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FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)

AGENCY **Medicine**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **11-01A**
RULE NAME **Licensing and Disciplinary Procedures: Physicians; Podiatrists**

CITE AUTHORITY §30-3-7(a)(1) and §30-1D-1(d)

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Thursday, June 30, 2016 4:30 PM

WRITTEN COMMENTS MAY BE MAILED TO
Robert C. Knittle, Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, West Virginia 25311
Robert.C.Knittle@wv.gov

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Robert C Knittle -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

Title-Series: 11-01A Rule Id: 10137 Document: 27542

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FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
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RULE NAME **Licensing and Disciplinary Procedures: Physicians; Podiatrists**

CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

Series 1A establishes the rules of the West Virginia Board of Medicine regarding the licensing and disciplinary procedures for allopathic physicians and for podiatrists. The proposed amendments to this rule are intended to: (1) modernize and clarify language regarding the licensing process for physicians and podiatrists without making any substantive changes to existing licensure requirements; (2) incorporate the new requirements of W. Va. Code§30-1D-1(d) (enacted in the 2016 regular session as HB4340), which direct the Board to promulgate rules regarding the implementation of mandatory criminal history background checks for all Board applicants beginning in July 2017; (3) clarify the confidentiality of the Boards complaint and investigation process as well as the Boards ability to cooperate with other state and federal agencies with concurrent or overlapping areas of jurisdiction; (4) modify the disciplinary misconduct standards to permit the prescribing of amphetamine or sympathomimetic amine drugs for the treatment of binge-eating disorder which is consistent with current FDA approval and guidance; (5) modernize the nomenclature utilized in Section 13 related to the reporting of medical professional liability claims; (6) eliminate redundant and outdated reporting provisions; (7) eliminate redundant appeal language; and (8) incorporates a sunset provision as required by W. Va. Code §29A-3-19(b).

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

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RULE NAME **Licensing and Disciplinary Procedures: Physicians; Podiatrists**

CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

PRIMARY CONTACT
Robert C. Knittle, Executive Director
101 Dee Drive, Suite 103

Charleston, STATE ZIP

SECONDARY CONTACT
Jamie C. Frame
101 Dee Drive, Suite 103

Charleston, STATE SECONDARY ZIP SECONDARY

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SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

The Board does not anticipate any financial impact.

Robert C Knittle -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

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CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

N/A

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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.

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Robert C Knittle -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY **Medicine**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **11-01A**
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CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

In promulgating an amendment to Series 1A to provide for the requirements of HB4340, the Board recognized that the language of this rule regarding the requirements for licensure had not been updated or modernized in some time and undertook a revision of the sections of the rule which relate to the application and licensure process for physicians and podiatrists to modernize the language and to reorganize and consolidate portions of the rule for clarity, ease of reference by applicants, and to eliminate outdated language and redundancies throughout.
A summary of the content of the changes appears below:
Section One: The Scope has been amended to add updated authority and section 1.5 has been added to provide for a sunset provision as required by Senate Bill 619.
Section Three: The definition section has been revised to remove unnecessary definitions and to add one new definition.
Section Four: This section has been revised and restructured to incorporate qualification and application information for allopathic physicians applying for an initial license or a license by endorsement. The language has been modernized and redundant and/or obsolete provisions have been eliminated, and it now contains provisions related to qualifications and application requirements formerly found in Sections 4, 6, 7 and 8. No changes have been made to the qualifications for physician licensure.
Existing additional qualifications which are

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Yes
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SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

required for foreign medical school graduates are now set forth in Section 5, required examinations are treated separately under a consolidated Section 7, temporary licensure for physicians and podiatrists has been relocated to Section 9, and licensure status and renewal for physicians and podiatrists are now in Section 10.
Section 5: This section previously contained obsolete language regarding examinations by the Board which the Board is no longer charged with conducting. The revised Section 5 sets forth the existing additional licensure qualification requirements for foreign medical school graduates. No changes have been made to these requirements, other than setting them out in a separate section for ease of reference.
Section 6: This section previously contained the qualifications for licensure of a physician by reciprocal endorsement. Because the qualifications are identical to the qualifications for initial licensure, these sections were consolidated into the proposed Section 4. Proposed Section 6 sets forth the qualifications for a license to practice podiatry, formerly located in Section 10. While the language has been modernized, no changes have been made to the substantive qualifications for licensure to practice podiatry. The proposed Section 6 also incorporates required application content, which substantially mirror the application components for physicians and physician assistants.
Section 7: This

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CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

section previously contained the application requirements for licensure of a physician by reciprocal endorsement which is now consolidated in the proposed Section 4. Proposed Section 7 sets forth the examination requirements for physician and podiatric licensure. This language has been consolidated and revised to remove obsolete provisions regarding historical examinations. No substantive changes have been made with regard to physician examination requirements.
Section 8: Information contained in the former Section 8, dealing with application forms and processing for physicians, now appears in proposed Section 4. Proposed Section 8 is a new section which sets forth the requirements of House Bill 4340, which directs certain health occupation licensing boards, including the West Virginia Board of Medicine, to promulgate rules regarding the implementation of mandatory criminal history background checks utilizing fingerprinting for all Board applicants. Proposed Section 8 sets forth requirements and procedures for the fingerprint based criminal history check which are consistent with the authorizing legislation and the standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact as authorized by 42 U. S. C. A. §14611, et seq.
Section 9: This section previously addressed licensure renewal and renewal application forms for licensees of the Board. Licensure renewal, including required

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CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

forms, for physicians and podiatrists is now addressed in proposed Section 10. Proposed Section 9 sets forth the requirements for receipt of a temporary license to practice medicine and surgery or podiatry. Temporary licenses are only available to applicants who are already licensed in another jurisdiction, and the provisions for a physician temporary license were therefore previously set forth in Section 6. The rule did not previously address temporary podiatric licensure. This section does not change the requirements for the issuance of a temporary license. It modernizes the language and clarifies that a podiatrist licensed in another state may be issued a temporary license on the same terms and conditions as a physician applicant.
Section 10: Section ten previously set forth the qualifications for the practice of podiatry, which are now set forth in proposed Section 6. The proposed Section 10 establishes the licensure terms for a license to practice medicine and surgery or podiatry and the renewal cycles and processes for physicians and podiatrists. It does acknowledge the transition to an online renewal process. The Proposed Section 10 also addresses licensure status and how a licensee may modify his or licensure status from active to inactive or vice versa. This language does not include any substantive changes to the existing renewal cycles, the renewal process, or the licensure status change process.
Section 11: This

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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 5)

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CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

section formerly contained obsolete language related to licensure exemptions. Licensure exemptions are currently set out in West Virginia Code §30-3-13, and were recently revised by the Legislature during the 2016 Regular Session (Senate Bill 47). The redundant regulatory language was removed from this rule. Proposed Section 11 sets forth confidentiality provisions for the Boards complaint and investigatory process. This new section was included to clarify the under what circumstances, and to what extent documents and information obtained by the Board during an administrative investigation into alleged violations of the processional conduct standards of the West Virginia Medical Practice Act may be shared with licensees and with state or federal agencies conducting investigations which relate to Board licensees. This section was added pursuant to the Boards rulemaking authority as set forth in W. Va. Code §30-3-7(a)(1). This section acknowledges a licensees right to access to information developed by an investigation once a determination of probable cause be made, and requires compliance with the disclosure requirements of W. Va. Code §30-3-14(i).

Section 12: The proposed Series 1A amends Subdivision 12.1.cc.A. to add binge-eating disorder as a condition for which treatment by a Schedule II amphetamine or sympathomimetic amine drug is permitted. This amendment is consistent with current FDA

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CITE AUTHORITY **§30-3-7(a)(1) and §30-1D-1(d)**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

guidance.
Sections 13 and 14: The proposed amendment removes redundant and/or obsolete provisions and modifies the nomenclature utilized with regard to the reporting of malpractice. Proposed Subsection 13.2 requires the reporting of any medical professional liability claim or action, rather than the reporting of civil actions. Applicant and licensee appeals procedures are set forth in the West Virginia Medical Practice Act and the Boards procedural rules. The proposed amended rule eliminates Section 14 due to its redundancy.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
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11CSR1A

TITLE 11
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF MEDICINE

SERIES 1A
LICENSING AND DISCIPLINARY PROCEDURES: PHYSICIANS; PODIATRISTS.

§11-1A-1. General.

1.1. Scope. -- W. Va. Code §30-3-7(1)(a) authorizes the Board of Medicine to promulgate rules which are necessary to perform the duties and responsibilities of the Board. W. Va. Code §30-1D-1(d) authorizes the Board to promulgate rules which set forth the requirements and procedures for applicant criminal history checks. West Virginia Code §29A-3-19(b) requires the incorporation of a sunset provision in existing rules which are modified after April 1, 2016. This rule applies to physicians and podiatrists and to their licensing and professional discipline.

