WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE WEST VIRGINIA SECRETARY OF STATE

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

AGENCY: WEST VIRGINIA BOARD OF MEDICINE TITLE NUMBER: 11

CITE AUTHORITY: LEGISLATIVE

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1B

TITLE OF RULE BEING AMENDED: LICENSURE, DISCIPLINARY AND COMPLAINT PROCEDURES, CONTINUING EDUCATION, PHYSICIAN ASSISTANTS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

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

Robert C Knittle

Authorized Signature

SUMMARY OF CONTENT AND STATEMENT OF CIRCUMSTANCES
REQUIRING THE RULE 11 CSR 1B

The amendments proposed to 11 CSR 1B implement requirements of West Virginia Code § 30-1-7a which mandate that each person licensed as a physician assistant by the Board of Medicine must complete drug diversion training and best practice prescribing of controlled substances training, unless the physician assistant completes a Board of Medicine developed certification form attesting that the physician assistant has not prescribed, administered, or dispensed a controlled substance during the applicable reporting period.

The amendments also define "chronic conditions" pursuant to new language in West Virginia Code § 30-3-16 (r) in order that physician assistants may prescribe certain medications for a longer period of time (annually) than at present for those defined chronic conditions. Other definitions are added as well.

Outdated language relating to the formulary has been deleted.

Changes made are to update the rule and to comply with provisions of two new laws passed in the 2012 Regular Legislative Session: Enrolled Committee Substitute for S.B. 437, relating to substance abuse, and Enrolled Committee Substitute for S.B. 535, relating to expanding prescriptive authority of physician assistants and advanced practice registered nurses.

TITLE 11

LEGISLATIVE RULE

WEST VIRGINIA BOARD OF MEDICINE

SERIES 1B

LICENSURE, DISCIPLINARY AND COMPLAINT PROCEDURES, CONTINUING EDUCATION, PHYSICIAN ASSISTANTS

§11-1B-1. General.

1.1. Scope. -- W. Va. Code §30-3-16(b) requires the Board of Medicine to adopt rules governing the extent to which physician assistants may function in this State, W. Va. Code §30-1-7a. requires each person licensed as a physician assistant by the Board of Medicine to complete drug diversion training and best practice prescribing of controlled substances training, as the trainings are established by the Board of Medicine, if the person prescribes, administers, or dispenses a controlled substance, W. Va. Code §30-3-16(j) requires physician assistants in certain circumstances to be restricted to work under the direct supervision of the supervising physician and W. Va. Code §30-3-16 ~~(n)~~(r) requires the Board to adopt rules governing the eligibility and extent to which a physician assistant may prescribe at the direction of the supervising physician, and W. Va. Code §30-3-16(w) requires the Board of Medicine to adopt rules pertaining to written documentation of continuing education required. This rule relates to physician assistants and to their licensing, complaint procedures and professional discipline, and continuing education.

1.2. Authority. -- W. Va. Code §30-1-7a, §30-3-16(b),(j),(r) and (w).

1.3. Filing Date. --

1.4. Effective Date. --

§11-1B-2. Definitions.

2.1. For purposes of this rule, the following words and terms mean the following:

2.1.a. "Alternate supervising physician" means a permanently licensed physician designated by the supervising physician in his or her absence who has agreed to provide medical direction and advice to a licensed physician assistant.

2.1.b. "Antineoplastics" are chemotherapeutic agents used in the active treatment of current cancer.

2.1.c. "Chronic condition" is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions include anemia, anxiety, arthritis, asthma, bladder outlet obstruction, cardiovascular and pulmonary disease, cancer, controlled diabetes, epilepsy and seizures, thyroid disease, and obesity, and do not include chronic pain or any condition which requires antineoplastics excluded from the physician assistant formulary by law, all subject to the scope of practice of the physician assistant and supervising physician as set forth in W. Va. Code § 30-3-16, 7.5. of this rule, and the approved formulary.

2.1.d. "Controlled substances" means drugs that are classified by federal or state law in Schedules I, II, III, IV or V, as defined in W. Va. Code § 60A-2-204 through 212.

2.1.~~b.~~e. "Crimes involving moral turpitude" means 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.

2.1.f. "Direct supervision" means the supervising physician must be present in the office suite and immediately available to furnish assistance and directions to the physician assistant.

2.1.g. "Drug diversion training and best practice prescribing of controlled substances training" means training which includes all of the following:

1. Drug diversion, including West Virginia statistics on prescription drug abuse and resulting deaths.

2. Epidemiology of chronic pain and misuse of opioids.

3. Indication for opioids in chronic pain treatment including general characteristics, toxicities and drug interactions.

4. Examination of patient evaluation and risk assessment and tools to assess risk and monitor benefits.

5. Initiation and ongoing management of chronic pain patient treated with opioid based therapies, including treatment objectives; monitoring and periodic review; referrals and consultations; informed consent; prescription of controlled substance agreements, urine screens and pill counts; patient education on safe use, storage and disposal of opioids; discontinuation of opioids for pain due to lack of benefits or increased risks; documentation and medical records.

