

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

Form #3

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FILED

2012 AUG 28 AM 10: 01

OFFICE OF THE 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: West Virginia Code § 30-1-7a and § 30-3-12

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: CONTINUING EDUCATION FOR PHYSICIANS AND PODIATRISTS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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


Authorized Signature

SUMMARY OF CONTENT AND STATEMENT OF CIRCUMSTANCES
REQUIRING THE RULE 11 CSR 6

Amendments made to 11 CSR 6 are made pursuant to provisions in West Virginia Code § 30-1-7a which requires that physicians and podiatrists must complete drug diversion training and best practice prescribing of controlled substances training as part of their continuing education requirements, unless exempted due to not prescribing, administering or dispensing such drugs. New definitions are among the provisions added for clarification.

Pursuant to West Virginia Code § 30-3-12, amendments are made as well to provisions about how to acquire appropriate continuing medical education based on changes in the American Board of Medical Specialties (ABMS) and its Maintenance of Certification program. A clarification is added regarding the continuing medical education which must be documented to the Board of Medicine in cases where a license has expired, lapsed, surrendered or been suspended on a non-disciplinary basis for lack of adequate continuing medical education.

The changes are all made to conform to new law and upgrading of medical standards nationally.

TITLE 11
LEGISLATIVE RULE
BOARD OF MEDICINE

FILED

2012 AUG 28 AM 10: 01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 6

CONTINUING EDUCATION FOR
PHYSICIANS AND PODIATRISTS

§11-6-1. General.

1.1. Scope. -- These legislative rules address requirements for continuing education satisfactory to the Board for physicians and podiatrists.

1.2. Authority. -- W. Va. Code §30-3-12 and § 30-1-7a.

1.3. Filing Date. -- ~~April 4, 2008.~~

1.4. Effective Date. -- ~~July 1, 2008.~~

§11-6-2. Definitions.

2.1. "ABMS" means American Board of Medical Specialties.

2.2. "Board" means the West Virginia Board of Medicine.

2.3. "Chronic pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three (3) continuous months. For purposes of this rule, "chronic pain" does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.

2.4. "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 § 60-2-204 through 212.

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

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

b. Epidemiology of chronic pain and misuse of opioids.

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

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

e. 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.

f. Case study of a patient with chronic pain.

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

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

i. Compliance with controlled substances laws and rules.

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

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

2.6. "Maintenance of certification" means on ongoing process of education and assessment for the twenty four (24) member boards of the ABMS board certified physicians to improve practice performance in six (6) core competencies: professionalism, patient care and professional skills, medical knowledge, practice based learning and improvement, interpersonal and communication skills, and systems based practice.

2.7. "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.

2.8. "Reactivation" means a return to active status of a license which has been in an expired, lapsed, surrendered or suspended status for more than one (1) year immediately preceding the request for reactivation.

2.9. "Suspended license" for purposes of this rule means a license suspended on a non-disciplinary basis under the provisions of West Virginia Code § 30-3-12 for failure to timely provide required continuing education to the Board.

§11-6-2.3. Continuing Education Satisfactory to the Board.

2-3.1. Physicians. -- Beginning July 1, 1993, successful completion of a minimum of fifty (50) hours of continuing medical education satisfactory to the Board during the preceding two (2) year period is required for the biennial renewal of a medical license. Beginning July 1, 2008, at least thirty (30) hours of the required fifty (50) hours must be related to the physician's area or areas of specialty.

2-3.2. In order to acquire continuing medical education satisfactory to the Board, a physician may:

2-3.2.1. Take continuing medical education designated as Category I by the American Medical Association or the American Academy of Family Physicians, or

2-3.2.2. Teach medical education courses or lecture to medical students, residents, or licensed physicians, or serve as a preceptor to medical students or residents: Provided, that a physician may not count more than twenty (20) hours in this category toward the required fifty (50) hours of continuing medical education.

2-3.2.3. Sit for and pass a certification or recertification examination of one of the American Board of Medical Specialties ABMS member boards, and receive certification or recertification from said board, or provide documentation of successful involvement in maintenance of certification from said ABMS member board during the two (2) years subsequent to the last medical license renewal in West Virginia from said board: Provided, that a physician may not count more than ~~twenty five (25)~~ forty seven (47) hours in this category toward the required fifty (50) hours of continuing medical education: Provided, however, that any physician who timely provides to the Board a Board-developed certification form and waiver request attesting that he or she has not prescribed, administered, or dispensed a controlled substance during the entire previous reporting period may count fifty (50) hours in this category toward the required fifty (50) hours of continuing medical education. Certification, or recertification, or current successful involvement in maintenance of certification from any board other than one of the American Board of Medical Specialties ABMS member boards does not qualify the recipient for any credit hours of continuing medical education.