1.2. Authority. -- W. Va. Code §30-3-7(a)(1) and W. Va. Code §30-1D-1(d).

1.3. Filing Date. -- ~~April 6, 2007~~

1.4. Effective Date. -- ~~May 1, 2007~~

1.5. Sunset Date. – This legislative rule shall terminate five years from the effective date unless renewed prior to that date.

§11-1A-2. Application and Enforcement.

This legislative rule implements the West Virginia Medical Practice Act, W. Va. Code §30-3-1 et seq.

§11-1A-3. Definitions Applicable To All Board of Medicine Rules.

3.1. "ACGME" means the Accreditation Council of Graduate Medical Education.

3.2. "AMA" means the American Medical Association.

3.3. "APMA" means the American Podiatric Medical Association.

3.4 “APMLE” means the American Podiatric Medical Licensing Examination.

3.~~4.~~5. "Board" means the West Virginia Board of Medicine, established in W. Va. Code §30-3-5.

~~3.5. "Department" means the West Virginia Department of Health and Human Resources.~~

3.6. "ECFMG" means the Educational Commission for Foreign Medical Graduates.

3.7. "False or deceptive advertising" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable results or includes representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived.

3.8. "FCVS" means the Federation of State Medical Boards' Credentials Verification Service.

3.9. "FLEX" means the Federation of State Medical Boards Licensing Examination.

3.10. "LCME" means the Liaison Committee on Medical Education.

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

~~3.12. "LMCC" means a licentiate of the Medical Council of Canada.~~

3.~~13.~~12. "NBME" means the National Board of Medical Examiners.

3.~~15.~~13. "PMLexis" means the Podiatric Medical Licensing Examination for States.

3.~~16.~~14. "Probation" means imposing conditions and requirements upon a licensee for a period of time that the Board, in its discretion, determines to be justified under any provision of law. A licensee placed on probation may continue to practice subject to limitations imposed by the Board, including the requirements that the licensee appear before the Board, or an officer or agent thereof, at the times and places designated by the Board. A licensee may be placed on probation without a previous or concurrent suspension or revocation of his or her license.

3.~~17.~~15. "SPEX" means the Special Purpose Examination of the Federation of State Medical Boards.

3.~~18.~~16. "USMLE" means the United States Medical Licensing Examination, the successor to the FLEX and NBME.

3.~~19.~~17. "West Virginia Medical Practice Act" means W. Va. Code §30-3-1 et seq.

§11-1A-4. Qualification and Application For A License To Practice Medicine And Surgery.

~~4.1. An application for a license to practice medicine and surgery shall be completed on a form provided by the Board. The application shall be completed in full with all required supporting documents received by the Board not later than fifteen (15) days prior to the Board's consideration of the application.~~

~~4.2. An application for a license to practice medicine and surgery shall include the following:~~

~~a. A photograph taken within the previous twelve (12) months which substantially resembles the applicant;~~

~~b. Evidence of graduation from a medical school approved by the LCME or by the Board;~~

~~c. A sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character;~~

~~d. Evidence of completion of one (1) year of postgraduate clinical training approved by the ACGME;~~

~~e. A nonrefundable cashier's check or money order payable to the Board or electronic payment in an amount established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine; and~~

~~f. Any other documents as may be required by the Board under section 8.1 of this rule.~~

~~4.3. An applicant for a license to practice medicine and surgery is required to obtain a passing score on the FLEX. For those applicants who did not take the two (2) component FLEX program, a passing score shall consist of a weighted average score of seventy-five percent (75%) or better obtained in one sitting. For those applicants taking the two (2) component FLEX program, a passing score shall consist of seventy five (75) or better on component one of the FLEX and seventy-five (75) or better on component two of the FLEX. A weighted average score of the two (2) component FLEX program shall not be used by the Board in the determination of a passing score. Any applicant who passes either component one or component two of the FLEX, but not both, is required to retake only the component upon which the applicant did not obtain a passing score to be eligible for licensure. An applicant must obtain a passing score of seventy-five (75) or better on both components before the elapse of seven (7) consecutive years from the first FLEX sitting. Failure to obtain a passing score on both components before the elapse of seven (7) consecutive years shall render the applicant ineligible for licensure.~~

~~4.4. The Board (or a majority of them) shall accept the certificate of the NBME, in lieu of a passing score on the FLEX. The Board (or a majority of them) may also accept successful passage of a State Board Examination or a certificate of the LMCC in lieu of the certificate of the NBME or a passing score on the FLEX. An applicant relying on the certificate of the NBME shall request certification of scores from the NBME. An applicant must obtain a passing score on the examination sequence before the elapse of seven (7) consecutive years from the first NBME sitting. Failure to obtain a passing score on the examination sequence before the elapse of seven (7) consecutive years shall render the applicant ineligible for licensure.~~

~~4.5. The Board (or a majority of them) shall accept a passing score of seventy-five (75) percent or better on Step three (3) of the USMLE, in lieu of a passing score on the FLEX, the NBME or LMCC certificate, or successful passage of a State Board examination. To be eligible for USMLE Step three (3), an applicant must have successfully completed and obtained passing scores of seventy five (75) or better on both USMLE Steps one (1) and two (2). To be eligible for licensure an applicant must successfully complete and obtain passing scores on USMLE Steps one (1), two (2) and three (3) before the elapse of seven (7) consecutive years. Each~~

~~USMLE Step must be passed individually in order to successfully complete the USMLE examination. Failure to successfully complete and obtain passing scores on USMLE Steps one (1), two (2) and three (3) before the elapse of seven (7) consecutive years renders the applicant ineligible for licensure, except that the Board, in its discretion, may allow no more than three additional years for the successful completion of USMLE Steps one (1), two (2) and three (3), for any medical student enrolled in any dual M.D., Ph.D. program, provided that such medical student has successfully completed each of the previous USMLE steps.~~

~~4.6. The USMLE examination is designed to supersede and replace the FLEX examination and the National Board of Medical Examiners' examination sequence ("NBME") over a period of years, and some medical students and physicians may have successfully completed part of the FLEX or NBME examination sequence. In order to facilitate a smooth transition to USMLE and to avoid undue burden on applicants for licensure, it is necessary to designate those combinations of examinations which the Board will consider comparable to the existing examinations and which shall render an applicant eligible for licensure during the period of replacement of examinations. Those combinations and the passing score for each examination component are as follows:~~

~~a. NBME Part I (passing score = 75%) or USMLE Step 1 (passing score = 75%) plus NBME Part II (passing score = 75%) or USMLE Step 2 (passing score = 75%) plus NBME Part III (passing score = 75%) or USMLE Step 3 (passing score = 75%);~~

~~b. FLEX Component 1 (Passing score = 75%) plusUSMLE Step 3 (passing score = 75%)~~ ~~or~~

~~c. NBME Part I (passing score = 75%) or USMLE Step 1 (passing score = 75%) plus NBME Part II (passing score = 75%) or USMLE Step 2 (passing score = 75%) plusFLEX Component 2 (passing score = 75%).~~

~~In order to meet the examination requirement of this subsection for licensure, the examination combinations set forth in subdivisions a., b., and c., of this subsection, must be successfully completed before the elapse of seven (7) consecutive years. Failure to successfully complete the examination combinations set forth in subdivisions a., b., and c., of this section, before the elapse of seven (7) consecutive years, renders the applicant ineligible for licensure, except that the Board, in its discretion, may allow no more than three additional years for the successful completion of the examination combinations set forth in subdivision a., b., and c., of this subsection, for any medical student enrolled in any dual M.D., Ph.D. program, provided that such medical student has successfully completed each of the previous steps.~~

~~4.7. All applicants for a license to practice medicine and surgery shall demonstrate their ability to communicate in the English language to the satisfaction of the Board.~~

~~4.8. An applicant for a license to practice medicine and surgery who is a graduate of a school of medicine located outside the United States, the Commonwealth of Puerto Rico or Canada,~~

~~(a) shall also provide evidence of a valid ECFMG certificate or of receipt of a passing score on the examination of the ECFMG, Provided, That an applicant who: (i) is currently fully~~

~~licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five (5) years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board in any jurisdiction, is not required to have a certificate from the educational commission for foreign medical graduates; and~~

~~(b) shall also provide evidence of successful completion of at least three (3) years of postgraduate clinical training (internship, residency, or fellowship) in the United States or Canada, which has been approved by the ACGME, or successful completion of at least one (1) such year and current certification by a member board of the American Board of Medical Specialties.~~

~~4.9. All evidence and information described in this section may be provided through FCVS, where available through FCVS.~~

