



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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

AGENCY: Optometry TITLE-SERIES: 14-01
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 14-01 West Virginia Board of Optometry

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §30-1D-1(d) §30-8-1 et. seq.,

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The §14-1 rule amendment is made to comply with Lynette's Law, W.Va. Code, §30-1D-1(d), that adds a criminal background check requirement for new applicants to WV Code of State Rules, §14-1, in §14-1-4. This is the only change made to the rule along with the appropriate re-numbering of sections, etc. Our general rule making authority is contained in W.Va. Code, §30-8-1, et. seq.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/28/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/28/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

The rule contents were sent to the WV Association of Optometric Physicians [WVAOP] for comment. The only comment was a thank you for sending the rule material to the WVAOP from its Executive Director, Chad Robinson.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The amendment to the rule is made to comply with Lynette's Law passed by the WV Legislature, W. Va. Code, §30-1D-1(d). It provides for a state and national criminal background check for new applicants only. There is no increase in fees to the Board of Optometry. The applicant will pay the cost of the background check to the entity providing the criminal background service. This is the only change to the rule.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The WV Legislature passed Lynette's Law, W. Va. Code, §30-1D-1(d), requiring a criminal background check for new applicants for certain boards including the WV Board of Optometry. The language used for the rule amendment is pro forma recommended by the WV State Police.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The economic impact on state government should be revenue and expense neutral. The cost of the background check is paid by the applicant to the criminal background check provider.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The economic impact of the rule amendment to comply with the Legislature's requirements should be minimal. Only the cost of the background check is to the applicant to the criminal background check service. It could save money to the citizens in the future due to exclusion of convicted criminals in the practice of optometry.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The effect on personal services would be minimal in personnel time. The service is being performed by another entity paid by the applicant.

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

TITLE 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY

SERIES 1
RULES OF THE WEST VIRGINIA BOARD OF OPTOMETRY

§14-1-1. General.

1.1. Scope. -- This rule establishes the operation of the West Virginia Board of Optometry and the requirements, procedures and responsibilities for licensure as an optometrist. W. Va. Code, §30-1D-1(d) authorizes the Board to promulgate rules which set forth the requirements and procedures of applicant criminal history checks. West Virginia Code, §29A3-19(b) requires the incorporation of a sunset provision in existing rules which are modified after April 1, 2016.

1.2. Authority. -- W. Va. Code §30-8-1 et. seq.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of ten (10) years from its effective date.

§14-1-2. Definitions.

2.1. "Applicant" means any person making application for a license or permit under the provisions of W. Va. Code §30-8-1 et. seq. and the W. Va. Code of State Rules, §14CSR1, et. seq.

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

2.3. "Criminal History Record Check" means a state and national criminal history check authorized by W. Va. Code, §30-1D-1(d) for applicants.

~~2.3~~ 2.4. "License" means a license to practice optometry.

~~2.4~~ 2.5. "Licensee" means an optometrist licensed under the provisions of W. Va. Code §30-8-1 et. seq. and the provisions of the W. Va. Code of State Rules, §14CSR1, et. seq.

~~2.5~~ 2.6. "Temporary permit" or "permit" means a permit issued to a person who has graduated from an accredited optometry school, has taken all parts of the prescribed National Board Examination and is awaiting results of the examination.

~~2.6~~ 2.7. "National Board Examination" means the prescribed national examination in optometry composed and administered by the National Board of Examiners in Optometry.

~~2.7~~ 2.8. "Interview" means a formal discussion with the Board to require the applicant to demonstrate a thorough knowledge of those subject areas necessary to ensure the safe practice of optometry within the bounds of W. Va. Code §30-8-1, et. seq. and the provisions of the rules of the Board listed in the W. Va. Code of State Rules, §14CSR1, et. seq.

~~2.8-2.9.~~ “Accredited Optometry School” means a school accredited by the Accreditation Council on Optometric Education or its successor recognized by the U.S. Department of Education.

§14-1-3. Application Examination and Interview.

3.1. Before any person may sit for the interview he or she shall submit a written application on the Board's application form, which will be supplied by the Board or its designee. The application shall require the following: the applicant name, address, date and place of birth, citizenship and a detailed history of his or her educational qualifications, showing the name, the place where and the length of time which the applicant attended pre-optometry and optometry schools. The applicant shall also state in the application whether he or she has taken any other State Board examinations and the results of the examinations and whether or not he or she has actively engaged in practice of optometry in any other state. With the application he or she shall include two (2) current photographs of himself or herself, not to exceed two (2) inches by two (2) inches in size.

3.2. In the application the applicant shall state that he or she shall abide by the laws of this State regulating the practice of optometry and by the rules adopted by the Board.

