



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Medicine TITLE-SERIES: 11-06
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 11-06 Continuing Education for Physicians and Podiatric Physicians

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §30-3-7.

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:

W. Va. Code §30-3-7.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/29/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/29/2021

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 Board publicized notice of the proposed rule change by: including a notice of the proposed amendments and comment period on the Board of Medicine website with a link to the proposed rule; sending email notification to licensees and registrants of the Board regarding notice of the proposed amendments and comment period with a link to the proposed rule; and notifying other interested professional associations and governmental entities including: West Virginia State Medical Association; West Virginia Podiatric Medical Association; West Virginia Primary Care Association and West Virginia Hospital Association.

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

Series six establishes the minimum continuing education requirements satisfactory to the Board for physicians and podiatric physicians.

Section two adds a requirement that information related to substance use disorder treatment referral be included in all drug diversion training and best practice prescribing of controlled substance training. As a result of comments received, it also requires training on the impacts of stigma on treatment effectiveness including the concept of addiction as a chronic disease and an introduction to MOUD and training on the effectiveness of MOUD treatment including the use of full opioid antagonist, partial opioid antagonist and opioid antagonists. Additionally, this section establishes a new definition, Website or Boards website.

Section three was amended to allow podiatric physicians to satisfy continuing education requirements, except for the drug diversion training and best practice prescribing of controlled substances training requirement, by sitting for and passing a certification or recertification examination of the American Board of Podiatric Medicine or the American Board of Foot and Ankle Surgery during the relevant period.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The proposed amendments to this rule defines website, modifies the components to be included in all Board-approved drug diversion training and best practice prescribing of controlled substances training continuing education courses, and permits a podiatric physician to satisfy his or her continuing education requirements, except for the three hour drug diversion training and best practice prescribing of controlled substances training requirement, by sitting for and passing a certification or recertification examination conducted by one of two approved certifying boards for podiatric physicians.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None.

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

None.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

N/A.

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

Yes

Mark A Spangler -- 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 11
LEGISLATIVE RULE
BOARD OF MEDICINE

SERIES 6
CONTINUING EDUCATION FOR PHYSICIANS AND PODIATRIC PHYSICIANS

§11-6-1. General.

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

1.2. Authority. -- W. Va. Code §30-3-7.

1.3. Filing Date.-- ~~April 23, 2018~~

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

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect ~~on July 1, 2023~~ upon August 1, 2027.

§11-6-2. Definitions.

Definitions set forth in 11 CSR 1A are hereby incorporated by reference.

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

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

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

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

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

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

2.5.b. Epidemiology of chronic pain and misuse of opioids.

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

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

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

2.5.f. Case study of a patient with chronic pain.

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

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

2.5.i. Compliance with controlled substances laws and rules.

2.5.j. Training on prescribing and administration of an opioid antagonist.

2.5.k. Training on the impacts of stigma on treatment effectiveness including the concept of addiction as a chronic disease;

2.5.l. Introduction to Medication for Opioid Use Disorder (MOUD) and training on the effectiveness of MOUD treatment including the use of full opioid agonist, partial opioid agonist, and opioid antagonists;

~~2.5.k.m.~~ Registration with and use of the West Virginia Controlled Substances Monitoring Program established in West Virginia Code Chapter 60A, Article 9.

2.5.l.n. Information related to substance use disorder treatment referral, including but not limited to programs and initiatives developed through the Governor's Council on Substance Abuse Prevention and Treatment, the Governor's Committee on Crime, Delinquency, and Correction, and/or W. Va. Code § 15-9-7.

~~2.5.l.m.o.~~ Maintenance of a record of attendance of each individual who successfully completes the drug diversion training and best practice prescribing of controlled substances training.

2.6. "Licensee" means a physician or podiatric physician licensed pursuant to the provisions of W. Va. Code § 30 -3-1 et seq. and the provisions of 11 CSR 1A.

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

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

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2.9. “Reactivation” means re-licensure of an eligible former licensee who has not held a license issued by the Board for more than one year immediately preceding the request for reactivation.

2.10. “Reinstatement” means re-licensure of an eligible former licensee whose license automatically expired or was subject to a non-disciplinary voluntary surrender less than one year prior to the request for reinstatement.

2.11. “Renewal applicant” means a licensee who is seeking to renew a license issued by the Board.

2.12. “Reporting period” means the two-year period preceding the renewal deadline for a license issued by the Board. Continuing education satisfactory to the Board must be obtained in each reporting period.

2.13. “Website” or “Board’s website” means the set of related web pages operated by or on behalf of the West Virginia Board of Medicine located at the domain name wvdom.wv.gov, or at any successor domain name published by the Board.

§11-6-3. Continuing Education Satisfactory to the Board.

3.1. Physicians. -- Successful completion of a minimum of fifty hours of continuing medical education satisfactory to the Board during the preceding two-year period is required for the biennial renewal of a medical license. At least thirty hours of the required fifty hours must be related to the physician’s area or areas of specialty.

Types and categories of continuing medical education satisfactory to the Board for physicians are:

3.1.a Continuing medical education designated as Category I by the AMA or the American Academy of Family Physicians.

3.1.b. Teaching medical education courses or lecturing to medical students, residents, or licensed physicians, or serving as a preceptor to medical students or residents. A physician may obtain a maximum of twenty hours of continuing medical education credit for this category of activity.