~~4.10. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting at which his or her application will be considered. Any applicant may be required to appear before Board members at the meeting at which his or her application is to be considered. The purpose of the interview or required attendance at a Board meeting is to verify the existence and the identity of all required documents and information and to enable the Board to clarify information contained in the application. The Board may require production of original documents at the interview or required attendance at a Board meeting.~~

~~4.11. The application, together with all photocopied documents submitted, becomes the property of the Board and will not be returned.~~

~~4.12. The burden of satisfying the Board of the applicant's qualifications for licensure is upon the applicant.~~

~~4.13. A license to practice medicine and surgery in this state is valid for a term of two (2) years and shall be renewed upon the receipt of a nonrefundable fee, as established by the Board, together with an application provided by the Board: Provided, That an initial license expires on the thirtieth day of June of the ensuing year established by the Board for renewal.~~

~~4.14. The Board may renew, on an inactive basis, the license of a physician who is currently licensed to practice medicine and surgery, but who is not actually practicing medicine and surgery in this State. A physician holding an inactive license shall not practice medicine and surgery in this State, but the inactive license may be converted by the Board to an active license, upon request of the physician to the Board, provided that the period of inactivity is accounted for to the satisfaction of the Board. An inactive license may be obtained upon receipt of a nonrefundable fee, as established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine and submission of an application on forms provided by the Board. An inactive license is valid for a term of two (2) years, and is renewable.~~

4.1. Minimum qualifications for initial licensure as a medical doctor are set forth in West Virginia Code §30-3-10.

4.2. An application for a license to practice medicine and surgery for an applicant seeking initial licensure, or licensure by endorsement pursuant to West Virginia Code §30-3-11, shall be completed on a Board-approved application.

4.3. Completed applications are considered by the Board at regular Board meetings. The Board will not consider an application or decide upon the issuance of a license to an applicant until the complete application, including all third-party documentation and/or verification, is on file with the Board and the Board has had at least fifteen days to review the application.

4.4. An application for licensure must be accompanied by payment of a nonrefundable application fee in an amount established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine.

4.5. The Board's physician licensure application shall include, and applicants must provide, the following information:

a. The applicant's name, e-mail address, home address, preferred mailing address and primary practice location address(es) and telephone numbers;

b. Demographic information of the applicant, such as date of birth, place of birth, sex, etc.;

c. A photograph taken within the previous twelve (12) months which substantially resembles the applicant;

d. Evidence of graduation from a medical school approved by the LCME or by the Board;

e. Information with respect to the applicant's professional practice, good moral character and fitness to practice.

f. Information as determined by the Board which relates to whether the applicant is mentally and physically able to engage safely in the practice of medicine and surgery.

g. Evidence of completion of one (1) year of postgraduate clinical training approved by the ACGME;

h. An AMA biographical report;

i. A list of all hospitals where the physician has had privileges in the last five (5) years;

j. Information regarding all medical schools attended by the applicant;

k. A list of, and requested information regarding, all training programs, including postgraduate training, in which the applicant ever participated;

l. A list of all jurisdictions in which the applicant has applied for licensure, the disposition of all such applications, and a list of all licenses the applicant holds or has ever held and the current status of each license;

m. A copy of the individual's birth certificate, certificate of naturalization, or passport to be used in identifying the applicant and the appropriate spelling of his or her name;

n. A copy of legal documentation satisfactory to the Board which verifies any name change the applicant has experienced;

o. A report from the National Practitioner Data Bank;

p. A criminal history record check as set forth in section 8;

q. Evidence that the applicant has received passing scores on all required examinations as set forth in subsection 7 of this rule; and

r. Any other documents as may be required by the Board to evaluate the qualifications and fitness of an applicant to practice medicine and surgery in West Virginia.

4.6. All evidence and information described in this section may be provided through FCVS, where available through FCVS.

4.7. It is the applicant's responsibility to provide necessary forms to selected institutions for response to the Board, except where FCVS is providing the information directly to the Board.

4.8. Completed verification forms must be provided directly from selected institutions to the Board and not from the applicant, except where FCVS is providing the information directly to the Board.

4.9. In the event the staff finds derogatory or conflicting information regarding an applicant's qualifications, or information requiring clarification or further explanation by the applicant, the information shall be presented to the Board's Licensure Committee for review. Thereafter, the Licensure Committee shall determine whether the applicant should be scheduled to appear before the Committee. The Committee may also direct staff to obtain additional information related to the applicant's qualifications.

4.10. Any applicant may be required to appear personally before the Licensure Committee of the Board in support of his or her application. The purpose of the required appearance is to verify all required documents and information, and to enable the Board to clarify information contained in the application. The Board may require production of original documents at the required attendance at a Board or Committee meeting.

4.11. The Board, at its discretion, may obtain additional information through the Federation of State Medical Boards and/or through oral or written examinations, psychiatric evaluation, physical examination or other tests as may be necessary to determine the competency of the

applicant.

4.12. The Board shall require applicants to take the SPEX or a competency examination in their field of practice prior to issuing a license, whenever the Board considers it necessary to evaluate the medical knowledge and clinical skills of an applicant.

4.13. A complete application, including all associated documentation submitted to the Board, becomes the property of the Board and will not be returned.

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

4.15. In evaluating an application and determining an applicant's qualification for licensure, the Board may consider any recent period(s) of absence from the practice of medicine by the applicant which may affect the applicant's clinical skills and/or knowledge when such absence(s) individually or cumulatively equal or exceed two years. It is the applicant's burden to demonstrate that any such absence from practice has not resulted in a loss of current skills or knowledge, to provide proof satisfactory to the Board that the applicant has taken effective measures to ensure that his or her clinical skills and knowledge are current, and to propose a plan designed to ensure his or her safe reentry into practice. In making this determination the Board may require the examination and/or assessment of the competencies, medical knowledge and clinical skills necessary to assist in assessing a safe reentry into practice.

~~**§11 1A 5. Application Required For Examination — Federation Of State Medical Boards Licensing Examination (FLEX); USMLE Step three (3).**~~

~~5.1. An application for the FLEX or USMLE Step three (3) shall be completed on a form provided by the Board. The application shall be completed in full prior to the examination.~~

~~5.2. An application for the FLEX or USMLE Step three (3) must be received by the Board not later than ninety (90) days prior to the date of examination.~~

~~5.3. An application to take the FLEX or USMLE Step three (3) shall include the following:~~

~~a. Evidence of graduation from a medical school approved by the LCME or by the Board;~~

~~b. Two (2) photographs taken within the previous twelve (12) months which substantially resemble the applicant's appearance at the time the examination is to be given;~~

~~c. A sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character;~~

~~d. Evidence of current certification by or receipt of a passing score on the examination of the ECFMG, where applicable;~~

~~e. A nonrefundable cashier's check or money order payable to the Board in an amount as established by the Board under West Virginia Board of Medicine 11 CSR 4, Fees for~~

~~Services Rendered by the Board of Medicine; and~~

~~f. Any other documents as may be required by the Board.~~

~~5.4. All evidence and information described in this section may be provided through FCVS, where available through FCVS.~~

~~5.5. The application, together with all photocopied documents submitted, becomes the property of the Board and shall not be returned.~~

~~5.6. Procedures for each examination shall be provided to each approved applicant at least fifteen (15) days prior to such examination.~~

§11-1A-5 Additional Licensure Requirements for Graduates of Medical Schools Located Outside of the United States, the Commonwealth of Puerto Rico or Canada.

5.1. In addition to the qualifications for licensure to practice medicine and surgery which are set forth in section 4, all applicants for licensure who are graduates of medical schools located outside of the United States, the Commonwealth of Puerto Rico or Canada must also:

a. Provide an acceptable copy of the applicant's valid ECFMG certificate, or submit documentation satisfactory to the Board which demonstrates that:

1. The applicant is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico;-

2. The applicant has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five (5) years; and

3. The applicant provides proof satisfactory to the Board that he or she is not the subject of any pending disciplinary action by a medical licensing board in any jurisdiction;

b. Possess a demonstrable ability to communicate in the English language; and

c. Provide evidence satisfactory to the Board that the applicant:

1. Has successfully completed at least three (3) years of ACGME approved postgraduate clinical training (internship, residency, or fellowship) in the United States or Canada; or

2. Has successfully completed at least one (1) year of ACGME approved postgraduate clinical training (internship, residency, or fellowship) in the United States or Canada and is currently Board certified by a member board of the American Board of Medical

Specialties;

~~**§11-1A-6. Qualification For The Issuance Of A License To Practice Medicine And Surgery By Reciprocal Endorsement.**~~

~~6.1. An applicant for a license to practice medicine and surgery by reciprocal endorsement from another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico, shall provide proof of licensure in such jurisdiction under licensure requirements substantially similar to those existing in this State, and proof that he or she has the requisite qualifications to provide the same standard of care as a physician initially licensed in this State. These requirements and qualifications are specifically enumerated in this section.~~

