

WEST VIRGINIA
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Board of Osteopathy TITLE NUMBER: 24

CITE AUTHORITY W.Va. Code § 30-1-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 1

TITLE OF RULE BEING PROPOSED: Licensing, Disciplinary and
Complaint Procedures, Osteopathic Physicians

THE ABOVE PROPOSED LEGISLATIVE RULE, 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.

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Osteopathy

24 C.S.R. 1
Title 24
Legislative Rules

West Virginia Board of Osteopathy
Series 1

Licensing, Disciplinary and Complaint Procedures, Osteopathic
Physicians

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. Adjudicatory hearing.-- A formal administrative hearing before the Board or designated hearing examiner, conducted to determine the truth and validity of complaints filed against a licensee. An adjudicatory hearing may result in disciplinary action including, but not limited to, suspension or revocation of a registrant's license or certificate of registration; reprimand, censure or any other limitation, including probation, on a licensee's practice.

3.2. 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.

3.3. AOA.--American Osteopathic Association

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

3.5. Certification. --The approval of individuals by the Board to serve as physicians assistants. It also means the approval of programs by the Board for the training and education of physicians assistants.

3.6. 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.

3.7. Medicine. --Osteopathic medicine

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

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

3.10. Order to Show cause. --A paper served by the Board upon a registrant ordering the person to appear before the Board for an adjudicatory hearing.

3.11. Probation. --Imposing such conditions and requirements 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 twelve (12) months which substantially 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 one (1) year of postgraduate clinical training approved by the American Osteopathic Association.

4.2.5. A nonrefundable cashier's check or money order payable to the Board in an amount of one hundred fifty dollars (\$150); and

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 the 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 NBOME or the State Board sponsored exam. The Board is not required, however, to accept these exams in lieu of the NBOME.

4.5. 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. An applicant shall arrange for a personal interview with a member of the Board prior to his application being considered by the Board. The Board may require any applicant to appear before the Board at the meeting at which his 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. The application, together with all photocopied documents submitted with the application, become the property of the Board and shall not be returned.

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

4.9. A license to practice medicine and surgery in this State is valid for a term of two (2) years and must be renewed by June 30 of the second year. The license shall be renewed upon the receipt of a nonrefundable fee, as 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.

24-1-6. 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 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 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.

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.

6.1.4. Have successfully passed NBOME exam, or equivalent state osteopathic exam.

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 be 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 such 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 NBOME or State Board; the scores must meet the requirements established in Section 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. Such other documents as may be 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 or money order payable to the Board a nonrefundable fee.

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 nonrefundable fee in an amount established by the Board and by appearing before member of the Board for a personal interview.

7.9. 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:

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

b. Must be able to demonstrate to the satisfaction of the Board the ability to communicate in the English language; and

c. 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.

d. Must have completed one year of postgraduate education approved by the AOA.

e. Must practice in an area of need. 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 must 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, which form must 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 the previous twelve (12) months which substantially 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 nonrefundable fee in an amount established by the Board;

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; and

9.1.7. Such other documents as may be required by the Board.

9.2. The application, together with all photocopied documents submitted with, 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.

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 must 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 must be received, together with the application and a nonrefundable 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 NBOME at the next scheduled exam after issuance of permit.

11.2. If the holder of the temporary permit fails to take the State Board Exam the Board shall revoke his or her temporary permit to practice medicine and surgery.

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 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 applicants 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 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 graduate medical trainees 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.

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 must 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 must be able to demonstrate to the satisfaction of the Board his or her ability to communicate in the English language;

13.3.5. An application for an education training permit must be accompanied by a nonrefundable fee in an amount established by the Board; and

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 must have an initial interview with a member of the Board or the Board's designated representative.

13.4. The education training permit is valid only for twelve (12) consecutive months, but the Board may extend validity when an extension is warranted. The permits automatically expire and become void if the trainee leaves the course of training 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.

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 must fulfill all requirements established by law in order to be licensed.

24-1-14. Written examination; examinee conduct.

