

Form #3

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QUESTIONNAIRE

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

DATE: July 31, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

334 Penco Road

Weirton, WV 26062

LEGISLATIVE RULE TITLE: Formation and Approval of Professional Limited Liability Companies

1. Authorizing statute(s) citation W Va Code §31B-13-1304

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

June 1, 2009

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

Copies of the rule were sent to all osteopathic physicians and surgeons licensed by the WV Board of Osteopathy.

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

July 1, 2009

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

Attached X No comments received

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

July 31, 2009

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

Cheryl Schreiber, Executive Secretary

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

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

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

Doren Burrell, Senior Assistant Attorney General

Office of the Attorney General

State Capital, Room E-26

Charleston, WV 25305

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

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

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

N/A

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

WEST VIRGINIA BOARD OF OSTEOPATHY

**FORMATION AND APPROVAL OF
PROFESSIONAL LIMITED LIABILITY COMPANIES**

Title 24, Series 4

SUMMARY OF PROPOSED RULE

This rule is an existing rule governing the formation and registration of professional limited liability companies for osteopathic physicians and surgeons. The Board of Osteopathy seeks to amend this rule by removing a specified fee for the registration of a PLLC and moving that to a schedule of fees in a separate rule of the Board of Osteopathy, 24 CSR 5.

WEST VIRGINIA BOARD OF OSTEOPATHY

**FEES FOR SERVICES RENDERED BY THE
WEST VIRGINIA BOARD OF OSTEOPATHY**

Title 24, Series 4

STATEMENT OF CIRCUMSTANCES FOR PROPOSED RULE

The West Virginia Board of Osteopathy has established a Schedule of Fees for services rendered by it. This Schedule of Fees is set out in a separate rule of the Board, 24 CSR 5. In order to provide a unified source of information for ALL fees charged by the Board, the Board seeks to move the specification of a fee from this current rule and place that in the schedule promulgated as Fees for Services Rendered by the Board of Osteopathy, 24 CSR 5. This particular fee is an annual charge for registering an osteopathic physician's Professional Limited Liability Company.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Formation and Approval of Professional Limited Liability Companies

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Board of Osteopathy

Address: 334 Penco Road
Weirton, WV 26062

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

Fiscal Note Summary

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

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Fiscal Note Detail

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

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title:

Formation and Approval of Professional Limited Liability Companies

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

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

If the rule is amended as proposed, fees will be specified in a separate rule. When fees are modified in the other rule providing a schedule of fees, a complete Fiscal Note will be provided.

Amendment of this rule will not have any independent effect on total revenues for the Board of Osteopathy.

MEMORANDUM

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

The purpose of the proposed amendment to the rule is to remove specification of registration fees in this rule in order to consolidate all fees into one, other rule as part of a schedule of ALL fees that may be charged by the Board of Osteopathy. Since the change simply means moving the reference to registration fees from one rule to another, amendment of this rule would not have any fiscal impact for the agency or the State.

Date: June 1, 2009

Signature of Agency Head or Authorized Representative

Ernest Miller

TITLE 24
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OSTEOPATHY

SERIES 4
FORMATION AND APPROVAL OF PROFESSIONAL
LIMITED LIABILITY COMPANIES

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

§24-4-1. General.

1.1. Scope. -- This legislative rule addresses procedures for the formation and approval of professional limited liability companies for osteopathic physicians.

1.2. Authority. -- W. Va. Code §31B-13-1304.

1.3. Filing Date. --

1.4. Effective Date. --

§24-4-2. Definitions.

2.1. Board. - The West Virginia Board of Osteopathy, established in W. Va. Code §30-14-3.

2.2. Professional limited liability company. - a limited liability company organized under Chapter 31B of the W. Va. Code for the purpose of rendering a professional service.

2.3. Professional services. - The services rendered under W. Va. Code §30-14-1 et seq., by osteopathic physicians.

§24-4-3. Procedures for Formation and Approval of Professional Limited Liability Companies for Osteopathic Physicians; Fees.

3.1. Osteopathic physicians licensed to practice medicine and surgery in an active status in this State who desire to render medical professional services as a limited liability company shall comply with the provisions of W. Va. Code §31B-13-1 et seq. No professional limited liability company shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.