~~6.2. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide evidence of graduation from a medical school approved by the LCME or by the Board.~~

~~6.3. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide proof of successful completion of at least one (1) year of postgraduate clinical training in a program approved by the ACGME.~~

~~6.4. An applicant for a license to practice medicine and surgery by reciprocal endorsement who is a graduate of a medical school located outside of the United States, Canada, or the Commonwealth of Puerto Rico~~

~~(a) shall also provide evidence of a valid ECFMG certificate or of receipt of a passing score on the examination of the ECFMG: Provided, That an applicant who: (i) is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five (5) years; and is not the subject of any pending disciplinary action by a medical licensing board in any jurisdiction, is not required to have a certificate from the educational commission for foreign medical graduates, and~~

~~(b) shall also provide evidence of successful completion of at least three (3) years of postgraduate clinical training (internship, residency, or fellowship) in the United States or Canada, which has been approved by the ACGME, or successful completion of at least one (1) such year and current certification by a member board of the American Board of Medical Specialties.~~

~~6.5. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide proof of passage of the FLEX. The FLEX scores must meet the requirements established in Subsection 4.3 of this rule. The Board (or a majority of them) shall accept in lieu of the FLEX, the certificate of the NBME or the LMCC in lieu of a passing score on the FLEX. The Board (or a majority of them) may also accept successful passage of a State Board Examination in lieu of the certificate of the NBME or a passing score on the FLEX. The Board may also accept successful passage of Step three (3) of the USMLE or successful passage of combination sequences of examinations, as set forth in Subsections 4.5 and 4.6 of this rule.~~

~~6.6. All evidence and information described in this section may be provided through FCVS, where available through FCVS.~~

~~6.7. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide a sworn and notarized statement from another physician that the applicant is of good moral character.~~

~~6.8. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall provide a statement that the physician is in good standing in each jurisdiction in which he or she is licensed, and that he or she has had no medical disciplinary action taken against him or her and has no medical disciplinary action pending against him or her.~~

§11-1A-6. Qualification and Application For a License to Practice Podiatry.

6.1. Minimum qualifications for initial licensure as a podiatrist are set forth in West Virginia Code §30-3-10(d).

6.2. An application for a license to practice podiatry for an applicant seeking initial licensure, or licensure by endorsement pursuant to West Virginia Code §30-3-11(a), shall be completed on a Board-approved application.

6.3. Completed applications are considered by the Board at regular Board meetings. The Board will not consider an application or decide upon the issuance of a license to an applicant until the complete application, including all third-party documentation and/or verification, is on file with the Board and the Board has had at least fifteen days to review the application.

6.4. An application for licensure to practice podiatric medicine must be accompanied by payment of a nonrefundable application fee in an amount established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine.

6.5. The Board's podiatrist licensure application shall include, and applicants must provide, the following information:

a. The applicant's name, e-mail address, home address, preferred mailing address and primary practice location address(es) and telephone numbers;

b. Demographic information of the applicant, such as date of birth, place of birth, sex, etc.;

c. A photograph taken within the previous twelve (12) months which substantially resembles the applicant;

d. Evidence of graduation and receipt of the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine which is approved by the Council of Podiatric Education or by the board;

e. Information with respect to the applicant's professional practice, good moral character

and fitness to practice, including a sworn and notarized statement that the applicant is of good moral character.

f. Information as determined by the Board which relates to whether the applicant is mentally and physically able to engage safely in the practice of podiatric medicine.

g. Evidence of completion of:

1. one (1) year of graduate clinical training in a program approved by the CPME or the CPM; or

2. two (2) years of graduate podiatric clinical training in the U.S. armed forces; or

3. Three years of private podiatric clinical experience satisfactory to the Board;

h. A list of, and requested information regarding, all training programs, including postgraduate training, in which the applicant ever participated;

i. A list of all jurisdictions in which the applicant has applied for licensure, the disposition of all such applications, and a list of all licenses the applicant holds or has ever held and the current status of each license;

j. A copy of the individual's birth certificate, certificate of naturalization, or passport to be used in identifying the applicant and the appropriate spelling of his or her name;

k. A copy of legal documentation satisfactory to the Board which verifies any name change;

l. A criminal history record check as set forth in section 8;

m. Evidence that the applicant has received passing scores on all required examinations as set forth in section 7 of this rule;

n. A report from the National Practitioner Data Bank; and

o. Any other documents as may be required by the Board to evaluate the qualifications and fitness of an applicant to practice medicine and surgery in West Virginia.

6.6 It is the applicant's responsibility to provide necessary forms to selected institutions for response to the Board. Completed verification forms must be provided directly from selected institutions to the Board and not from the applicant.

6.7. In the event the staff finds derogatory or conflicting information regarding an applicant's qualifications, or information requiring clarification or further explanation by the applicant, the information shall be presented to the Board's Licensure Committee for review. Thereafter, the Licensure Committee shall determine whether the applicant should be

scheduled to appear before the Committee. The Committee may also direct staff to obtain additional information related to the applicant's qualifications.

6.8. Any applicant may be required to appear personally before the Licensure Committee of the Board in support of his or her application. The purpose of the required appearance is to verify all required documents and information, and to enable the Board to clarify information contained in the application. The Board may require production of original documents at the required attendance at a Board or Committee meeting.

6.9. The Board, at its discretion, may obtain additional information, oral and/or written examinations, psychiatric evaluation, physical examination or other tests as may be necessary to determine the competency of the applicant.

6.10. The Board shall require applicants to take a competency examination prior to issuing a license, whenever the Board considers it necessary to evaluate the medical knowledge and clinical skills of an applicant.

6.11. A complete application, including all associated documentation submitted to the Board, becomes the property of the Board and will not be returned.

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

6.13. In evaluating an application and determining an applicant's qualification for licensure, the Board may consider any recent period(s) of absence from the practice of medicine by the applicant which may affect the applicant's clinical skills and/or knowledge when such absence(s) individually or cumulatively equal or exceed two years. It is the applicant's burden to demonstrate that any such absence from practice has not resulted in a loss of current skills or knowledge, to provide proof satisfactory to the Board that the applicant has taken effective measures to ensure that his or her clinical skills and knowledge are current, and to propose a plan designed to ensure his or her safe reentry into practice. In making this determination the Board may require the examination and/or assessment of the competencies, medical knowledge and clinical skills necessary to assist in assessing a safe reentry into practice.

6.14. The provisions of this rule that relate to disciplinary procedures, reports and complaints, and the provisions of the contested case hearing and appeal procedures, W. Va. Code §29A-5-1 et seq. and rules of the Board West Virginia Board of Medicine Rule 11 CSR 3, Board Organization and Meeting Procedure; Complaint and Contested Case Hearing Procedures, are applicable to podiatrists and the practice of podiatry and shall be applied in that context to matters relating to podiatrists.

~~**§11 1A 7. License To Practice Medicine And Surgery By Reciprocal Endorsement; Application Required.**~~

~~7.1. An application for a license to practice medicine and surgery by reciprocal endorsement shall be completed on forms provided by the Board. All parts of the application shall be~~

~~completed in full with all required supporting documents received by the Board not later than fifteen (15) days prior to consideration by the Board.~~

~~7.2. An applicant shall arrange for a personal interview with a member of the Board prior to the meeting during which his or her application is to be considered and the Board may require an applicant's attendance at a Board meeting. The purpose of the interview or required attendance at a Board meeting is to verify the existence and the identity of all required documents and information and to enable the Board to clarify any information contained in the application. The Board may require production of original documents at the interview or required attendance at a Board meeting.~~

~~7.3. An applicant shall have available for review by a Board member, or by the Board, if the applicant appears at the meeting, the following original documents:~~

~~a. Medical school diploma;~~

~~b. ECFMG certificate, if applicable;~~

~~c. A document attesting to the successful completion of the required minimum postgraduate clinical training;~~

~~d. A sworn and notarized statement on a form provided by the Board from another physician stating that the applicant is of good moral character, and is physically and mentally capable of engaging in the practice of medicine and surgery;~~

~~e. A statement that the physician is in good standing in each jurisdiction in which he or she is licensed to practice, has had no medical disciplinary action taken against him or her and that he or she has no medical disciplinary actions pending; and~~

~~f. Such other documents as may be required by the Board.~~

~~7.4. An applicant for a license to practice medicine and surgery by reciprocal endorsement shall also provide photocopies of all documents presented to the Board. The photocopies shall be attached to the application and made a part thereof. The application, together with all photocopied documents submitted will become the property of the Board and shall not be returned.~~

~~7.5. An applicant for licensure to practice medicine and surgery by reciprocal endorsement shall pay by cashier's check, money order, or credit card payable to the Board, or electronic payment, a nonrefundable fee in an amount established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine.~~

~~7.6. An applicant for a license to practice medicine and surgery by reciprocal endorsement whose application is complete may request a temporary license to practice until the next regular meeting of the Board, by meeting the qualifications of the Board, by paying an additional nonrefundable fee in an amount established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine and by appearing before a member of~~

~~the Board for a personal interview.~~

~~7.7. An applicant for a license to practice medicine and surgery by reciprocal endorsement has the burden of demonstrating to the satisfaction of the Board that the applicant has the requisite qualifications of a physician initially licensed in the State.~~

§11-1A-7. Required Examinations for a License to Practice Medicine and Surgery; Required Examinations for a License to Practice Podiatry.