3.3. Beginning May 1, 2014, unless a physician has completed and timely provided to the Board a Board-developed certification form and waiver request

attesting that he or she has not prescribed, administered, or dispensed a controlled substance during the entire previous reporting period, every physician 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, which three (3) such hours may be provided only by a Board-approved program. Said three (3) hours shall be part of the fifty (50) total hours of continuing education required and not three (3) additional hours.

There are no other types or categories of continuing medical education satisfactory to the Board.

~~2.3~~ 3.4. Podiatrists. -- Beginning July 1, 1993, successful completion of a minimum of fifty (50) hours of continuing podiatric education satisfactory to the Board during the preceding two (2) year period is required for the biennial renewal of a podiatric license. Beginning July 1, 2008, at least thirty (30) hours of the hours must be related to the podiatrist's area or areas of specialty.

~~2.4~~ 3.5. In order to acquire continuing podiatric education satisfactory to the Board a podiatrist may:

~~2.4~~ 3.5.1. Take continuing podiatric education approved by the Council on Podiatric Medical Education, or

~~2.4~~ 3.5.2. Take continuing podiatric education given under the auspices of the podiatry colleges in the United States, or

~~2.4~~ 3.5.3. Take continuing medical education designated as Category I by the American Medical Association or the American Academy of Family Physicians.

~~2.4~~ 3.5.4. Take continuing podiatric education given under the auspices of the West Virginia Podiatric Medical Association.

~~2.4~~ 3.5.5. Teach podiatric education courses or lectures in podiatry taught to podiatric students, residents, or licensed podiatrists, or serve as a preceptor to podiatric students or residents: Provided, that a podiatrist may not count more than twenty (20) hours in this category toward the required fifty (50) hours of podiatric education.

3.6. Beginning May 1, 2014, unless a podiatrist 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 podiatrist 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. Said three (3) hours shall be part of the fifty (50) total hours of continuing education required and not three (3) additional hours.

There are no other types or categories of continuing podiatric education satisfactory to the Board.

2-5 3.7. Hours; Physicians and Podiatrists. -- For the purposes of this section, one (1) clock hour of attendance equals one (1) hour of continuing education.

§11-6-34. Certification of Successful Completion of Continuing Education Requirements.

3.4.1. Certification. -- Every applicant for licensure renewal shall timely submit to the Board a certification of the successful completion of a minimum of fifty (50) hours of continuing education satisfactory to the Board during the preceding two (2) year period. If an applicant fails to submit such certification in a timely fashion the applicant's license shall automatically expire.

3.4.2. Form of Certification. -- The Board shall imprint on its biennial renewal application forms a certification requiring the applicant's signature and the date after an attestation to the truth and correctness of the applicant's statements pertaining to the successful completion of the required continuing education. The certification shall include a statement that any license issued from the application is based on the truth of the applicant's statements and that if false information is submitted in the application, such an act constitutes good cause for the revocation of the applicant's license to practice in the State of West Virginia.

3.4.3. Timely Submission of Certification. -- In order for a certification to be submitted to the Board in a timely fashion, the certification must be received in the Board offices before the first day of July of the year of renewal of the license.

§11-6-45. Written Documentation of Successful Completion of Continuing Education Requirements.

4.5.1. Audits. -- The Board may conduct such audits and investigations as it considers necessary to determine if licensees are complying with continuing education requirements and if the statements made on the Board's renewal application forms as to continuing education are accurate.

4.5.2. When Written Documentation Requested. -- Any licensee is required to provide supporting written documentation of the successful completion of the continuing education certified as received on the biennial renewal application form, if the Board requests such written documentation in writing. The licensee shall provide the Board with the written documentation so that it is received by the Board within thirty (30) days of the licensee's receipt of the written request.