6. Case study of a patient with chronic pain.

7. Identification of diversion and drug seeking tactics and behaviors.

8. Best practice methods for working with patients suspected of drug seeking behavior and diversion.

9. Compliance with controlled substances laws and rules.

10. Registration with and use of the West Virginia Controlled Substances Monitoring Program established in West Virginia Code Chapter 60A, Article 9.

11. Maintenance of a record of attendance of each individual who successfully completes the drug diversion training and best practice prescribing of controlled substances training.

2.1.~~e.~~h. "Immediately preceding" means patient care services ending within a year of submission to the Board of the application requesting limited prescriptive privileges.

2.1.~~d.~~i. "Legend drug" means a drug that may be dispensed under federal or state law only pursuant to the prescription of an authorized prescriber.

2.1.~~e.~~ j. "Licensure" means the approval of individuals by the Board to serve as physician assistants.

2.1.~~f.~~ k. "NCCPA" means The National Commission on the Certification of Physician Assistants.

2.1.l. "Opioid" means natural and semi-synthetic derivatives of the opium poppy, as well as similar synthetic compounds that have analgesic or pain relieving properties because of their effects in the central nervous system. These include, but are not limited to, codeine, morphine, hydromorphone, hydrocodone, oxycodone, methadone, and fentanyl.

2.1.m. "Personal supervision" means the supervising physician must be in attendance in the room with the physician assistant throughout the rendering of care by the physician assistant.

2.1.~~g.~~ n. Protocol" means written treatment instructions prepared by a supervising physician for use by a physician assistant. The instructions should be flexible, in accordance with the setting where the physician assistant is employed.

2.1.~~h.~~o. "Satellite operation" means an office or clinic separate and apart from the office of the supervising physician, established by the physician and in which a physician assistant will be providing patient care.

2.1.~~i.~~ p. "Supervision" means the opportunity or ability of the physician to provide or exercise control and direction over the services of physician assistants. Constant physical presence of the supervising physician of a physician assistant certified by the NCCPA is not

required so long as the supervising physician and the physician assistant are or can easily be in contact with each other by radio, telephone or telecommunication. Supervision requires the availability of the supervising physician. An appropriate degree of supervision includes:

2.1.~~i~~p.1. The active and continuing overview of the physician assistant's activities to determine that the supervising physician's directions are being implemented;

2.1.~~i~~p.2. The availability of the supervising physician to the physician assistant for all necessary consultations;

2.1.~~i~~p.3. Personal and regular (at least monthly) review by the supervising physician of selected patient records upon which entries are made by the physician assistant. The supervising physician shall select patient records for review on the basis of written criteria established by the supervising physician and the physician assistant and shall be of sufficient number to assure adequate review of the physician assistant's scope of practice, and;

2.1.~~i~~p.4. Periodic (at least monthly) education and review sessions discussing specific conditions, protocols, procedures and specific patients, held by the supervising physician for the physician assistant under his or her supervision.

§11-1B-3. Supervision of Physician Assistants by Licensed Physician; Services That May be Performed by Physician Assistants.

3.1. A physician fully licensed under W. Va. Code §30-3-1 et seq. without restriction or limitation may submit a job description to the Board to employ a physician assistant.

3.2. The delegation of certain acts to a physician assistant shall be stated on the job description in a manner consistent with sound medical practice and with the protection of the health and safety of the patient in mind. The services shall be limited to those which are educational, diagnostic, therapeutic or preventive in nature and may, according to the standards set by his or her supervising physician, allow the physician assistant to formulate a provisional diagnosis and treatment plan which may be set by standard protocols of his or her supervising physician and are under his or her direction.

§11-1B-4. Submission of Application; Job Description.

4.1. A physician assistant shall submit an application and a job description signed and dated by the supervising physician listing in numerical order the duties which will be performed. All information must be received by the Office of the Board of Medicine, 15 days prior to a Board meeting. The filing of an application and job description does not entitle a physician assistant to licensure. The Board is the only legal authority for approval and licensure.

4.2. An application and the proposed job description shall be accompanied by proof of qualifications as follows:

4.2.a. Documentation that the applicant graduated from an approved program;

4.2.b. Documentation that the applicant attained a baccalaureate or masters degree;

4.2.c. The required fee;

4.2.d. Documentation that the applicant has unencumbered licensure, registration, or certification status in all states where he or she was previously licensed, registered, or certified; and

4.2.e. Documentation that the applicant passed the NCCPA examination. Noncertified physician assistants who are issued a temporary license under W. Va. Code §30-3-16(g) shall sit for and obtain a passing score on the examination next offered following graduation from an approved program. No applicant may receive a temporary license who, following graduation from an approved program, has sat for and not obtained a passing score on the NCCPA examination.

4.3. The Board may provide temporary approval to a physician to supervise a currently licensed physician assistant provided that:

4.3.a. A completed application and proposed job description has been received at the office of the Board of Medicine;

4.3.b. The skills and training of the prospective supervising physician are appropriate to supervise the range of medical services provided for in both the proposed and previously approved job descriptions;

4.3.c. The physician assistant is limited to performing those medical services provided for in the previously approved job description, until the Board has approved the proposed job description; and

4.3.d. The licenses of the prospective supervising physician and the physician assistant are in good standing.

