:31

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Board of Osteopathy TITLE NUMBER: 24

CITE AUTHORITY: West Virginia Code section 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 RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

FILED

TITLE 24
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OSTEOPATHY

2009 OCT 23 AM 11:32

SERIES 1
LICENSING PROCEDURES FOR OSTEOPATHIC PHYSICIANS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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. 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 40 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 40 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 40 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 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 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 1 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 1 year of post-graduate, clinical training in a program approved by the Accreditation Council for Graduate Medical Education and 40 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 40 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 40 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 40 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 1 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)~~ 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 2 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. 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 3 days;~~

e. Without making an in-person examination of the patient at least once out of every 6 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 the standards of acceptable and prevailing medical practice;

~~g. 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.

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.~~