4.5.3. Automatic Expiration of License. -- When a licensee's license automatically expires for failure to timely submit to the Board a certification of successful completion of a minimum of fifty (50) hours of continuing education

satisfactory to the Board, the license shall remain expired until such time as the certification, as set forth in ~~section 3 of these regulations~~ 4 of this rule, is received by the Board and until such time as all supporting written documentation is submitted to and approved by the Board.

~~4-5.4.~~ Failure or Refusal to Provide Written Documentation. -- Failure or refusal of a licensee to provide written documentation requested by the Board as set forth in ~~section 4.2 of this regulation~~ 5.2 of this rule is prima facie evidence of renewing a license to practice medicine or podiatry by fraudulent misrepresentation and the licensee is subject to disciplinary proceedings under W. Va. Code §30-3-14.

~~4-5.5.~~ Inactive License. -- Beginning July 1, 1993, in the case of a licensee who holds an inactive license and who makes a written request to the Board for an active license, the licensee shall submit written documentation of successful completion of a minimum of fifty (50) hours of continuing education as required in ~~section 2 of these regulations~~ 3 of this rule. The Board shall not consider a request for a change from an inactive to an active license until all written documentation accompanied by a certification in accordance with ~~section 3 of these regulations~~ 4 of this rule is submitted to and approved by the Board.

5.6. Expired, Lapsed, Surrendered, or Suspended License. – Beginning June 1, 2013, in the case of a former licensee who makes a written request to the Board for reactivation of a license, the former licensee shall submit written documentation of successful completion of a minimum of fifty (50) hours of continuing education as required in section 3 of this rule: Provided, in order for reactivation to be granted by the Board, the former licensee shall not be required by the Board to submit such written documentation for more than fifty (50) hours obtained during each of the two (2) full and complete renewal cycles immediately preceding the reactivation request.

FISCAL NOTE FOR PROPOSED RULES

CONTINUING EDUCATION FOR PHYSICIANS AND PODIATRISTS

Rule Title: _____

Type of Rule: 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: _____

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: August 28 2012

Signature of Agency Head or Authorized Representative

Robert C. Knittle

- 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 phone/fax/e-mail numbers** 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. **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)

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*

REV. O. RICHARD BOWYER
PRESIDENT

MARIAN SWINKER, MD, MPH
SECRETARY

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MICHAEL L. FERREBEE, MD
VICE PRESIDENT

ROBERT C. KNITTLE
EXECUTIVE DIRECTOR

July 9, 2012

Jeffrey Jay Findling, Jr., D.P.M.
President, West Virginia Association for Podiatric Medicine
102 Park Place Drive
Morgantown, West Virginia 26508

Re: 11 CSR 6, Continuing Education for Physicians and Podiatrists

Dear Dr. Findling:

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



State of West Virginia *Board of Medicine*

REV. O. RICHARD BOWYER
PRESIDENT

MARIAN SWINKER, MD, MPH
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MICHAEL L. FERREBEE, MD
VICE PRESIDENT

ROBERT C. KNITTLE
EXECUTIVE DIRECTOR

July 9, 2012

The Honorable Evan H. Jenkins, Executive Director
West Virginia State Medical Association
4307 MacCorkle Avenue, SE
P. O. Box 4106
Charleston, West Virginia 25364

Re: 11 CSR 6, Continuing Education for Physicians and Podiatrists

Dear Senator Jenkins:

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.

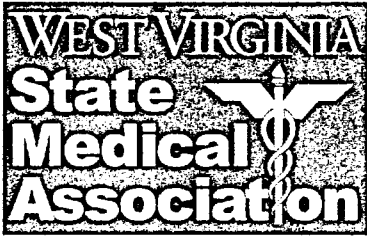
Sincerely,

A handwritten signature in black ink that reads "Robert C. Knittle".

Robert C. Knittle

RCK:eb

Enclosure



August 9, 2012

Mr. Robert C. Knittle, MS
Executive Director
WV Board of Medicine
101 Dee Drive
Suite 103
Charleston, WV 25311

Dear Mr. Knittle,

Thank you for the opportunity to comment on behalf of the members of the West Virginia State Medical Association on the Board's proposed rule 11 CSR 6 "*Continuing Education for Physicians and Podiatrists*". We offer the following comments and suggestions regarding various provisions in order of their placement in the rule.

