



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Optometry TITLE-SERIES: 14-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Rules of the West Virginia Board of Optometry

CITE STATUTORY AUTHORITY: 30-8-1, et.seq, 30-1-21, 30-1-22, 30-1-24

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/29/2019 1:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Pamela Carper

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Charleston, WV 25301

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule contains types and conditions of licensure. The amendment incorporates 30-1-21 on Low Income Waiver, 30-1-22, Military Waiver and 30-1-24 Use of Criminal Records for Disqualification of Authorization to Practice.

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

Please see above. In addition some changes were approved by the Governor's Office to allow more applicants to have a temporary permit for a longer period of time and technical changes to make the rule more uniform. The second filing is to incorporate 30-1-24.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The impact on fee special revenue will not be known until applicants apply for waivers. The impact for this board should be around \$3000.00 or lower. Circumstances are similar for 30-1-24 depending on those who apply for criminal conviction consideration.

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

Applicants who qualify for the waivers will save \$300 on application fees and a \$100 certificate fee.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 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 primary impact will be lost revenue from the application fee and certificate fee per qualified applicant equaling \$400 person. A better estimate of costs in personal services and lost revenue may be better estimated after one year of implementation.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Pamela P Carper -- 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 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. -- ~~May 9, 2018.~~

1.4. Effective Date. -- ~~July 1, 2018.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~May 9, 2028~~ August 1, 2029.

§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.

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

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.

2.6. "Low Income Individual" means an individual whose household adjusted gross income is below 130 percent of the Federal poverty line. This term also includes any individual enrolled in a public assistance program including, but not limited to, the Temporary Assistance for Needy Families Program (TANF), Medicaid, or the Supplemental Nutrition Assistance Program (SNAP).

2.7. "Military Families" means any person who serves as an active member of the armed forces of the United States of America, the National Guard, or a reserve component, honorably discharged veterans of the armed forces, and their spouses. This term also includes surviving spouses of deceased armed service members who have not remarried.

~~2.6.~~ 2.8. “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.

~~2.7.~~ 2.9. “National Board Examination” means the prescribed national examination in optometry composed and administered by the National Board of Examiners in Optometry or its successor.

2.10. “Online State Law Exam” means the online state law examination regarding West Virginia optometric regulations available through the National Board of Examiners in Optometry or its successor.

~~2.8.~~ 2.11. “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.

~~2.9.~~ 2.12. “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.

2.13. “Unreversed,” as this term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned or expunged.

§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 and his or her birth certificate.

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~~ or its successor 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 or the applicant may choose to have the schools that he or she has attended to send sealed certified transcripts directly to the Board or its designee.

3.8. The applicant shall take and pass the Online State Law Examination for West Virginia optometry available through the National Board of Examiners in Optometry or its successor.

~~3.8.~~ 3.9. The fee for the application shall be determined by the Board's rule, Schedule of Fees, W. Va. Code of State Rules, §14CSR5.

3.10. A low income individual may apply for a waiver of all initial licensing fees using a Board approved form. The Low Income Waiver of Initial Licensing Fees form, provided by the Board, and all required documentation shall be submitted with the applicant's application for licensure.

3.10.a. The applicant shall attest to the validity of the information provided with the low income waiver application by signing the written declaration contained in the Board approved low income form. The declaration will state that any falsification, omission or withholding of information of facts regarding low income eligibility shall be sufficient grounds for the suspension, cancellation or revocation of his or her optometry license.

3.10.b. Upon receipt of a completed low income waiver form and required documentation, the Board shall review the application for a waiver and issue a decision for approval or disapproval of the low income waiver within thirty (30) days.

3.11. A qualifying member of a military family may apply for a waiver of all initial licensing fees using a Board approved form. The Military Family Waiver of Initial Licensing Fees form, provided by the Board, and all required documentation shall be submitted with the applicant's application for licensure. The Military Family Waiver of Initial Licensing Fees Form is available on the Board's website at www.wvbo.org.

3.11.a. The applicant shall attest to the validity of the information provided with the military family waiver form by signing a written declaration contained in the Board approved military family waiver form. The declaration will state that any falsification, omission or withholding of information of facts regarding military family waiver eligibility shall be sufficient grounds for the suspension, cancellation or revocation of his or her optometry license.

3.11.b. Upon receipt of a complete military family waiver form and required documentation, the Board shall review the application for a waiver and issue a decision for approval or disapproval of the military family waiver within thirty (30) days.

§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.

§14-1-5. Rules For the Interview.

~~5.1.~~ The Board shall conduct interviews for a license as specified in series 6.

§14-1-6. 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.

§14-1-7. 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.

§14-1-8. 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.

§14-1-9. 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.

§14-1-10. 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.

§14-1-11. Temporary Permit.

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.~~ 11.2 – 11.3.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 passing~~ all sections of the prescribed exam administered by the National Board of Examiners in Optometry or its successor.