3.3. The application shall be subscribed and sworn by the applicant. His or her signature shall be witnessed and notarized by a notary public.

3.4. The Board shall deny the right to sit for the interview to any person furnishing false information in the application, or if the applicant has been licensed before it is made known to the Board of the falseness of the information, the license is subject to suspension, revocation or cancellation.

3.5. Certified transcripts from pre-optometry and optometry colleges attended by the applicant shall accompany each application. The certified transcripts of record shall show the total number of hours of attendance, the subjects studied, the grades given and the date of graduation.

3.6. Passing all parts of the National Board Examination is to be confirmed by receipt of a passing grade report from the National Board of Examiners in Optometry's office and submitted with the application.

3.7. The applicant shall file the completed application and application fee with the Board or its designee no later than thirty (30) days prior to the first day of the interview dates. The completed application, records and fees are to be mailed to the Board or its designee in one (1) parcel and all transcripts are to be left sealed.

3.8. The fee for the application shall be determined by the Board's rule, Schedule of Fees, W. Va. Code of State Rules, §14CSR5.

§14-1-4. Criminal History Record Check

4.1. Beginning July 1, 2018, and in addition to all of the requirements for licensure, all applicants for an initial license to practice as an optometrist in West Virginia shall request and submit to the Board the results of a state and a national criminal history record check.

4.2. 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.

4.3. 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.

4.4. 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.

4.5. 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.

4.6. 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.

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

4.8. 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 application for licensure.

4.9. An 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.

4.10. Should criminal offenses be reported on an applicant's criminal history record check, the board will consider the nature, severity, and recency of offenses, as well as rehabilitation and other factors on a case by case basis for licensure. Criminal history record checks shall be verified by a source acceptable to the Board, other than the applicant.

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

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

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

4.11.c. Pursuant to a court order.

4.12. Criminal history record checks and related records are not public records for the purposes of chapter 29B of the West Virginia Code.

§14-1-4.5. Rules For the Interview.

4.5.1. The Board shall conduct interviews for a license as specified in series 6.

§14-1-~~5~~ 6. Colleges Of Optometry.

~~§~~ 6.1. A college of optometry, to be approved by the Board, shall maintain high scholastic and professional standards and be accredited by the Accreditation Council on Optometric Education (ACOE) or its successor.

~~§~~ 6.2. The Board shall keep an up-to-date list of all Colleges of Optometry approved by the Board, and make the list available upon request.

§14-1-~~6~~ 7. Licenses.

~~§~~ 7.1. When an applicant is interviewed by the Board and found qualified to practice the profession of optometry in this State he or she shall be notified by letter by the Board or its designee. In this letter the Board or its designee shall also advise the applicant of the required certificate fee and the annual renewal fee. If the applicant fails to pay the required fees within ninety (90) days, his or her records shall be so marked and he or she shall not be listed as a licensed optometrist in this State. The Board or its designee shall make every effort to locate the applicant and shall send a registered letter with receipt requested to the address given by the applicant.

~~§~~ 7.2. The Board shall issue a license to practice the profession of optometry in this State to any person who, successfully completes the interview and meets the requirements of the Board, or is approved by reciprocity. The fee for issuing this license is to be paid by check or money order made payable to the West Virginia Board of Optometry.

~~§~~ 7.3. The Board shall issue a license to include the licensee's name in full, a license registration number, the Board seal, the effective date of the certificate and the signatures of the Board members. One photograph shall be affixed to the large certificate and one shall remain in the permanent file.

§14-1-~~7~~ 8. Renewals.

~~§~~ 8.1. A licensee who desires to continue in active practice shall annually, on or before the first day of July, renew his or her license and pay an annual renewal fee and maintain proof of acquisition of all required continuing education hours for audit.

~~§~~ 8.2. Renewal fees shall be paid by check, money order or credit card made payable to the West Virginia Board of Optometry.

~~§~~ 8.3. Upon receipt of the renewal fee the Board or its designee shall issue a renewal license card bearing the number of the license, the year for which renewed and any other information the Board considers necessary.

~~§~~ 8.4. It is the responsibility of each licensee to make timely application for license renewal and complete the process properly, to retain the required continuing education documentation and to pay the fees required. Any information or reminders which the Board may issue are courtesies and shall not diminish the responsibilities of the licensee.

~~§~~ 8.5. Every optometrist shall display his or her renewal certificate in a conspicuous place in the principal office where he or she practices optometry. If an optometrist practices his or her profession in more than one (1) office (branch office) he or she shall have an additional renewal card for each office, obtained upon request to the Board. Every optometrist shall notify the Board of any branch office and its address.

§14-1-~~8~~ 9. Delinquent and Expired License Requirements.

§ 9.1. If a license is not renewed when due, then the Board shall automatically place the licensee on delinquent status. A licensee on delinquent status may not practice optometry in this state.