14.1 An applicant for license who requires a written examination shall be required to take the NBOME or State Board sponsored examination, as the Board may require.

14.2. The conduct of examinees 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 be renew his or her license every two (2) years, by submitting a renewal application form and paying a nonrefundable renewal fee in an amount established by the Board. 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. Failure to acquire and submit a renewal application will not constitute justification for any physician to practice on an expired license.

15.2. The Board's renewal application form will 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. A statement of the applicant's medical training and work experience;

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

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

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

15.2.8. 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;

15.2.9. The number of malpractice settlements made or judgements against the applicant in the last two (2) years;

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

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

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 will 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 permit.

24-1-17. License Exemptions.

17.1. In addition to exemptions provided by law, no license shall be required of any duly licensed nonresident physician who participates in a continuing medical education course within the State.

17.2. Duly licensed physicians 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 thereof;

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 material, 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 thereby, 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 these regulations;

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 these rules 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, willfully impeded or obstructed such 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. 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-1-707 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 law or rule or regulation relates to or in part regulates the practice of osteopathic medicine, when the licensee or applicant knows or should know that such 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 any medicinal drug appearing on Schedule II in W. Va. Code § 60A-1-101 to § 60A-1-707 for personal use;

18.1.31. 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; or

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

18.1.32. 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;

18.1.33. 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;

18.1.34. 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

18.1.35. 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 Acts declared to constitute dishonorable, unethical or unprofessional conduct: As used in section 19.1.5. 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:

18.2.1.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 (s);

.c. For the licensee's personal use, or for the use of his or her immediate family when the licensee knows or has reason to know that an abuse of controlled substance(s) is occurring, or may result from such a practice; or

.d. In such 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;

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 thereof, including, but not limited to:

18.2.2.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;

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

18.2.8.a. The time and effort required;

18.2.8.b. The novelty and difficulty of the procedure or treatment;

.c. The skill required to perform the procedure or treatment properly;

.d. Any requirements or conditions imposed by the patient or circumstances;

.e. The nature and length of the professional relationship with the patient;

.f. The experience, reputation, and ability of the licensee; and

.g. The nature of the circumstances under which the services are provided.

In any case where it is found that an excessive, unconscionable fee has

been charged, in addition to any actions taken under the provisions of section 19.3 of this rule, 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 take any one or more of the following actions:

18.3.1. Refuse to grant a license to an applicant;

18.3.2. Administer a public reprimand;

18.3.3. Suspend, limit or restrict any license for a definite period, not to exceed five (5) years;

18.3.4. Require any licensee to participate in a program of education prescribed by the Board;

18.3.5. Revoke any license;

18.3.6. Require the licensee to submit to care, counseling or treatment by physicians or other professional persons.

18.3.7. Assess a civil fine of between \$1,000 and \$10,000 and/or assess cost of the Board's investigation and administrative proceedings against the licensee;

18.3.8. Require him or her to practice under the direction or supervision of another practitioner; or

18.3.9. Require the licensee to provide a period of free public or charitable service.

In addition to and in conjunction with the foregoing actions, the Board may make a finding adverse to the licensee or applicant, but withhold imposition of judgement and penalty, or it may impose the judgement and penalty but suspend enforcement thereof and place the physician on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. In its discretion, the Board may restore and reissue a license to practice osteopathic medicine issued under the W. Va. Code § 30-14A-1, et seq., or any antecedent law, and as a condition of reinstatement, it may impose any disciplinary or corrective measure provided for in this rule or in the W. Va. Code § 30-14A-1, et seq.

18.4. The Board has the authority to place a licensee in a probationary status and to apply varying conditions upon the licensee during the probationary period.