4.4. The Board may provide temporary approval to a physician to supervise a physician assistant previously licensed in West Virginia, whose license has been expired or terminated for less than one year prior to the completion and submission to the Board of the physician assistant's application, provided that:

4.4.a. A completed application and proposed job description has been received at the office of the Board of Medicine;

4.4.b. The skills and training of the prospective supervising physician are appropriate to supervise the range of medical services provided for in both the proposed and most recent previously approved job descriptions;

4.4.c. The physician assistant is limited to performing those medical services provided for in the most recent previously approved job description, until the Board has approved the proposed job description; and

4.4.d. The license of the prospective supervising physician is in good standing and the license of the physician assistant until the time of its expiration or termination was in good standing.

4.4.5. Application for changes to the standard approved job description as provided for in subdivision 13.1. of this rule or a previously approved job description shall be made by the physician assistant or supervising physician 15 days prior to a Board meeting. The proposed job description shall be signed and dated by the supervising physician and physician assistant.

§11-1B-5. Biennial Report of Physician Assistant's Performance; Biennial Renewal; Biennial Report of the Board.

5.1. Physician assistants and their supervising physicians must submit to the Board biennial signed reports either individually or combined, on the professional conduct, capabilities and performance of the physician assistant. The report shall be submitted to the office of the Board by April 1. Biennial renewal for physician assistants shall occur by April 1 every odd year.

5.2. In addition to the report, the Board shall compile and publish an annual report that includes a list of currently licensed physician assistants, their supervising physician(s) and their location in the state.

§11-1B-6. Supervision and Control of Physician Assistant.

6.1. The physician assistant, whether employed by a health care facility or the supervising physician, shall perform only under the supervision and control of the supervising physician. Supervision and control of a physician assistant certified by the NCCPA requires the availability of a physician for consultation and direction of the actions of the physician assistant. It does not necessarily require the personal presence of the supervising physician at the place or places where services are rendered, if the physician assistant certified by the NCCPA is performing (specified) duties at the direction of the supervising physician.

6.2. In the case of a physician assistant who has not been certified by the NCCPA, the presence of the supervising physician or alternate supervising physician on the premises where the noncertified physician assistant performs delegated medical tasks is required. The physician assistant may function in any setting within which the supervising physician routinely practices, but in no instance shall a separate place of work for the physician assistant be established. The supervising physician shall be a physician permanently licensed in this State.

§11-1B-7. Limitations on Supervision and Scope of Duties of Physician Assistants.

7.1. A supervising physician may not supervise more than 3 physician assistants or their equivalent at any one time, except that a physician may supervise up to 4 hospital employed physician assistants.

7.2. A supervising physician may also serve as an alternate supervising physician in the absence of another supervising physician, however the legal responsibility remains at all times with the supervising physician.

7.3. It is appropriate for a physician assistant to provide medical services to an alternate physician's patients at his or her direction in settings such as a health care facility, partnerships, group practices and other mutually agreed on patient coverage arrangements. Where a physician assistant is providing medical services to the alternate physician's patients at his or her direction in these settings, the alternate supervising physician is also legally responsible for the physician assistant.

7.4. A physician assistant may not sign prescriptions except in the case of certain physician assistants authorized to do so by the Board in accordance with the provisions of subsection 14 of this rule.

7.5. A physician assistant may not perform any services which his or her supervising physician is not qualified to perform, including the treatment of chronic conditions as defined in 2.1.b.

7.6. A physician assistant may not perform any services which are not included in his or her job description and approved by the Board.

7.7. Physician assistants who are supervised by more than one supervising physician shall be those whose scope of professional duties require multiple physician supervisors or who have more than one employer.

7.8. A supervising physician may not permit a physician assistant to independently practice medicine. The supervising physician shall supervise the physician assistant at all times.

7.9. A physician assistant may not maintain an office separate and apart from the supervising physician's primary office for treating patients, unless the Board has granted the supervising physician specific permission to establish a satellite operation.

7.10. A physician assistant may not independently bill patients for services provided.

7.11. A physician assistant may not independently delegate a task assigned to him or her by his or her supervising physician to another individual.

7.12. A physician assistant may not perform acupuncture in any form.

7.13. In the case of a physician assistant who has not been certified by the NCCPA, the presence of the supervising physician or alternate supervising physician is required on the premises where the noncertified physician assistant performs delegated medical tasks.

§11-1B-8. Identification of Physician Assistant.

8.1. When functioning as a physician assistant, the physician assistant must wear a name tag which identifies the physician assistant as a physician assistant.

§11-1B-9. Responsibilities of the Supervising Physician.

9.1. The supervising physician is responsible for observing, directing and evaluating the work, records and practices performed by the physician assistant.

9.2. The supervising physician shall notify the Board in writing of any termination of the employment of his or her physician assistant within 10 days of the termination.

9.3. The supervising physician is legally responsible for the actions of the physician assistant at all times. Also, in temporary situations not to exceed 21 days, when a licensed and fully qualified physician assistant is substituting for another licensed physician assistant, the acts and omissions of the substituting physician assistant are the legal responsibility of the absent physician assistant's designated supervising physician.

9.4. The temporary change in supervisory responsibility shall be provided to the Board in writing, within 10 days of the effective date of the substitution, signed by the affected supervising physicians and physician assistants, and clearly specifying the dates of substitution.

§11-1B-10. Disciplinary Action Against a Physician Assistant; Physical and Mental Examinations.