3.2. The name of a professional limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or "Professional L.L.C."

3.3. Every professional limited liability company shall file with the Board at the time of formation, and on an annual basis on or before the first day of July, the names of its ~~two or more~~ members, and written documentation that the professional limited liability company carries at least one million dollars of professional liability insurance, ~~together with an initial filing fee of \$100 and annual renewal fee of \$100~~ along with the fee specified in the schedule of fees established in the Board's legislative rule, Fees For Services Rendered By The Board of Osteopathy, 24 CSR 5.

3.3.a. The requirement of carrying one million dollars of professional liability insurance is satisfied if the professional limited liability company provides one million dollars of funds specifically designated and segregated for the satisfaction of judgements against the company members or any of its professional or nonprofessional services to patients or clients of the company, by:

(1) Deposit in trust or in bank escrow of cash, a bank certificates of deposit or United States treasury obligations; or

(2) A bank letter of credit or insurance company bond.

3.4. Every limited liability company formed prior to the effective date of this rule whose members are osteopathic physicians licensed under the provisions of W. Va. Code §30-14-1 et seq. shall re-form and re-file pursuant to the provisions of W. Va. Code §31B-13-1 et seq. and of this rule.

3.5. Every professional limited liability company shall file with the Board a copy of the annual report required to be filed with the secretary of state under W. Va. Code §31B-2-211. The copy of the annual report, and a copy of any corrected annual report filed with the secretary of state, shall be filed with the Board on or before the first day of July on an annual basis.

3.6. Every professional limited liability company in compliance with all the provisions of this rule shall be approved by and remain approved by the Board.

3.7. If any person ceases to be a member of any professional limited liability company, the Board shall be so notified in writing within twenty days therefrom that such person has ceased to be a member of such professional limited liability company. The fact that a person ceases to be a member of a professional limited liability company shall not affect the approval of such professional limited liability company by the Board, provided that the Board determines that the professional limited liability company remains in compliance with all the provisions of this rule.

§24-4-4. Notification of Non-compliance, Cessation of Rendering Professional Services.

4.1. Should the Board determine that a professional limited liability company is not in compliance with all the provisions of this rule and should cease rendering professional services in the State, the Board shall so notify the professional limited liability company in writing, and upon receipt of such written notice, said professional limited liability company shall cease rendering professional services in the State.

§24-4-5. Physician-Patient Relationship.

5.1. The provisions of this rule shall not be construed to alter or affect the physician-patient relationship.

WEST VIRGINIA BOARD OF OSTEOPATHY

FORMATION AND APPROVAL OF PROFESSIONAL LIMITED LIABILITY COMPANIES

Title 24, Series 4

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AMENDMENT TO PROPOSED RULE

In response to a comment received during the comment period, the WV Board of Osteopathy has amended subsection 3.3 of the proposed rule by deleting the words “two or more” in reference to members of the corporation. This makes the rule consistent with the language of West Virginia Code §31B-13-1304, which allows a professional limited liability company to have one or more members.

WEST VIRGINIA BOARD OF OSTEOPATHY

**FORMATION AND APPROVAL OF
PROFESSIONAL LIMITED LIABILITY COMPANIES**

Title 24, Series 4

COMMENTS RECEIVED IN RESPONSE TO PROPOSED RULE

Only one comment was received regarding the proposed amendments to Title 24, Series 4. In this comment (attached), Dr. Maria Taranto asked the Board of Osteopathy to revise a section of the rule requiring the list of “the names of its two or more members.” The Board concurs with this comment. Since Title 24, Series 4 was originally created, the relevant statute was changed to allow the formation of professional limited liability companies with only one member. Therefore, the Board proposed to amend subsection 3.3 of the rule to remove the reference to “two or more” when referring to members of the PLLC.



Dr. Maria N. Tranto
Internal Medicine

June 18, 2009

RE: Proposed Rule Series 4

Dear West Virginia Board of Osteopathy,

As a single PLLC, I am asking that you review the section 3.3 where the statement states, "*the names of its two or more members*". A single member PLLC would only consist of one person; therefore, we cannot comply with this rule as it is stated.

Thank you for your consideration in this matter.

Sincerely,

Dr. Maria N. Tanto

MT/mes

3665 Pennsylvania Avenue Weirton, WV 26062

Phone: 304-723-4040 Fax: 304-723-2700