18.4.1. Conditions for probation: Upon reaching the conclusion that a licensee to practice osteopathic medicine should be placed on probation, the Board may impose any one or more of the following conditions:

18.4.1.a. The Board may appoint one or more Board members to be responsible for having the probationary licensee report for interviews on a regular basis. These interviews may be set up on a periodic basis as determined by the Board and the appointed Board members shall then report back to the Board at its regularly scheduled meeting on the progress of the licensee;

.b. The Board may cause the probationary licensee to appear before the Board at such intervals as the Board may determine in order that the licensee may report on his or her progress. During these appearances by the probationary licensee, the Board may ask the probationary licensee questions so as to observe his or her behavior and progress;

.c. The Board may select a physician, or request the probationary licensee to select a physician who shall be approved by the Board and the physician shall submit periodic progress reports on the probationary licensee as the Board may direct;

.d. The Board may appoint a medical consultant whose responsibility is to handle interviews with the probationary licensee. The probationary licensee shall then report to the appointed medical consultant on a regular basis as determined by the Board, and the medical consultant shall report to the Board at intervals determined by the Board;

.e. In cases of alcoholism and/or drug abuse, as a condition of probation, the Board may require that the probationary licensee submit periodic blood samples and/or urine drug screen samples;

.f. The Board may require that a probationary licensee report all medications that he or she may be utilizing and that he or she make such reports to the Board, at such intervals as the Board may direct from time to time;

.g. The Board may require that the probationary licensee authorize his or her personal physician to submit to the Board, for review, the probationary licensee's medical history, both as to past medical history and any and all new medical history as may become available to the personal physician during the period of the probationary term;

.h. The Board may require that prior to the termination of a probationary term, the probationary licensee appear at a regularly scheduled Board meeting and furnish the Board with information as it may then request, and the Board may utilize subpoenas, subpoenas duces tecum and its investigators as it considers necessary to gather facts and evidence to determine compliance by the probationary licensee with the terms of probation; and

.1. In those situations where indicated, the Board may impose additional terms of probation, restriction, or revocation upon a licensee who has initially been placed on probation. The period of probation shall not exceed five (5) years from its initiation date.

24-1-19. Appeal.

19.1 Any applicant for a license who has had his or her application denied by order of the Board may appeal the order within thirty (30) days of such action, in accordance with the contested case hearing procedure, W. Va. Code § 29A-5-1 et seq., and rules of the Board: Provided, That the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

19.2 Any physician practicing osteopathic medicine and surgery in this State, who has had his or her license denied, suspended, restricted, or revoked by order of the Board, may appeal the order within thirty (30) days of such action in accordance with the contested case hearing procedure, W. Va. Code § 29A-5-1 et seq., and rules of the Board: Provided, That the appeal shall not include cases in which the Board issues a license, permit or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

24-1-20. Disposition of Reports and Complaints.

20.1 Any person, medical peer review committee, firm, corporation, member of the Board or public officer may make a complaint to the Board which charges a physician with a violation of the W. Va. Code § 30-14-1, et seq., or of the Rules of the Board. The Board may provide a form for such purpose, but such a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint shall contain the following:

20.1.1. The name and address of the individual(s) against whom the complaint is lodged;

20.1.2. The date of care;

20.1.3. The name(s) of individual(s) who may have treated the patient after the alleged incident; and

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

20.2 Reports submitted by a medical peer review committee, a physician, the chief executive officer of a hospital, a professional society, an insurer or any other person, in compliance with the provisions of

W. Va. Code § 30-3-14(b) may result in the initiation of a complaint by the Board.

The Board shall prepare and mail copies of this section to the State Osteopathic Society, State District Academies, West Virginia School of Osteopathic Medicine, and each hospital in the state of West Virginia.

20.2.1. The Board may prepare forms for filing required reports and make them available upon request.

20.2.2. Any information regarding a complaint may be sent by the Board to the physician concerned for his or her written comment and he or she shall submit a written reply within fifteen (15) days, or waive the right to do so.

20.2.3. Any requests for comment sent to physicians shall be considered properly served when sent to their last known address. It is the physician's responsibility to keep the Board informed of his or her appropriate current address.

20.2.4. Any individual or any medical entity having reason to believe that the conduct of a physician amounts to professional malpractice or professional incompetence shall be encouraged to report the information to the Board.