10.1. The license of a physician assistant shall be restricted, suspended or revoked by the Board in accordance with all the alternatives set out at W. Va. Code §30-3-14(i) when, after due notice and a hearing in accordance with the manner and form prescribed by the contested case hearing procedure, W. Va. Code §29A-5-1 et seq. and rules of the Board set out in Procedural Rule 11 CSR 3, if it is found:

10.1.a. That the physician assistant has held himself or herself out or permitted another person to represent him or her as a licensed physician;

10.1.b. That the physician assistant has in fact performed other than at the direction and under the supervision of a supervising physician licensed by the Board;

10.1.c. That the physician assistant has been delegated and performed a task or tasks beyond his or her competence and not in accordance with the job description approved by the Board;

10.1.d. That the physician assistant is a habitual user of intoxicants or drugs to such an extent that he or she is unable to safely perform as an assistant to the physician;

10.1.e. That the physician assistant has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude;

10.1.f. That the physician assistant has been adjudicated a mental incompetent or his or her mental condition renders him or her unable to safely perform as an assistant to a physician;

10.1.g. That the physician assistant has failed to comply with any of the provisions of this rule or the West Virginia Medical Practice Act; W. Va. Code §30-3-1 et seq.; or

10.1.h. That the physician assistant is guilty of unprofessional conduct which includes, but is not limited to, the following:

10.1.h.1. Misrepresentation or concealment of any material fact in obtaining any certificate or license or a reinstatement of any certificate or license;

10.1.h.2. The commission of an offense against any provision of state law related to the practice of physician assistants, or any rule promulgated under the law;

10.1.h.3. The commission of any act involving moral turpitude, dishonesty or corruption, when the act directly or indirectly affects the health, welfare or safety of citizens of this State. If the act constitutes a crime, conviction of the crime in a criminal proceeding is not a condition precedent to disciplinary action;

10.1.h.4. Conviction of a felony, as defined under the laws of this State or under the laws of any other state, territory or country except as provided in 10.2;

10.1.h.5. Misconduct in his or her practice as a physician assistant or performing tasks fraudulently, beyond his or her authorized scope of practice, with incompetence or with negligence on a particular occasion or negligence on repeated occasions;

10.1.h.6. Performing tasks as a physician assistant while the ability to do so is impaired by alcohol, drugs, physical disability or mental instability;

10.1.h.7. Impersonation of a licensed physician or another certified or licensed physician assistant;

10.1.h.8. Offering, undertaking or agreeing to cure or treat disease by a secret method, procedure, treatment or medicine; treating or prescribing for any human condition by a method, means or procedure which the physician assistant refuses to divulge upon demand of the Board; or using methods or treatment processes not accepted by a reasonable segment of the medical profession;

10.1.h.9. Prescribing a prescription drug, including any controlled substance under state or federal law, other than in good faith and a therapeutic manner in accordance with accepted medical standards;

10.1.h.10. Prescribing a controlled substance under state or federal law, to or for himself or herself, or to or for any member of his or her immediate family;

10.1.h.11. Prescribing a prescription drug, including any controlled substance under state or federal law, which is not included in the approved job description for that physician assistant or which is not included in the approved state formulary for physician assistants;

10.1.h.12. Administration of anabolic steroids for other than therapeutic purposes;

10.1.h.13. Failing to keep written records justifying the course of treatment of a patient, the records to include, but not be limited to, patient histories, examination and test results and treatment rendered, if any;

10.1.h.14. Exercising influence within a patient-physician assistant relationship for the purpose of engaging a patient in sexual activity; or

10.1.h.15. Failure to report a known or observed violation of this rule, and/or provisions of the West Virginia Medical Practice Act or rules.

10.2. The Board shall deny any application for a license in this state to an applicant who, and shall revoke the license of any physician assistant licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article.

10.2.a. A plea of nolo contendere has the same effect as a verdict or plea of guilt. Upon application of the physician assistant that has had his or her license revoked because of a drug related felony conviction, upon completion of any sentence of confinement, parole, probation or other court-ordered supervision and full satisfaction of any fines, judgments or other fees imposed by the sentencing court, the board may issue the applicant a new license upon a finding that the physician assistant is, except for the underlying conviction, otherwise qualified to practice: Provided, that the board may place whatever terms conditions or limitations it deems appropriate upon a physician assistant licensed pursuant to this subsection.

10.3. The board under any circumstances may require a physician assistant or person applying for licensure or other authorization to practice as a physician assistant in this state to submit to a physical or mental examination by a physician or physicians approved by the board.

10.3.a. A physician assistant submitting to any such examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing as a physician assistant in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication.

10.3.b. If a person fails or refuses to submit to any such examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice as a physician assistant competently and in compliance with the standards of acceptable and prevailing practice as a physician assistant.

§11-1B-11. Denial of Licensure of Physician Assistant.