7.1. To be eligible for consideration for a license to practice medicine and surgery in this state, an applicant must demonstrate that he or she has successfully passed all components of the United States Medical Licensing Examination (USMLE) with a score greater than or equal to the minimum passing score as determined by the developer on each component part, including USMLE Step 1, USMLE Step 2 (both the Clinical Knowledge exam and the and Clinical Skills exam) and USMLE Step 3. However, an applicant shall not be eligible for licensure if:

a. The applicant failed to obtain a passing score on any component part of the USMLE in six attempts; or

b. Passing scores on all component parts of the USMLE were not been obtained by the applicant within ten consecutive years.

7.2. An applicant who has not taken all component steps of the USMLE may be eligible for consideration for licensure to practice medicine and surgery in this state if the applicant can demonstrate that, within ten consecutive years:

a. The applicant passed all component parts of previously administered examinations, such as the State Board Examination, FLEX or NBME with a passing score of 75% or better; or

b. The applicant passed a combination of the component parts of currently or previously administered examinations which have been identified as acceptable by the Board. The Board shall publish a current list of examination combinations which have been approved by the Board on its website.

7.3. To be eligible for consideration for a license to practice podiatry in this state, an applicant must demonstrate that he or she has, within a period of ten consecutive years, successfully passed all components of:

a. The American Podiatric Medical Licensing Examination (APMLE) including Steps 1, 2, and 3; or

b. The PMLexis Steps 1, 2, and 3 with minimum passing scores on each step as determined by the developers; Provided, the nationally recommended cut score is criterion referenced according to the method known as the Angoff method; or

c. Any other examination, or combination of examinations, which have been identified as

acceptable by the Board. The Board shall publish a current list of examination combinations which have been approved by the Board on its website.

7.4. Examination(s) approved by the Board shall be in the English language.

~~**§11-1A-8. Application Forms and Processing.**~~

~~8.1. Application forms for licenses shall include, but not be limited to, requirements for the following information:~~

~~a. An AMA biographical printout;~~

~~b. A list of all states where the physician has held and holds a medical license, even if the medical license is not active;~~

~~c. A list of all hospitals where the physician has had privileges in the last five (5) years;~~

~~d. The applicant's medical school;~~

~~e. A list of all training programs, including postgraduate;~~

~~f. The state from which the physician is requesting endorsement, with specific reference to that state's examination and grades;~~

~~g. A copy of the individual's birth certificate, certificate of naturalization, passport or baptismal, to be used in identifying the applicant and the appropriate spelling of his or her name;~~

~~h. A copy of a marriage license, divorce decree or court order, to document any name change; and~~

~~i. The place and date of the applicant's birth.~~

~~8.2. In the event the staff finds derogatory information during the processing of an application, the information shall be presented to Board members for review and a determination as to whether an individual should be scheduled for an interview or if the staff should obtain additional information.~~

~~8.3. It is the applicant's responsibility to provide necessary forms to selected institutions for response to the Board, except where FCVS is providing the information directly to the Board.~~

~~8.4. Completed verification forms must be provided directly from selected institutions to the Board and not from the applicant, except where FCVS is providing the information directly to the Board.~~

~~8.5. The Board reserves the right to obtain additional information through the Federation of State Medical Boards and/or through oral or written examinations, psychiatric evaluation, physical examination or other tests as may be necessary to determine the competency of the applicant.~~

~~8.6. The Board reserves the right to require applicants to take the SPEX or an oral competency examination in their field of practice prior to issuing a license, whenever the Board considers it necessary.~~

§11-1A-8. Criminal History Record Check.

8.1. Beginning July 1, 2017, and in addition to all of the requirements for licensure set forth elsewhere in this legislative rule, all applicants for an initial license to practice medicine and surgery in West Virginia and all applicants for an initial license to practice podiatry shall request and submit to the Board the results of a state and a national criminal history record check.

8.2. The purpose of the criminal history record check is to assist the Board in obtaining information that may relate to the applicant's fitness for licensure.

8.3 In addition to the State Police, the Board may contract with and designate a company specializing in the services required by this section instead of requiring the applicant to apply directly to the West Virginia State Police or similar out-of-state agency for the criminal history records checks. Provided, that any such company must utilize protocols consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact.

8.4. The applicant shall furnish to the State Police, or other organization duly designated by the Board, a full set of fingerprints and any additional information required to complete the criminal history record check.

8.5. The applicant is responsible for any fees required by the State Police, or other organization duly designated by the Board, for the actual costs of the fingerprinting and the actual costs of conducting a complete criminal history record check.

8.6. The Board may require the applicant to obtain a criminal history records check from a similar Board approved agency or organization in the state of the applicant's residence, if outside of West Virginia.

8.7. The applicant shall authorize the release of all records obtained by the criminal history record check to the Board.

8.8. A criminal history record check submitted in support of an application for licensure must have been requested by the applicant no earlier than twelve (12) months immediately prior to the Board's receipt of the applicant's electronic application for licensure.

8.9. A medical or podiatric initial licensure application is not complete until the Board receives the results of a state and a national criminal history record check conducted by the State Police or another entity duly authorized by the Board. The Board shall not grant an application for licensure submitted by any applicant who fails or refuses to submit the criminal history record check required by this section.

8.10. The Board may, in its discretion, require any applicant for reactivation of a medical license which has been expired for greater than five years to request and submit to the Board the results of a state and a national criminal history record check in conformity with the requirements of this section.

8.11. To avoid disqualification from licensure, an applicant's criminal history record check must be unremarkable, and verified by a source acceptable to the Board, other than the applicant.

8.12. The results of the state and national criminal history record check may not be released to or by a private entity except:

a. To the individual who is the subject of the criminal history record check;

b. With the written authorization of the individual who is the subject of the criminal history record check; or

c. Pursuant to a court order.

8.13. Criminal history record checks and related records are not public records for the purposes of chapter twenty-nine-b of the West Virginia Code.

~~**§11-1A-9. License Renewals; Renewal Application Form.**~~

~~9.1. A licensee shall renew his or her license every two (2) years, as of the first day of July of the year, upon timely submission of a fully completed renewal application form and payment of a nonrefundable renewal fee in an amount established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine. The Board will mail forms to each known licensee at his or her last known address or make available to each licensee an online renewal form. It is the responsibility of the licensee to inform the Board of the licensee's correct address and of any change of address. It is the responsibility of the licensee to acquire and submit renewal application forms. Failure of the licensee to receive a renewal form will not constitute justification for any physician to practice on an expired license. An expired license is not a valid license.~~

~~9.2. The Board's renewal application form shall include, at a minimum, a request for the following information:~~

~~a. The applicant's name, date of birth, home and principal business addresses and telephone numbers;~~

~~b. Personal characteristics of the applicant, such as sex ;~~

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

~~d. A statement concerning any civil litigation related to the practice of medicine or any criminal litigation commenced against the applicant within the last two (2) years;~~

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

~~f. A statement of all other jurisdictions in which the applicant is licensed to practice medicine;~~

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

~~h. Any treatment received for chemical substance or alcohol dependency in the last two (2) years; and~~

~~i. Any limitation of hospital privileges in the last two (2) years.~~

§11-1A-9. Temporary License to Practice Medicine and Surgery or Podiatry.

9.1. An applicant for licensure to practice medicine and surgery or podiatry may request a temporary license if:

a. The applicant has submitted a complete application;

b. The applicant meets all of the qualifications for a license to practice medicine and surgery or podiatry;

c. The applicant holds a valid, unrestricted license to practice medicine and surgery or podiatry from another state, the District of Columbia, the Commonwealth of Puerto Rico or Canada;

d. All licenses held by the applicant are unrestricted and in good standing;

e. The applicant provides proof satisfactory to the Board that he or she is not the subject of any pending disciplinary complaints, investigations or actions by any medical licensing board in any jurisdiction;

f. The applicant's application does not contain any derogatory or conflicting information, or any other information regarding an applicant's qualifications which require the information to be presented to the Board's Licensure Committee for review; and

g. The applicant is awaiting the next scheduled meeting of the Board for action upon his or her application.