First, under *Continuing Education Satisfactory to the Board* section 3.1 on page 3, the last sentence reads: "Beginning July 1, 2008 at least thirty (30) hours of the hours must be related to the physician's area or areas of specialty". Assuming that sentence is referencing the fifty (50) total hours of continuing medical education required for the biennial renewal of a medical license, we recommend for clarification that "required fifty (50)" be inserted after "the" and before "hours" to read as follows:

"Beginning July 1, 2008, at least thirty (30) hours of the required fifty (50) hours must be related to the physician's area or areas of specialty".

In regard to the new language in section 3.2.3 that recognizes the American Board of Medical Specialties (ABMS) maintenance of certification (MOC) requirements as applicable to fulfill 47 hours (or 50 hours for those who do not prescribe controlled substances) of the 50 total hours required for continuing medical education, we applaud the Board for its progressive thinking. We understand that much work has been done on the Federal level at the Federation of State Medical Boards on maintenance of licensure standards (MOL). Accordingly, much work has been done by the American Medical Association on this topic and in looking at how MOL standards coincide and support MOC requirements. Understanding that over 80 percent of practicing physicians are certified by one of the 24 member boards of the ABMS, we believe that the Board's determination that participation in MOC represents substantial compliance with licensure requirements is a positive step forward and avoids unnecessary duplication of work. For those physicians who are not specialty board certified by one of the ABMS member boards and would not be eligible for

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MOC, this rule leaves in place a necessary parallel process for meeting the continuing medical education requirements for licensure.

We do believe clarification is needed to better define the term “current” in section 3.2.3 in relation to successful involvement in MOC. Section 3.1 of the rule mandates the required hours be completed “during the preceding two (2) year period ... for the biennial renewal of a medical license”. The proposed rule should specify under section 3.2.3 at what point in time a licensee’s “current successful involvement in maintenance of certification” is necessary to meet the CME requirement.

In regard to the newly established requirement for physicians to complete a minimum of three (3) hours of continuing medical education in “*drug diversion training and best practice prescribing of controlled substance training*” as required by SB 437, the WVSMA offers two suggestions regarding section 3.3 on pages 3 and 4. We suggest that language be added to clarify that the said three hours of continuing education be “provided only by a Board approved program(s)”. This requirement will avoid any possibility of uncertainty about whether or not a continuing medical education program meets the training requirements and the risk of unnecessary retro-active denials of CME upon audits that physicians experienced with the previous requirement for *end of life care and pain management*.

We also recommend that the Board require that the provider(s) of the Board approved program(s) maintain a record of attendance of each individual who successfully completes the CME training that can be used to confirm their compliance with the requirement in the event the licensee can not locate his/her paper CME attendance certificate.

Lastly, we support the change that the Board is making in regard to the process for reactivation of licenses of formerly licensed physicians in section 5.6 on page 6. We believe this change will prove to be less onerous on physicians trying to re-enter practice in the state while still ensuring the highest of competency and quality of the licensees.

Again, I thank you on behalf of the members of the West Virginia State Medical Association for the opportunity to provide our comment on this proposed rule. If you have any questions regarding the comments and suggestions we have made, please do not hesitate to contact Amy N. Tolliver, MS Government Relations Specialist at 304-925-0342 x 25 or Amy@wvsma.org.

Sincerely,



MaryAnn Cater, DO
President
West Virginia State Medical Association



State of West Virginia *Board of Medicine*

REV. O. RICHARD BOWYER
PRESIDENT

MICHAEL L. FERREBEE, MD
VICE PRESIDENT

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ROBERT C. KNITTLE
EXECUTIVE DIRECTOR

August 28, 2012

Mary Ann Cater, D.O., President
West Virginia State Medical Association
4307 MacCorkle Avenue, SE
P. O. Box 4106
Charleston, West Virginia 25364

Re: Your Comments on Proposed Legislative Rule 11 CSR 6

Dear Dr. Cater:

Thank you for your August 9, 2012, letter containing comments on the Board's above-proposed Legislative Rule. Your kind remarks are much appreciated. All of the suggestions made on behalf of the West Virginia State Medical Association were found to be worthy by Board of Medicine members and therefore have been adopted in the Agency Approved Rule. The Board is grateful for your assistance.

Best wishes to you.

Sincerely,


Robert C. Knittle

RCK:eb

pc: Evan H. Jenkins, Executive Director

Reasons for Changes

The changes suggested were all minor but added to the understanding of the rule's requirements.