11.1. The burden of satisfying the Board of his or her qualifications for licensure is on the applicant.

11.2. If the Board determines that an applicant has failed to satisfy the Board that he or she should be licensed, the Board shall immediately notify the applicant in writing of its decision and indicate in what respect the applicant has failed to satisfy the Board's requirements. The applicant shall be given a formal hearing before the Board upon request of the applicant filed with or mailed by registered or certified mail to the office of the Board of Medicine. The request must be filed within 30 days after receipt of the Board's decision, stating the reasons for the request. The Board shall within 20 days of receipt of the request, notify the applicant of the time and place of a public hearing, which shall be held within a reasonable time. Following the hearing, the Board shall determine on the basis of this rule whether the applicant is qualified to be licensed. The decision of the Board is final as to that application.

§11-1B-12. Complaint and Disciplinary Procedures.

12.1. The complaint and disciplinary process and procedures set forth in the contested case hearing procedure, W. Va. Code §29A-5-1 et seq., and in the Board Procedural Rule 11 CSR 3, also apply to the complaint process for physician assistants and to disciplinary actions instituted against physician assistants with the same provisions regarding the appeal of decisions made to circuit courts.

§11-1B-13. Physician Assistant Utilization.

13.1. The tasks a physician assistant may perform are those which require technical skill, execution of standing orders, routine patient care tasks and those diagnostic and therapeutic procedures which the supervising physician may wish to delegate to the physician assistant after the supervising physician has satisfied himself or herself as to the ability and competence of the physician assistant. The supervising physician may, with due regard for the safety of the patient and in keeping with sound medical practice, delegate to the physician assistant those medical

procedures and other tasks that are usually performed within the normal scope of the supervising physician's practice, subject to the limitations set forth in this section and the West Virginia Medical Practice Act, W. Va. Code §30-3-1 et seq., and the training and expertise of the physician assistant.

13.2. The physician assistant shall, under appropriate direction and supervision by a physician, augment the physician's data gathering abilities in order to assist the supervising physician in reaching decisions and instituting care plans for the physician's patients. A physician assistant shall have, as a minimum, the knowledge and competency to perform the following functions and may under appropriate supervision perform them; this standard job description is not intended to be specific or all-inclusive:

13.2.a. Screen patients to determine the need for medical attention;

13.2.b. Review patient records to determine health status;

13.2.c. Take a patient history;

13.2.d. Perform a physical examination;

13.2.e. Perform development screening examinations on children;

13.2.f. Record pertinent patient data;

13.2.g. Make decisions regarding data gathering and appropriate management and treatment of patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition;

13.2.h. Prepare patient summaries;

13.2.i. Initiate requests for commonly performed initial laboratory studies;

13.2.j. Collect specimens for and carry out commonly performed blood, urine and stool analyses and cultures;

13.2.k. Identify normal and abnormal findings in history, physical examination and commonly performed laboratory studies;

13.2.l. Initiate appropriate evaluation and emergency management for emergency situations; for example, cardiac arrest, respiratory distress, injuries, burns and hemorrhage;

13.2.m. Perform clinical procedures such as:

13.2.m.A. Venipuncture;

13.2.m.B. Electrocardiogram;

13.2.m.C. Care and suturing of minor lacerations, with injection of local anesthesia, if necessary;

13.2.m.D. Casting and splinting;

13.2.m.E. Control of external hemorrhage;

13.2.m.F. Application of dressings and bandages;

13.2.m.G. Removal of superficial foreign bodies;

13.2.m.H. Cardiopulmonary resuscitation;

13.2.m.I. Audiometry screening;

13.2.m.J. Visual screening; and

13.2.m.K. Carry out aseptic and isolation techniques.

13.2.n. Provide counseling and instruction regarding common patient problems;

13.2.o. Execute documents at the direction of and for the supervising physician;

13.2.p. Prepare patient discharge summaries if physician assistant has been directly involved in patient care;

13.2.q. Assist in surgery; and

13.2.r. Assist physician under ~~direct~~ personal supervision in a manner by which to learn and become proficient in new procedures.

13.3. A physician assistant making application to the Board for job description changes or additions shall document that his or her training and competency supports the request.

13.4. A physician assistant may pronounce death provided that:

13.4.a. It is contained in his or her job description;

13.4.b. The physician assistant has a need to do so within his or her scope of practice; and

13.4.c. That the pronouncement is in accordance with applicable West Virginia law and rules.

13.5. The supervising physician shall monitor and supervise the activities of the physician assistant and require appropriate documentation, including organized medical records

with symptoms, pertinent physical findings, impressions and treatment plans indicated. The supervising physician may also provide written protocols for the use of the physician assistant in the performance of delegated tasks. The established protocols shall be available for public inspection upon request and may be reviewed by the Board as required.

13.6. Provision shall be made for the supervising physician to see each regular patient periodically; for example, every third visit.

13.7. If the supervising physician absents himself or herself in such a manner or to such an extent that he or she is unavailable to aid the physician assistant when required, the supervising physician shall not delegate patient care to his or her physician assistant unless he or she has made appropriate arrangements for an alternate supervising physician. The legal responsibility for the acts and omissions of the physician assistant remains with the supervising physician at all times.

13.8. It is the responsibility of the supervising physician to ensure that supervision is maintained in his or her absence.