9.2. The Board may authorize its staff to issue a temporary license to an applicant who meets all of the qualifications set forth in subsection 9.1. and who provides the following additional items with his or her licensure application:

a. A written request that the applicant be issued a temporary license; and

b. A nonrefundable temporary license fee in an amount established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine.

9.3. A temporary license issued pursuant to this section remains valid until the Board meets and considers the applicant's completed licensure application.

~~**§11-1A-10. Practice of Podiatry.**~~

~~10.1. Application to practice podiatry. — Each person who desires to practice podiatry and is not now authorized to do so shall file with the Board a written application, under oath, on a form prescribed by the Board.~~

~~10.2. Examination; license; use of title; renewal; inactive license.~~

~~a. If the applicant passes a Board approved examination which consists of three parts: Part I and Part II of the Examination of the National Board of Podiatric Medical Examiners, followed by the PMLexis; has paid the required fee; and meets the requirements for licensure set forth in W. Va. Code §30-3-10, the Board shall issue a license signed by the president and secretary.~~

~~b. The burden of satisfying the Board of the applicant's qualifications is upon the applicant.~~

~~c. A passing score on the PMLexis is a score above the nationally recommended cut score for the specific PMLexis taken by the applicant: Provided, the nationally recommended cut score is criterion referenced according to the method known as the Angoff method.~~

~~d. A license authorizing the practice of podiatry does not permit the holder to use the title of "Physician" or to use the title "Surgeon," unless the title is qualified by letters or words showing that the holder of the license is a practitioner of podiatry.~~

~~e. A license to practice podiatry in this state is valid for a term of two (2) years and shall be renewed every two (2) years, as of the first day of July of the year, upon the receipt of a nonrefundable fee as established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine, together with a timely submitted fully completed renewal application form provided by the Board: Provided, That an initial license expires on the thirtieth day of the ensuing odd numbered year. Forms shall be mailed to each known licensee at his or her last known address or an online renewal form shall be made available to each licensee. It is the responsibility of the licensee to inform the Board of the licensee's correct address and of any change of address. It is the responsibility of the licensee to acquire and submit renewal application forms. Failure of the licensee to receive a renewal form will not constitute justification for any podiatrist to practice on an expired license. An expired license is not a valid license.~~

~~f. The Board may renew, on an inactive basis, the license of a podiatrist who is currently licensed to practice podiatry, but who is not actually practicing podiatry in this state. A podiatrist holding an inactive license shall not practice podiatry in this state, but the inactive license may be converted by the Board to an active license, upon request of the podiatrist to the Board, provided that the period of inactivity is accounted for to the satisfaction of the Board. An inactive license may be obtained upon receipt of a nonrefundable fee, as established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine, and submission of an application on forms provided by the Board. An inactive license is valid for a term of two (2) years, and is renewable.~~

~~10.3. License to persons licensed in other states. When a podiatrist licensed by the licensing authority of another state, territory or the District of Columbia wishes to move to this State to practice his or her profession, the Board may, in its discretion, issue to him or her a license to practice podiatry, if he or she meets the requirements for licensure set forth in W. Va. Code §30-3-10 and pays a fee as established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine. Application shall be made on a form prescribed by the Board. The application to the Board shall be accompanied by a nonrefundable check, money order, credit card, or electronic payment in an amount established by the Board under Board rule West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine.~~

~~10.4. Prohibition. No person shall practice podiatry without a license from the Board; no person shall advertise or announce himself or herself as a practitioner of podiatry without a license from the Board; no person shall open or conduct an office or other place for such practice without a license from the Board; no person shall conduct an office in the name of some other person who has a license to practice podiatry; and no person shall practice podiatry after a license has been revoked, or if suspended, during the time of the suspension.~~

~~10.5. Denial, revocation, limitation, or suspension of license for violation of statutes; application of rule.~~

~~a. The provisions of this rule that relate to disciplinary procedures, reports and complaints, and the provisions of the contested case hearing and appeal procedures, W. Va. Code §29A-5-1 et seq. and rules of the Board West Virginia Board of Medicine Rule 11 CSR 3, Board Organization and Meeting Procedure; Complaint and Contested Case Hearing Procedures, are applicable to podiatrists and the practice of podiatry and shall be applied in that context to matters relating to podiatrists.~~

§11-1A-10. Licensure Renewal, Inactive Status Licensure: Physicians and Podiatrists.

10.1 With the exception of an initial license, a license to practice medicine and surgery or to practice podiatry in this state is issued for a term of two years. An initial license is issued with an expiration date consistent with the applicant's renewal classification as set forth in subsection 10.2.

10.2. License renewal for all licensed physicians whose last names begin with the letters "A" through "L" shall occur prior to July 1 of every even year. License renewal for all licensed

physicians whose last names begin with the letters "M" through "Z" and all podiatrists shall occur prior to July 1 of every odd year.

10.3. A license shall expire, if not renewed by the renewal deadline set by the Board and will be published on the Board's website. An expired license is not a valid license.

10.4. To avoid expiration, an eligible licensee shall seek to renew his or her license every two (2) years by:

a. Completing and submitting an application approved by the Board;

b. Certifying that he or she has successfully completed all legally required continuing medical education for the preceding two-year period; and

c. Submitting the nonrefundable license renewal fee, as established by the Board.

10.5. The Board will make an online renewal application available through the Board's website.

10.6. Licensees shall, at all times, maintain current contact information on file with the Board including: a preferred mailing address; a home address; current practice locations; and a current e-mail address. Licensees shall notify the Board of any changes to such contact information within fifteen days of the change.

10.7. Communications and notifications regarding the renewal process will be conveyed to licensees via e-mail.

10.8. It is the responsibility of the licensee to be aware of his or her license expiration date and to acquire and submit a renewal application and any required documentation related thereto. Failure of the licensee to receive a renewal notification will not constitute justification for any licensee to practice on an expired license.

10.9. At a minimum, the Board's renewal application for physicians and for podiatrists shall include, and renewal applicants must provide, the following information:

a. The applicant's name, e-mail address, home address, preferred mailing address, primary practice location address(es), and telephone numbers;

b. Demographic information of the applicant, such as date of birth, sex, etc.;

c. A statement concerning any disciplinary action taken against the applicant in the last two (2) years, and any pending disciplinary complaints, investigations or actions in any jurisdiction;

d. A statement concerning any medical professional liability claims or actions which were settled or with respect to which judgments against the applicant were rendered, and/or any criminal arrests, charges, pleas or litigation commenced against the applicant within the last two

(2) years;

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

f. A statement of all other jurisdictions in which the applicant is licensed to practice medicine;

g. The number of medical professional liability settlements made by or on behalf of the applicant and/or judgements entered against the applicant in the last two (2) years;

h. Any treatment received for chemical substance or alcohol dependency in the last two (2) years with the exception of any treatment received in association with a voluntary agreement entered into pursuant to West Virginia Code §30-3-10(h);

i. Any limitation of hospital privileges in the last two (2) years;

j. Information with respect to the renewal applicant's professional practice, character and fitness to practice medicine and surgery or podiatry;

k. Certification of successful completion of all required continuing medical education requirements; and

l. Any other information required by the Board for renewal of a license.

10.10. Upon request, the Board may renew the license of a physician or a podiatrist who is licensed to practice in this state, but who is not currently practicing in West Virginia, as an inactive status license. An inactive status licensee shall not practice his or her profession in this State while maintaining an inactive status license.

10.11. An inactive license may be obtained upon receipt of a nonrefundable fee, as established by the Board under West Virginia Board of Medicine Rule 11 CSR 4, Fees for Services Rendered by the Board of Medicine, and submission of an application provided by the Board. An inactive license is valid for a term of two (2) years, and is renewable.

10.12. Upon request, the Board may convert an inactive status license to an active status license if the requesting licensee:

a. Completes and submits a change of status application approved by the Board;

b. Submits the nonrefundable change of licensure status fee, as established by the Board;

c. Accounts for the licensee's period of inactivity to the satisfaction of the Board; and

d. Provides evidence of successful completion of all required continuing medical education requirements for the prior renewal period in accordance with 11CSR6.

~~**§11-1A-11. License Exemptions.**~~

~~11.1. In addition to exemptions provided by law, no license is required of any duly licensed nonresident physician or podiatrist who participates in a continuing medical or podiatric education course within the State.~~

~~11.2. Duly licensed physicians in another state may transmit medical instructions by radio to personnel in this State in emergency situations.~~

§11-1A-11 Confidentiality of Complaint and Investigation Process.

11.1. When the Board receives a report submitted pursuant to the provisions of West Virginia Code §30-3-14, or when the Board receives or initiates a complaint regarding the conduct of anyone practicing medicine and surgery, podiatry or practicing as a physician assistant pursuant to a license issued by the Board, the Board shall create a complaint file in which the Board shall maintain all documents relating to the investigation and action upon the alleged conduct.