20.2.5. The chief executive officer of every hospital shall within sixty (60) days after the completion of the hospital's formal disciplinary procedure, and also after the commencement of and again after the conclusion of any resulting legal action, report in writing to the Board the name of any osteopathic physician member of the medical staff practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause, including resignation, together with all pertinent information relating to the action. The chief executive officer shall also report within sixty (60) days after the action is taken any other formal disciplinary action taken against any osteopathic physician by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. This does not apply to any temporary suspension for failure to maintain records on a timely basis or for failure to attend staff or section meetings.

20.2.6. Any professional society in this State comprised primarily of physicians, which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall, within sixty (60) days of a final decision, report in writing to the Board the name of the member, together with all pertinent information relating to such action.

20.2.7. Every insurer providing professional liability insurance to a physician in this State shall submit to the Board the following information within thirty (30) days from any judgment, dismissal or settlement of a civil action involving the insured: The date of any

judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information within the knowledge of the insurer as the Board requires. The Board shall mail a copy of this section to every known insurer in the state which has sold or may hereafter sell, professional liability insurance to an osteopathic physician licensed to practice medicine in this State.

20.2.8. Within thirty (30) days after the conviction of a person known to be an osteopathic physician licensed or otherwise lawfully practicing medicine and surgery in this State, or applying to be licensed, of a felony under the laws of this State, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the Board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the physician or applicant, the nature of the offense committed and the final judgment and sentence of the court. The Board shall mail a copy of this section to every circuit clerk in the state.

20.2.9. Information received by the Board under the provisions of W. Va. Code § 30-3-14(c) and this subsection may be used by the Board in its determination as to whether to deny an application for a license or to initiate disciplinary action against a physician licensed in this State, and the information may be submitted into evidence notwithstanding its prior use in any administrative civil or criminal hearing involving the applicant or physician.

20.3 All communications with the Board charging a physician with violations are conditionally privileged and a person making a communication is privileged from liability based upon the communication unless the person makes the communication in bad faith or for a malicious reason.

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

20.5 An individual making a complaint should receive one of the following acknowledgements:

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

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

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

20.6. The Board shall maintain a separate investigative or complaint folder on each case reviewed, and each folder shall have a case number assigned to it.

20.7. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of Section 21.5.2. of this rule the complaint committee of the Board established by the Board as a whole shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and validity of the allegations set forth in the complaint. The complaint committee shall provide reports to the Board on the number, nature, procedure and handling of the complaints received.

20.8. A complaint against an individual must allege that in his or her professional capacity he or she is acting in violation of the law, rules, or good and accepted medical practice and may be founded on any violation enumerated in W. Va. Code § 30-3-14(c) or subsections 19.1. or 19.2. of this rule.

20.9. The complaint committee may request the Board to issue subpoenas and subpoena duces tecum as required to complete its investigation and may utilize Board investigator(s) to conduct whatever investigations are necessary to determine the truth and validity, or lack thereof, of complaints. In the event the Board initiates its own complaint, it may utilize subpoenas, subpoena duces tecum and its investigators as it determines necessary to gather facts and evidence.

20.10. To facilitate disposition of a complaint, the Board or the complaint committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the commencement of an adjudicatory proceeding. The Board or committee shall give fifteen (15) days' notice of the conference, which notice shall include a statement of the issues to be informally discussed. Statements made at a conference may not be introduced at any hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

20.11. If the complaint committee determines that a complaint complies substantially with subsection 21.8 of this rule and that it relates to matters set forth in W. Va. Code 30-3-14(c) or subsections 19.1 or 19.2 of this rule, it may request that the individual complained of (hereinafter referred to as the "Respondent") respond to the complaint within thirty (30) days. The committee shall attach a copy of the complaint to the order for response or shall describe the acts alleged in the complaint. A respondent may answer either personally or through his or her attorney, but the answer must address the substantive allegations set forth in the complaint or order.