13.9. No physician assistant may be utilized in an office or clinic separate and apart from the supervising physician's primary place for meeting patients unless the supervising physician has obtained specific approval from the Board. A supervising physician may supervise only 2 satellite operations. The criteria for granting the approval ~~is~~ are that the supervising physician demonstrates the following to the satisfaction of the Board:

13.9.a. That the physician assistant will be utilized in a designated manpower shortage area or an area of medical need as defined by the Board;

13.9.b. That there is adequate provision for direct communication between the physician assistant and the supervising physician and that the distance between the main office and the satellite operation is not so great as to prohibit or impede appropriate emergency services;

13.9.c. That provision is made for the supervising physician to see each regular patient periodically; for example, every third visit; and

13.9.d. That the supervising physician visits the remote office at least once every 14 days and demonstrate that he or she spends enough time on site to provide supervision and personal and regular review of the selected records upon which entries are made by the physician assistant. Patient records shall be selected on the basis of written criteria established by the supervising physician and the physician assistant and shall be of sufficient number to assure adequate review of the physician assistant's scope of practice.

13.10. The supervising physician shall maintain appropriate records of supervisory contact and shall make them available for Board review if required. A supervising physician who fails to maintain the standards required for a satellite operation may lose the privilege to maintain a satellite operation.

13.11. Designated representatives of the Board are authorized to make on-site visits to the offices of supervising physicians and medical care facilities utilizing physician assistants to review the following:

13.11.a. The supervision of physician assistants;

13.11.b. The maintenance of and compliance with, any protocols;

13.11.c. Utilization of physician assistants in conformity with the provisions of this section;

13.11.d. Identification of physician assistants; and

13.11.e. Compliance with licensure and registration requirements.

13.12. The Board reserves the right to review physician assistant utilization without prior notice to either the physician assistant or the supervising physician. It is a violation of this rule for a supervising physician or a physician assistant to refuse to undergo a review by the Board.

13.13. The provisions of this section shall not be construed to require medical care facilities to accept physician assistants or to use them within their premises. It is appropriate for the physician assistant to provide services to the hospitalized patients of his or her supervising physician under the supervision of the physician, if the medical care facility permits it.

13.14. Physician assistants employed directly by medical care facilities shall perform services only under the supervision of a clearly identified supervising physician, and the physician shall supervise no more than 3 physician assistants or their equivalent, except that a supervising physician may supervise up to 4 hospital employed physician assistants. Medical facility staff and attending physicians who provide medical direction to or utilize the services of physician assistants employed by a health care facility shall be considered to be alternate supervising physicians.

13.15. So long as the facility permits, a physician assistant may:

13.15.a. Assess and record the patient's progress within the parameters of an approved job description and report the patient's progress to the supervising physician;

13.15.b. Make entries in medical records and patient charts so long as an appropriate mechanism is established for authentication by the supervising physician through countersignature; and

13.15.c. Write and sign diagnostic and treatment orders to be countersigned later by his or her supervising physician.

13.16. A physician assistant may provide medical care or services in an emergency department so long as he or she has training in emergency medicine, is subject to standard

emergency protocols, functions within the parameters of an approved job description which govern his or her performance and is under the supervision of a physician with whom he or she has ready contact and who is willing to assume full responsibility for the physician assistant's performance.

13.17. No physician assistant shall render nonemergency outpatient medical services until the patient has been informed that the individual providing care is a physician assistant.

13.18. It is the supervising physician's responsibility to be alert to patient complaints concerning the type or quality of services provided by the physician assistant.

13.19. In the supervising physician's office and any satellite operation, a notice plainly visible to all patients shall be posted in a prominent place explaining the meaning of the term "Physician Assistant". The physician assistant's license must be prominently displayed in the office and any satellite operation in which he or she may function. A physician assistant may obtain a duplicate license from the Board if required.

13.20. The physician assistant is required to notify the Board of any ending of his or her employment within 10 days. The physician assistant must provide the Board with his or her new address and telephone number of his or her residence, address and telephone number of employment and name of his or her supervising physician.

13.21. The supervising physician is required to notify the Board of any ending of his or her supervision of a physician assistant within ten (10) days.

§11-1B-14. Limited Prescriptive Privileges for Physician Assistants.

14.1. A physician assistant may be authorized by the Board to issue written, electronic, or oral prescriptions for certain medicinal drugs at the direction of his or her supervising physician if all of the following conditions are met:

14.1.a. The physician assistant has performed patient care services for a minimum of 2 years immediately preceding the submission to the Board of the application requesting limited prescriptive privileges. The first year of patient care services may be as a student in an approved physician assistant program;

14.1.b. The physician assistant has successfully completed an accredited course of instruction in clinical pharmacology approved by the Board of not less than 4 semester hours. The course of instruction may be completed within an approved undergraduate or graduate program for physician assistants. Physician assistants who have not met this requirement shall complete an additional course of study approved by the Board in which 15 contact hours equals 1 semester hour. The Board may, at its discretion, grant up to 15 contact hours for 2 or more years of prescribing experience in other jurisdictions;

14.1.c. The physician assistant obtains Board approval of his or her job description which includes the categories of drugs the physician assistant proposes to prescribe at the direction of his or her supervising physician; ~~and~~

14.1.d. Beginning July 1, 2013, the physician assistant shall provide evidence of completion of a minimum of three (3) hours of drug diversion training and best practice prescribing of controlled substances training within two (2) years prior to his or her application submission to the Board for limited prescriptive privileges, and,

14.1.~~d.~~ e. The physician assistant continues to maintain national certification as a physician assistant, and in meeting the national certification requirements, completes a minimum of 10 hours of continuing education in rational drug therapy in each certification period. The ten (10) hours may be part of the one hundred (100) hours of continuing education required in subdivision 15.1. of this rule.