11.2. When the Board receives a complaint or initiates a complaint regarding a licensee's professional conduct, the Board shall provide the licensee with a copy of the complaint as soon as practical. If providing a copy of the complaint identifies an anonymous complainant or compromises the integrity of an investigation, the Board shall provide the licensee with a summary of all substantial elements of the complaint. Otherwise, during the pendency of an investigation, complaints regarding a licensee's professional conduct are confidential.

11.3. All records, papers, investigative files, investigative reports, other investigative information and other documents containing information in the possession of or received or gathered by the Board, or its members or employees or consultants as a result of investigations, inquiries, assessments, or interviews conducted in connection with a licensing, complaint, assessment, potential impairment matter, or disciplinary matter, are privileged and/or otherwise confidential. Provided, that if the Board finds probable cause to institute disciplinary charges against a licensee, he or she shall be entitled to receive disclosures of information contained within the complaint file as set forth in West Virginia Code §30-3-14(i).

11.4. If investigative information in the possession of the Board, its employees, or agents indicates that a crime may have been committed, the Board may report the information to the appropriate law enforcement agency or state or federal prosecuting attorney.

11.5. The Board may cooperate with and assist any state or federal law enforcement agency, any state or federal regulatory agency and/or any state or federal or prosecuting attorney conducting an investigation or a prosecution of a licensee by providing any such entity information that is relevant to the criminal, civil or administrative investigation or prosecution. Information disclosed by the Board to any entity pursuant to this subsection remains confidential and may not be disclosed by the recipient agency, except as necessary to further the investigation. Any information received by the Board from state or federal law enforcement agencies, state or federal regulatory agencies or state or federal prosecuting attorneys shall remain confidential and

may not be disclosed by the Board except as necessary to further the Board's investigation or when disclosure to the responding licensee is required by West Virginia Code §30-3-14(i).

11.6. The disposition of a complaint is public information.

§11-1A-12. Causes For Denial, Probation, Limitation, Discipline, Suspension Or Revocation of Licenses of Physicians and Podiatrists.

12.1. The Board may deny an application for a license, place a licensee on probation, suspend a license, limit or restrict a license or revoke any license heretofore or hereafter issued by the Board, upon satisfactory proof that the licensee has:

a. Knowingly made, or presented or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other material in connection with an application for a license;

b. Been or is involved in fraud, forgery, deception, collusion or conspiracy in connection with an examination for a license;

c. Become addicted to a controlled substance;

d. Become a chronic or persistent alcoholic;

e. Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof;

f. Willfully violated a confidential communication;

g. Had his or her license to practice medicine or podiatry in any other state, territory, jurisdiction or foreign nation revoked, suspended, restricted or limited, or otherwise acted against, or has been subjected to any other disciplinary action by the licensing authority thereof, or has been denied licensure in any other state, territory, jurisdiction, or foreign nation.

h. Been or is unable to practice medicine or podiatry with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of alcohol, drugs, chemicals or any other type of material, or by reason of any physical or mental abnormality;

i. Demonstrated a lack of professional competence to practice medicine or podiatry with a reasonable degree of skill and safety for patients. In this connection, the Board may consider repeated acts of a physician or podiatrist indicating his or her failure to properly treat a patient and may require the physician or podiatrist to submit to inquiries or examinations, written or oral, by members of the Board, or by other physicians or podiatrists licensed to practice medicine or podiatry in this State, as the Board considers necessary to determine the professional qualifications of the licensee;

j. Engaged in unprofessional conduct, including, but not limited to, any departure from, or failure to conform to, the standards of acceptable and prevailing medical or podiatric practice,

or the ethics of the medical or podiatric profession, irrespective of whether or not a patient is injured thereby, or has committed any act contrary to honesty, justice or good morals, whether the same is committed in the course of his or her practice or otherwise and whether committed within or without this State;

k. Been convicted of or found guilty of a crime in any jurisdiction which directly relates to the practice of medicine or podiatry or to the ability to practice medicine or podiatry. Any plea of nolo contendere shall be considered conviction for purposes of this rule;

l. Advertised, practiced or attempted to practice under a name other than his or her own;

m. Failed to report to the Board any person whom the licensee knows is in violation of this rule or of provisions of the West Virginia Medical Practice Act;

n. Aided, assisted, procured or advised any unlicensed person to practice medicine or podiatry contrary to this rule or the West Virginia Medical Practice Act;

o. Failed to perform any statutory or legal obligation placed upon a licensed physician or podiatrist;

p. Made or filed a report which the licensee knows to be false; intentionally or negligently failed to file a report or record required by state or federal law, willfully impeded or obstructed such filing or induced another person to do so. The reports or records shall include only those which are signed in the capacity as a licensed physician or podiatrist.

q. Paid or received any commission, bonus, kickback or rebate, or engaged in any split-fee arrangement in any form whatsoever with a physician, podiatrist, organization, agency or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers or pharmacies. The provisions of this subdivision shall not be construed to prevent a physician or podiatrist from receiving a fee for professional consultation services;

r. Exercised influence within a patient-physician or patient-podiatrist relationship for purposes of engaging a patient in sexual activity;

s. Made deceptive, untrue or fraudulent representations in the practice of medicine or podiatry or employed a trick or scheme in the practice of medicine or podiatry when the trick or scheme fails to conform to the generally prevailing standards of treatment in the medical or podiatric community;

t. Solicited patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or by overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate response from the recipient;

u. Failed to keep written records justifying the course of treatment of the patient, including, but not limited to, patient histories, examination results and test results and treatment rendered, if any;

v. Exercised influence on the patient or client in such a manner as to exploit the patient or client for the financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances or drugs and the promoting or advertising on any prescription form of a community pharmacy. For the purposes of this subdivision, it is legally presumed that prescribing, dispensing, administering, mixing or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities, is not in the best interests of the patient and is not in the course of the physician's or podiatrist's professional practice, without regard to his or her intent;

w. Prescribed, dispensed or administered any medicinal drug appearing on any schedule set forth in W. Va. Code §60A-1-1 et. seq. by the physician or podiatrist to himself or herself, except one prescribed, dispensed or administered to the physician or podiatrist by another practitioner authorized to prescribe, dispense or administer medicinal drugs;

x. Engaged in malpractice or failed to practice medicine or podiatry with that level of care, skill and treatment which is recognized by a reasonable, prudent, physician or podiatrist engaged in the same or a similar specialty as being acceptable under similar conditions and circumstances;

y. Performed any procedure or prescribed any therapy which, by the prevailing standards of medical or podiatric practice in the community, would constitute experimentation on a human subject, without first obtaining full, informed and written consent from the patient;

z. Practiced or offered to practice medicine and surgery or podiatry beyond the scope permitted by law or accepted and performed professional responsibilities which the licensee knows or has reason to know he or she is not competent to perform;

aa. Delegated professional responsibilities to a person whom the licensee knew or had reason to know is not qualified by training, experience or licensure to perform the responsibilities;

bb. Violated or attempted to violate any law or lawfully promulgated rule or regulation of this State, any other state, the Board, the United States or any other lawful authority (without regard to whether the violation is criminally punishable), which law or rule or regulation relates to or in part regulates the practice of medicine or podiatry, when the licensee or applicant knows or should know that such action is violative of the law, rule or regulation; or has violated a lawful order of the Board; or has failed to comply with a lawfully issued subpoena of the Board; or has violated an order of any court entered pursuant to any proceedings commenced by the Board;

cc. Presigned blank prescription forms;

dd. Prescribed any medicinal drug appearing on Schedule II in W. Va. Code §60A-1-1 et. seq. for office use;

ee. Prescribed, ordered, dispensed, administered, supplied, sold or given any drug which is an amphetamine or sympathomimetic amine drug and a compound designated as a Schedule II

controlled substance under W. Va. Code §60A-1-1 et. seq. to or for any person except for;

A. The treatment of narcolepsy; binge eating disorder, attention deficit disorder, a behavioral syndrome characterized by inappropriate symptoms of moderate to severe distractibility, short attention span, hyperactivity, emotional lability and impulsivity; or drug-induced brain dysfunction;

B. The differential diagnostic psychiatric evaluation of depression or the treatment of depression or the treatment of depression shown to be refractory to other therapeutic modalities; or