20.12. Upon receipt of the respondent's answer or at any point in the course of investigation or inquiry into a complaint, the committee may determine that there is not and will not be sufficient evidence to warrant further proceedings or that the complaint fails to allege misconduct for which a licensee may be sanctioned by the Board. In that event, the committee shall recommend to the Board to dismiss the complaint. The committee shall retain a file of all complaints and shall review this file periodically.

20.13. At any point in its investigation of a complaint, the Board or complaint committee may assign the matter to one of its medical consultants for review. The report of the medical consultant shall contain a statement of the allegations, the facts, analysis of the complaint and care provided, a brief description of the records reviewed and a recommendation and finding. The medical consultant shall, upon request, be afforded an opportunity to have an investigation interview with the physician in question or other involved parties, a report of which shall be placed in the investigative file.

20.14. If a respondent fails to answer within the thirty (30) day period or if the committee determines that there is reason to believe that the acts alleged occurred and constitute a violation for which a respondent may be sanctioned by the Board, the committee shall recommend that there be a finding of probable cause to believe there is a violation of the law or this rule.

20.15. The Board shall review the recommendation of the committee and shall require an adjudicatory hearing if it determines that there is probable cause to believe that acts alleged occurred and may constitute a violation of any provision of law or this rule. The Board may take such informal action as it determines a complaint warrants.

20.16. The Board may suspend or refuse to renew a license pending a hearing if the health, safety or welfare of the public necessitates such summary action. The Board shall provide a hearing on the necessity for the summary action within fifteen (15) days after the suspension. The Board shall render its decision within five (5) days of the conclusion of a hearing under this section.

20.17. The Board shall maintain a permanent file on each physician licensed or otherwise lawfully practicing in this State and of all persons applying to be licensed. This file shall include an individual historical record of each physician, which shall include all reports and information furnished to the Board pursuant to applicable law. In the event an investigative or complaint file is opened, a record shall be made thereof. The Board shall provide a licensee written notice of the substance of any record placed in his or her historical file, and the licensee will be permitted thirty (30) days in which to file a written statement regarding the record; the statement shall always accompany that part of the record in contention. A physician may examine his or her historical file during regular office hours of the Board or may designate his or her attorney to do so. A request for photocopies of his or her historical file may be made by a physician and it shall be processed by the Board on the basis of staff availability, and the cost of the request shall be paid by the requesting physician. Requests for matters relating to an ongoing investigation shall be handled at the discretion of the Board. All matters in an historical file are strictly confidential, except as exempted by W. Va. Code § 30-3-9. Except for information enumerated in W. Va. Code § 30-3-9(f), any matter in an historical file which is not involved in a proceeding for a hearing regarding the physician

concerned within two (2) years from its placement into such file may be expunged from the file at the discretion of the Board. If the investigative or complaint file is closed on the basis that the individual physician concerned is not guilty of any misconduct or wrongdoing, the Board shall remove all matters relating to that investigation from his or her historical file.

20.18. A physician shall respond within thirty (30) days to a written communication from the Board or its designee and shall make available to the Board any relevant and authorized records with respect to an inquiry or complaint about his or her professional conduct. The thirty (30) day period commences on the date the Board sends the communication by registered or certified mail with return receipt requested to his or her last known address. The physician shall maintain a medical record for each patient which is adequate to enable the physician to provide proper diagnosis and treatment. The physician must maintain a patient's medical record for a minimum period of three (3) years from the date of the last patient encounter and in a manner which permits the former patient or a successor physician access to them within the terms of this rule and as set forth in W. Va. Code § 16-29-1 et seq.

24-1-21. Severability

22.1. 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.

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West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

December 14, 1993

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register
TO: Cheryl D. Schreiber
Executive Secretary
334 Penco Road
Weirton, WV 26062
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: Licensing, Disciplinary and Complaint Procedures,
Osteopathic Physicians

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Robert R. Rodecker
Claud Smith, Attorney General's Off.
David Walker, Newtown, PA