14.2. Evidence of completion of all conditions for the granting of limited prescriptive privileges shall be included with the physician assistant's biennial renewal application and report to the Board.

14.3. The Board is responsible for approving a formulary classifying pharmacologic categories of all drugs which may be prescribed by a physician assistant authorized by the Board to prescribe drugs. The formulary shall exclude Schedules I and II of the Uniform Controlled Substances Act, ~~anticoagulants,~~ antineoplastics, radio-pharmaceuticals, general anesthetics and radiographic contrast materials. The formulary may be revised annually. ~~and shall include the following designated sections:~~

~~14.3.a. Section a. A choice of drugs commonly used in primary care outpatient settings to be prescribable by physician assistants who have completed an accredited course of study in clinical pharmacology approved by the Board.~~

~~14.3.b. Section b. Additional drugs used less commonly in primary care outpatient settings to be prescribable by physician assistants who have satisfied the requirements to prescribe Section a. drugs set forth under paragraph 14.3.a., of this rule. In addition, Section b. drugs may be prescribed by physician assistants only in the following limited situations:~~

~~14.3.b.1. On a direct order from the supervising physician to the physician assistant during consultation at the time of the patient's examination by the physician assistant, which is specifically noted in the patient's chart; or~~

~~14.3.b.2. On a refill prescription for a previously diagnosed and stable patient whose prescription was initiated by the supervising physician.~~

14.4. A prescription drug not included in the approved formulary shall not be contained in the job description of any physician assistant.

14.5. Prescriptions issued by a physician assistant shall be issued consistent with the supervising physician's directions or treatment protocol provided to his or her physician assistant. The maximum dosage shall be indicated in the protocol and in no case may the dosage exceed the manufacturer's recommended average therapeutic dose for that drug.

14.6. Each prescription and subsequent refills given by the physician assistant shall be entered on the patient's chart.

14.7. Prescriptions by a physician assistant approved for limited prescriptive privileges shall contain information including the name of the supervising physician, the name of the approved physician assistant, the physical address of the health care facility, the telephone number of the health care facility, the patient's name and address and the date the prescription is issued. The physician assistant shall sign or electronically affix his or her name to each prescription followed by the letters "PA-C".

14.8. Physician assistants authorized to issue prescriptions for Schedules III through V controlled substances shall include the Federal Drug Enforcement Administration number issued to that physician assistant. Prescriptions written for Schedule III drugs shall be limited to a seventy-two (72) hour supply and may not authorize a refill. The maximum amount of Schedule IV or Schedule V drugs shall be no more than ninety (90) dosage units or a thirty (30) day supply, whichever is less~~.~~, and may not authorize a refill.

14.9. Prescriptions for other legend drugs shall not be prescribed or refillable for a period exceeding six (6) months, except that an annual supply of any drug, other than a controlled substance, may be prescribed for the treatment of a chronic condition as defined in 2.1.b., other than chronic pain management: *Provided,* an annual supply may be prescribed or dispensed in smaller increments, at the discretion of the practitioner, in order to assess the drug's therapeutic efficacy: *Provided further,* the chronic disease being treated shall be noted on each such prescription by the physician assistant.

14.10. The Board of Medicine shall provide the Board of Pharmacy with a list of physician assistants with limited prescriptive privileges along with the categories of drugs or drugs within a category that the physician assistant has been authorized to prescribe, and shall update the list within ten (10) days after additions or deletions are made.

14.11. Nothing in this rule shall be construed to permit any physician assistant to independently prescribe or dispense drugs.

14.12. Physician assistants given limited prescriptive privileges under this subsection may accept professional samples as defined in Board of Medicine Rules for Dispensing of Legend Drugs by Physicians and Podiatrists, 11 CSR 5 2.10., on behalf of their respective supervising physician.

§11-1B-15. Continuing Education.

15.1. A physician assistant, as a condition of his or her biennial license renewal, shall provide to the Board written documentation of participation in and successful completion during the preceding two (2) year period of a minimum of one hundred (100) hours of continuing education. A minimum of fifty hours shall be designated as Category I by either the American Medical Association, American Academy of Physician Assistants or the Academy of Family Physicians, and the remaining hours to total one hundred (100) may be obtained from Category I or Category II so designated by the association or either academy. The written documentation may consist of current NCCPA certification.

15.2. For those individuals who are not NCCPA certified, written documentation shall consist of original certificates from the entities named in subdivision 15.1. of this rule, evidencing participation in and successful completion of the minimum one hundred (100) hours of continuing education as described in subdivision 15.1. of this rule.

15.3. A physician assistant shall submit all written documentation to the Board, with the completed biennial renewal form received prior to the first day of April of the year of renewal of the physician assistant license.