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

ff. Knowingly maintained a professional connection or association with any person who is in violation of the West Virginia Medical Practice Act or the rules of the Board; or has knowingly aided, assisted, procured or advised any person to practice medicine or podiatry contrary to the West Virginia Medical Practice Act or to the Rules of the Board; or knowingly performed any act which in any way aids, assists, procures, advises or encourages any unlicensed person or entity to practice medicine or podiatry; or has divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation or other entity for bringing or referring a patient; or has engaged in the practice of medicine or podiatry as an officer or employee of any corporation other than one organized and existing pursuant to the West Virginia Medical Practice Act, except as a licensed physician or podiatrist, intern or resident of a hospital or teaching institution licensed by this State;

gg. Offered, undertaken or agreed to cure or treat disease by a secret method, procedure, treatment or medicine; or has treated, operated or prescribed for any human condition, by a method, means, or procedure which the licensee has refused to divulge upon demand of the Board.

hh. Engaged in false or deceptive advertising.

ii. Engaged in advertising that is not in the public interest. Advertising that is not in the public interest includes the following, with the exceptions specifically listed:

A. Advertising that has the effect of intimidating or exerting undue pressure;

B. Advertising that uses testimonials;

C. Advertising which is false, deceptive, misleading, sensational or flamboyant;

D. Advertising which guarantees satisfaction or a cure;

E. Advertising which offers gratuitous services or discounts, the purpose of which is to deceive the public. This subdivision does not apply to advertising which contains an offer to

negotiate fees, nor to advertising in conjunction with an established policy or program of free care for patients; and

F. Advertising which makes claims of professional superiority which a licensee is unable to substantiate.

jj. Failure to maintain a medical record for each patient which is adequate to enable the physician or podiatrist to provide proper diagnosis and treatment, and/or to keep such patient medical records for a minimum of three (3) years from the date of the last patient encounter and in a manner which permits the former patient or a successor physician or podiatrist access to them within the terms of this rule and as set forth in W. Va. Code §16-29-1 et seq.

12.2. Acts declared to constitute dishonorable, unethical or unprofessional conduct: As used in this rule at subdivision 12.1.e, "Dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof" includes, but is not limited to:

a. Prescribing or dispensing any "Controlled Substance" as defined in W. Va. Code §60A-1-1 et. seq.:

A. With the intent or knowledge that a controlled substance will be used or is likely to be used other than medicinally or for an accepted therapeutic purpose;

B. With the intent to evade any law with respect to the sale, use or disposition of the controlled substances;

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

D. In such amounts that the licensee knows or has reason to know, under the attendant circumstances, that the amounts prescribed or dispensed are excessive under accepted and prevailing medical practice standards;

b. Issuing or publishing in any manner whatsoever, representations in which grossly improbable or extravagant statements are made which have a tendency to deceive or defraud the public, or a member thereof, including, but not limited to:

A. Any representation in which the licensee claims that he or she is able to cure or treat manifestly incurable diseases, ailments or infirmities by any method, procedure, treatment or medicine which the licensee knows or has reason to know has little or no therapeutic value;

B. Represents or professes or holds himself or herself out as being able and willing to treat diseases, ailments or infirmities under a system or school of practice:

(a) Other than that for which he or she holds a certificate or license granted by the Board;

(b) Other than that for which he or she holds a degree or diploma from a school otherwise recognized as accredited by the Board; or

(c) Which he or she professes to be self-taught;

c. A serious act, or a pattern of acts committed during the course of his or her medical or podiatric practice which, under the attendant circumstances, would be considered to be gross incompetence, gross ignorance, gross negligence or malpractice, including the performance of any unnecessary service or procedure;

d. Conduct which is calculated to bring or has the effect of bringing the medical or podiatric profession into disrepute, including, but not limited to, any departure from or failure to conform to the standards of acceptable and prevailing medical or podiatric practice within the state, and any departure from or failure to conform to the current principles of medical ethics of the AMA available from the AMA in Chicago, Illinois, or the principles of podiatric ethics of the APMA available from the APMA in Bethesda, Maryland. For the purposes of this subsection, actual injury to a patient need not be established;

e. Any charges or fees for any type of service rendered within 72 hours of the initial visit, if the licensee advertises free service, free examination or free treatment;

f. The administration of anabolic steroids for other than therapeutic purposes;

g. Failing to meet the standard of practice in connection with any supervisory and/or collaborative agreement with any category of health practitioner;

h. Violation of the Board rules for dispensing of legend drugs, as set forth in West Virginia Board of Medicine Rule 11 CSR 5, Board of Medicine Rules for Dispensing of Legend Drugs by Physicians and Podiatrists;

i. Charging or collecting an excessive, unconscionable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

A. The time and effort required;

B. The novelty and difficulty of the procedure or treatment;

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

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

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

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

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

In any case where it is found that an excessive, unconscionable fee has been charged, in addition to any actions taken under the provisions of subsection 12.3 of this rule, the Board may require the licensee to reduce or pay back the fee; and

j. Failure by a licensee to report a known or observed violation of this rule, the rule for dispensing legend drugs as set forth in West Virginia Board of Medicine Rule 11 CSR 5, Board of Medicine Rules for Dispensing of Legend Drugs by Physicians and Podiatrists, and/or the provisions of the West Virginia Medical Practice Act.

k. A practice of providing treatment recommendations relating to issuing prescriptions, via electronic or other means, for persons without establishing an on-going physician-patient relationship wherein the physician has obtained information adequate to support the prescription: Provided, That this definition does not apply: in a documented emergency; or in an on-call or cross coverage situation; or where patient care is rendered in consultation with another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including use of any prescribed medications.

12.3. When the Board finds that any applicant is unqualified to be granted a license or finds that any licensee should be disciplined pursuant to the West Virginia Medical Practice Act or rules of the Board, the Board may take any one or more of the following actions:

a. Refuse to grant a license to an applicant;

b. Administer a public reprimand;

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

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

e. Revoke any license;

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

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

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

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

In addition to and in conjunction with these actions, the Board may make a finding adverse to the licensee or applicant, but withhold imposition of judgment and penalty, or it may impose the judgement and penalty but suspend enforcement of penalty and place the physician or

podiatrist on probation. Probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. In its discretion, the Board may restore and reissue a license to practice medicine or podiatry issued under the West Virginia Medical Practice Act or any antecedent law, and as a condition thereof, it may impose any disciplinary or corrective measure provided for in this Rule or in the West Virginia Medical Practice Act.

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

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

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

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

C. The Board may select a physician or podiatrist, as applicable, or request the subject licensee to select a physician or podiatrist, as applicable, for Board approval. The physician or podiatrist shall submit periodic progress reports on the concerned licensee as the Board may direct;

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

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

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

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

H. The Board may require that prior to the termination of a probationary term, the

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

I. In those situations where indicated, the Board may impose additional terms of probation upon a licensee who has initially been placed on probation, as long as the entire period of any additional imposed probationary period does not exceed five (5) years from the initiation date of the originally imposed probationary period.

§11-1A-13. Required Reports from Hospitals, Professional Societies, Insurers, Courts.

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

~~13.2. Any professional society in this State comprised primarily of physicians, and any professional society in this state comprised primarily of podiatrists, which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall, within sixty (60) days of a final decision, report in writing to the Board the name of the member, together with all pertinent information relating to the action.~~

13.~~3~~.2. Every insurer providing professional liability insurance to a physician or podiatrist in this State shall submit to the Board the following information within thirty (30) days from any judgment, dismissal or settlement of a ~~civil action~~ medical professional liability claim or action involving the insured: The date of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information within the knowledge of the insurer as the Board requires. ~~The Board shall mail a copy of this section to every insurer in the state which has sold or may hereafter sell, professional liability insurance to a physician or podiatrist licensed to practice medicine or podiatry in this State.~~

13.4.3. Within thirty (30) days after the conviction of a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery and podiatry in this State, or applying to be so licensed, of a felony under the laws of this State, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled

substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the Board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the physician or podiatrist or applicant, the nature of the offense committed and the final judgment and sentence of the court. ~~The Board shall mail a copy of this section to every circuit clerk in the state.~~

~~**§11-1A-14. Appeal.**~~

~~14.1. Any applicant for a license who has had his or her application denied by order of the Board may appeal the order within thirty (30) days of such action, in accordance with the contested case hearing procedure, W. Va. Code §29A-5-1 et seq. and rules of the Board set out at West Virginia Board of Medicine Rule 11 CSR 3, Board Organization and Meeting Procedure; Complaint and Contested Case Hearing Procedures: Provided, That the appeal shall not include cases in which the Board issues a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.~~

~~14.2. Any physician or podiatrist practicing medicine and surgery or podiatry in this State, who has had his or her license denied, suspended, restricted, or revoked by order of the Board, may appeal the order within thirty (30) days of such action in accordance with the contested case hearing procedure, W. Va. Code §29A-5-1 et seq. and rules of the Board set out at West Virginia Board of Medicine Rule 11 CSR 3, Board Organization and Meeting Procedure; Complaint and Contested Case Hearing Procedures: Provided, That the appeal shall not include cases in which the Board issues a license, permit or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.~~