§ 9.2. The fee for a person on delinquent status shall increase at a rate, determined by the Board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of thirty-six months.

§ 9.3. Within thirty-six months of being placed on delinquent status, if a licensee wants to return to active practice, he or she must complete all the continuing education requirements and pay all the applicable fees as set by rule.

§ 9.4. After thirty-six months of being placed on delinquent status, a license is automatically placed on expired status and cannot be renewed. A person whose license has expired must reapply for a new license.

§14-1-~~9~~ 10. Unlawful Use of The Prefix “Doctor” or “Dr.”

§ 10.1. Under W. Va. Code §61-10-21 it is unlawful for any person to use the prefix “Doctor” or “Dr.” in connection with his or her name in any letter, postcard, advertisement, sign or public display of any nature whatsoever, without affixing thereto suitable words or letters designating the degree which he or she holds.

§14-1-~~10~~ 11. Temporary Permit.

~~10-11.1.~~ The Board may issue a temporary permit to practice optometry to an applicant who has graduated from an optometry school accredited by the Accreditation Council on Optometric Education or its successor, has taken and passed Parts I and II of the National Board Examination on the practice of optometry which is prepared, administered and graded by the National Board of Examiners in Optometry or its successor and has taken Part III of the National Board Exam and is awaiting results of Part III. The applicant shall also meet the requirements of subsections 10.2. – 10.3.a. and pay the temporary permit fee required in the Board’s rule, Schedule of Fees, W. Va. Code of State Rules, §14CSR5. The temporary permit may be issued prior to the applicant’s taking and the prescribed exam.

~~10 11.2.~~ A printed copy of the passing score notification of Part I and Part II of the National Board examination administered by the National Board of Examiners in Optometry or its successor and a printed copy of the online registration verification for Part III of the National Board exam or its successor shall be submitted with the application for a temporary permit.

~~10-11.3.~~ A letter from an active licensee who has agreed to supervise the applicant shall be submitted with the application for a temporary permit.

~~10 11.3.a.~~ The active licensee shall submit the prescribed form for proof of malpractice insurance in the amount of not less than One Million Dollars (\$1,000,000) per occurrence and not less than Three Million Dollars (\$3,000,000) aggregate coverage. The active licensee shall ensure that the permittee will be covered by this insurance.

~~10 11.4.~~ If the permittee receives a passing score on all parts of the National Board Examination, a temporary permit expires thirty (30) days after the permittee receives the results of the National Board Examination.

~~40~~ 11.5. If the permittee receives a failing score on Part III of the National Board Examination, the temporary permit expires immediately.

~~40~~ 11.6. An applicant under this subsection may only be issued one temporary permit. Upon the expiration of a temporary permit, a person may not practice as an optometrist until he or she is fully licensed under the provisions of §30-8-1 et seq. In no event may a permittee practice on a temporary permit beyond a period of ninety (90) consecutive days.

~~40-11.7~~. A Temporary permittee under this rule shall work under the on-site supervision of an active licensee. Patient charts written by the permittee shall be cosigned by the active licensee supervisor within 48 hours.

~~§14-1-44~~ 12. Special Volunteer License.

~~44~~ 12.1. A Special Volunteer License shall be issued by the Board using the provisions listed in W. Va. Code §30-8-16.

~~44~~ 12.2. The applicant for a special volunteer license must submit the prescribed application.

~~44~~ 12.3. The applicant for a special volunteer license shall provide proof of completion of the required continuing education hours listed in the Board's rule, W. Va. Code of State Rules, §14CSR10.

~~44~~ 12.4. The applicant shall submit the written agreement between the applicant and the clinic stating that the optometrist will provide voluntary uncompensated optometric services under the control of the clinic to patients of the clinic. Such agreement shall state that the clinic will provide liability coverage for the applicant in the amount of not less than One Million Dollars (\$1,000,000) per occurrence.

~~§14-1-42~~ 13. Inactive License.

~~42~~ 13.1. An active licensee who is not practicing, and who has no disciplinary action pending against his or her license may request an inactive license.

~~42~~ 13.2. A licensee who does not want to continue an active practice shall notify the board in writing and be granted inactive status.

~~42~~ 13.3. A person granted inactive status is not subject to the payment of any fee and may not practice optometry in this state.

~~42~~ 13.4. When the person wants to return to the practice of optometry, the person shall submit an application for renewal along with all applicable fees as set by rule.

~~42~~ 13.5. The Board may require, after the interview, remedial education and/or examination passage prior to active licensure reinstatement.

~~42~~ 13.7. Any inactive license shall be reactivated at the highest level of licensure. The inactive licensee shall submit to all requirements for the highest level of licensure prior to reactivation.