15.4. In addition, beginning July 1, 2013, unless a physician assistant has completed and timely provided to the Board a Board-developed certification waiver form attesting that he or she has not prescribed, administered, or dispensed a controlled substance during the entire previous reporting period, every physician assistant as a prerequisite to license renewal shall complete a minimum of three (3) hours of drug diversion training and best practice prescribing of controlled substances training during the previous reporting period, and,

15.4.5. A physician assistant with prescriptive privileges shall submit documentation of ten (10) hours of continuing education in rational drug therapy in each certification period. The ten (10) hours may be part of the one hundred (100) hours of continuing education required in subdivision 15.1. of this rule.

15.5.6. The license of a physician assistant who fails to submit written documentation as set forth in subdivision 15.3. of this rule shall automatically expire until the written documentation is submitted to and approved by the Board.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: LICENSURE, DISCIPLINARY AND COMPLAINT PROCEDURES, CONTINUING EDUCATION, PHYSICIAN ASSISTANTS

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: WEST VIRGINIA BOARD OF MEDICINE

Address: 101 DEE DRIVE, SUITE 103

CHARLESTON, WV 25311

Phone Number: 304.558.2921 x70005 Email: robert.c.knittle@wv.gov

Fiscal Note Summary

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

There is no additional cost nor revenue to state government related to this proposed rule.

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	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title:

Rule Title: LICENSURE, DISCIPLINARY AND COMPLAINT PROCEDURES, CONTINUING EDUCATION, PHYSICIAN ASSISTANTS

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

n/a

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.

none

Date: August28 2012

Signature of Agency Head or Authorized Representative

Brent C Knittle

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: August 28 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) WEST VIRGINIA BOARD OF MEDICINE
101 DEE DRIVE, SUITE 103
CHARLESTON, WV 25311

LEGISLATIVE RULE TITLE: Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants

1. Authorizing statute(s) citation West Virginia Code § 30-1-7a and § 30-3-16(r)

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

   July 9, 2012

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

   Letter to WVAPA President (attached)

   Posting on Board of Medicine Website

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

   August 10, 2012

   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)

August 28, 2012

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

Robert C. Knittle, Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311
304.558.2921 x70005
robert.c.knittle@wv.gov

g. **<u>IF DIFFERENT</u> 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)

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.

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 _____

State of West Virginia
Board of Medicine

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone 304.558.2921
Fax 304.558.2084
www.wvbom.wv.gov

July 9, 2012

Greg Selasky, P.A.-C., President
West Virginia Association of Physician Assistants
491 Michigan Avenue
Morgantown, West Virginia 26501

Re: 11 CSR 1B, Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants

Dear Mr. Selasky:

For your information, enclosed is the proposed rule filed today by the Board of Medicine. Note the scope of the rule, and please make this information available to your membership. The proposed rule is available on the Board's website as well at www.wvbom.wv.gov. There will be a comment period on the legislative rule ending August 10, 2012, at 3:00 p.m.

Sincerely,

Robert C. Knittle

RCK:eb

Enclosure

Rodecker, Deborah Lewis

From: Dean Wright <dwright@stmmedmgmt.org>
Sent: Tuesday, August 07, 2012 4:27 PM
To: Rodecker, Deborah Lewis
Cc: Greene, Wendy L
Subject: Comment on 11 CSR 1B, Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants

Dear Mrs. Rodecker,

In reviewing 11 CSR 1B, Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants while researching some issues related to physician assistants, I noticed that in section 13.2.r. of the current rule pertaining to a standard job description that reference was made to the PA assisting the " physician under **direct supervision** in a manner by which to learn and become proficient in new procedures." Based upon the newly added definition of "direct supervision" in section 2.1.f. and definition of "personal supervision" in section 2.1.m. I feel that 13.2.r. should be changed to "Assist physician under personal supervision in a manner by which to learn and become proficient in new procedures". This would more accurately state what the intent of the level of supervision was to be to learn new procedures. This would also need to be changed in the PA application / basic job description.

This would be my comment and recommendation as Chairman of the Physician Assistant Committee. Should you have any questions or comments about this change, please contact me. Thank you very much.

Respectfully,

K. Dean Wright, PA-C
Chairman of the PA Committee WVBOM

State of West Virginia
Board of Medicine

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Telephone 304.558.2921
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www.wvbom.wv.gov

REV. O. RICHARD BOWYER
PRESIDENT

MARIAN SWINKER, MD, MPH
SECRETARY

MICHAEL L. FERREBEE, MD
VICE PRESIDENT

ROBERT C. KNITTLE
EXECUTIVE DIRECTOR

August 28, 2012

Kenneth Dean Wright, P.A.-C.
St. Mary's Cardiovascular & Thoracic Surgeons
Highlawn Medical Building
2828 1st Avenue, Suite 200
Huntington, West Virginia 25702

Re: Your Comment on Proposed Legislative Rule 11 CSR 1B

Dear Mr. Wright:

The West Virginia Board of Medicine adopted your suggestion for the above-proposed rule and appreciates your attention to the difference between "direct" supervision and "personal" supervision. You will find that when filed, the Agency Approved Rule at 11 CSR 1B 13.2.r. substitutes "personal supervision" for "direct supervision" when a physician assistant is learning new procedures. That change is for the public interest and safety, and we thank you for your assistance.

Best wishes to you.

Sincerely,

Robert C. Knittle

RCK:eb

Reasons for Changes

"Direct supervision" was changed to "personal supervision" in one portion of the proposed rule to better protect the public.