11.2. A printed certified 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 applicant’s accredited optometry school transcript indicating successful completion of the requirements for a doctorate degree in optometry, proof of passing all sections of the National Board exam, registration for the exam National Board exam or the documentation required in W.Va. Code of State Rules, License By Reciprocity, §14-8-1, et. seq. shall be submitted with the application for a temporary permit.

11.3. A certified report of passage of the National Board Online State Law Exam.

~~11.3.~~ 11.4. A letter from an active licensee who has agreed to supervise the applicant shall be submitted with the application for a temporary permit. ~~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.

~~11.4.~~ 11.5. If the permittee receives a passing score on ~~all parts of the National Board Examination~~ the Board prescribed examination, a temporary permit expires ~~thirty (30) days~~ sixty (60) days after the permittee receives the results of the ~~National Board~~ prescribed E examination.

~~11.5.~~ 11.6. If the permittee receives a failing score on ~~Part III of the National~~ the Board prescribed Examination, the temporary permit expires immediately.

~~11.6.~~ 11.7. 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.

~~11.7.~~ 11.8. 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.

§14-1-12. Special Volunteer License.

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

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

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.

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.

§14-1-13. Special Volunteer Event License For A Charitable Function or Event.

13.1. The applicant for a charitable function or event shall comply with the provisions of W. Va. Code, §30-1-21.

13.2. A person holding an unrestricted license, certificate, registration or permit granted to practice optometry by another state may serve as a volunteer without compensation for a charitable function for a period not to exceed ten days, subject to the approval process described in this section. ~~Provided, that a~~ A person who has received any completed disciplinary actions in which discipline was ordered in any of the three most recent years, or is the subject of any pending disciplinary actions is not eligible for this special volunteer license.

13.3. The applicant for a charitable function or event shall complete the Special Volunteer Application prescribed by the Board. The application is available from the Board's website at www.wvbo.org. The application shall include the applicant's name, address, phone number email address, charitable event title, purpose and dates for the event, charitable event sponsoring organization, sponsoring organization's address, telephone number and email address. The application shall also include all optometric licenses held in each state for the previous three (3) years and any pending or completed disciplinary action taken regarding optometric licensure.

13.4. Upon a review of the information required in this section, the board shall provide a special volunteer license for the specific event authorized for a period not to exceed ten (10) days.

13.5. The board shall not charge a fee to issue the special volunteer event license.

~~§14-1-13.~~ 14-1-14. Inactive License.

~~13.1.~~ 14.1. An active licensee who is not practicing, and who has no disciplinary action pending against his or her license may request an inactive license.

~~13.2.~~ 14.2. A licensee who does not want to continue an active practice shall notify the board in writing and be granted inactive status.

~~13.3.~~ 14.3. A person granted inactive status is not subject to the payment of any fee and may not practice optometry in this state.

~~13.4.~~ 14.4. When the person wants to return to the practice of optometry within thirty-six (36) months of obtaining inactive status, the person shall submit an application for renewal along with all applicable fees as set by rule.

~~13.5.~~ 14.5. The Board may require, after the interview, remedial education and/or examination passage prior to active licensure reinstatement.

~~13.7.~~ 14.6. 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.

14.7. After thirty-six (36) months of being placed on inactive status, a licensee is automatically placed on expired status. He or she may not apply to be returned to active status. A person whose license has expired must apply for a new license.

§14-1-15. Consideration of Criminal Convictions Regarding Licensure.

15.1. The board may not disqualify an applicant from initial license because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the practice of optometry. In determining whether a criminal conviction bears a rational nexus to the practice of optometry, the board shall consider at a minimum:

15.1.a. The nature and seriousness of the crime for which the individual was convicted;

15.1.b. The passage of time since the commission of the crime;

15.1.c. The relationship of the crime to the ability, capacity and fitness required to perform the duties and discharge the responsibilities of an optometrist; and

15.1.d. Any evidence of rehabilitation or treatment undertaken by the individual.

15.2. Notwithstanding any other provision of the W. Va. Code to the contrary, if an applicant has been denied licensure because of a prior criminal conviction, the board shall permit the applicant to apply for initial licensure if:

15.2.a. A period of five (5) years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

15.2.b. The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

15.2.c. The conviction was not for an offense of a violent or sexual nature; Provided, that a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure to be determined by the board on a case by case basis.

15.3.1. An individual with a criminal record who has not previously applied for licensure may petition the board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.

15.3.1.a. Then petition shall be submitted on an application form prescribed by the board available from the Board's website at www.nabpo.org and shall include sufficient details about the individual's criminal record to enable the board to identify the jurisdiction where the conviction occurred, the date of the conviction, the date of the release from incarceration if applicable, and the specific nature of the conviction. Where the records are sealed, the applicant shall sign a waiver authorizing the board to access the criminal records of the applicant in order for the board to make the eligibility determination.

15.3.1.b. The applicant may submit with the petition for licensure eligibility evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to practice optometry.

15.3.1.c. The board shall provide the determination of licensure eligibility within sixty (60) days of receiving the petition.