3.1.c. Passing a certification or recertification examination of one of the ABMS member boards, and receiving certification or recertification from said board during the reporting period, or successful involvement in maintenance of certification from said ABMS member board during the reporting period. Certification, recertification, or current successful involvement in maintenance of certification from any board other than one of the ABMS member boards does not qualify the recipient for any credit hours of continuing medical education. A maximum of fifty hours of continuing medical education credit may be awarded for this category of activity, but a physician shall only be awarded forty-seven hours of credit if the physician is a mandatory participant in the continuing education activity described in subsection 3.3 of this rule.

3.1.d. Successful completion during the reporting period of a minimum of twelve months of an ACGME approved post-graduate training program or fellowship. A maximum of fifty hours of continuing medical education credit may be awarded for this category of activity, but a physician shall only be awarded forty-seven hours of credit if the physician is a mandatory participant in the continuing education activity described in subsection 3.3 of this rule.

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

3.2. Podiatric physicians. -- Successful completion of a minimum of fifty hours of continuing podiatric education satisfactory to the Board during the preceding two-year period is required for the biennial renewal of a podiatric license. At least thirty hours of the hours must be related to the podiatric physician's area or areas of specialty. Types and categories of continuing podiatric education activity satisfactory to the Board for podiatric physicians are:

3.2.a. Continuing podiatric education:

3.2.a.1. Approved by the APMA or Council on Podiatric Medical Education;

3.2.a.2. Presented or sponsored by any of the podiatry colleges in the United States;

3.2.a.3. Designated as Category I by the AMA or the American Academy of Family Physicians; or

3.2.a.4. Presented or sponsored by the West Virginia Podiatric Medical Association.

3.2.b. Teaching podiatric education courses or lecturing to medical students, podiatric students, residents, or licensed physicians or podiatric physicians on podiatric medicine, or serving as a preceptor to podiatric students or residents. Provided, that a podiatric physician may obtain a maximum of twenty hours of continuing podiatric education credit for this category of activity.

3.2.c. Passing a certification or recertification examination of the American Board of Podiatric Medicine or the American Board of Foot and Ankle Surgery, and receiving certification or recertification from said board during the reporting period. A maximum of fifty hours of continuing medical education credit may be awarded for this category of activity, but a physician shall only be awarded forty-seven hours of credit if the physician is a mandatory participant in the continuing education activity described in subsection 3.3 of this rule.

3.2.e.d. Successful completion during the reporting period of a minimum of twelve months of graduate clinical training in a program approved by the Council on Podiatric Medical Education or the Colleges of Podiatric Medicine. A maximum of fifty hours of continuing podiatric education credit may be awarded for this category of activity, but a podiatric physician shall only be awarded forty-seven hours of credit if the licensee is a mandatory participant in the continuing education activity described in subsection 3.3 of this rule.

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

3.3. Mandatory Continuing Education Activity for Physicians and Podiatric Physicians. -- As a prerequisite to license renewal, a licensee who has prescribed, administered, or dispensed any controlled substance pursuant to a West Virginia license during the reporting period shall complete a Board-approved continuing education activity for a minimum of three hours of drug diversion training and best practice prescribing of controlled substances training.

3.3.a. The Board-approved drug diversion training and best practice prescribing of controlled substances training shall satisfy three of the fifty required hours of continuing education for the reporting period.

3.3.b. A renewal applicant who has not prescribed, administered, or dispensed any controlled substances pursuant to a West Virginia license during the reporting period may seek a waiver of this

continuing education requirement by completing the required attestation and waiver request on the renewal application.

3.4. Other than as specifically set forth herein, in calculating continuing education activities, one hour equals sixty minutes of activity or instruction.

§11-6-4. Certification of Successful Completion of Continuing Education Requirements.

4.1. Certification. -- A renewal applicant shall, as a condition of licensure renewal, certify his or her successful completion of all required continuing education during the reporting period.

4.2. Form of Certification. -- The Board shall include a certification of successful completion of required continuing education on its biennial renewal application. The certification shall require the renewal applicant to:

4.2.a. Certify successful completion of all required continuing education;

4.2.b. Attest to the truthfulness and accuracy of the renewal applicant's statements regarding continuing education activities;

4.2.c. Acknowledge that any license issued based upon the renewal application is based upon the truth and accuracy of the applicant's statements and that if false information is submitted in the application, such act constitutes good cause for the revocation of the renewal applicant's license to practice in the State of West Virginia; and

4.2.d. Sign and date the certification.

4.3. Timely Submission of Certification. -- At the beginning of each renewal application period, the Board shall publish the renewal deadline on its website. A continuing education certification is timely if it is received by the Board prior to the renewal deadline.

4.4. A license shall automatically expire if the certification required by this section is not submitted to the Board by the renewal deadline. An automatically expired license shall remain expired until a licensee successfully seeks reinstatement or reactivation of license.

§11-6-5. Recordkeeping, Audits and Written Documentation of Successful Completion of Continuing Education Requirements.

5.1. Records. A licensee shall maintain accurate records of all continuing education he or she has completed. Continuing education records shall be maintained for a period of six years.

5.2. Audits. -- The Board may conduct such audits and investigations as it considers necessary to assure compliance with continuing education requirements and to verify the accuracy of a renewal applicant's certification of continuing education.

5.3. Production of Written Documentation. -- Upon written request of the Board to a licensee's preferred mailing address or e-mail address of record with the Board, a licensee shall, within thirty days, submit written documentation satisfactory to the Board corroborating the licensee's renewal application certification of continuing education compliance.

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5.4. Failure or Refusal to Provide Written Documentation. -- Failure or refusal of a licensee to provide written documentation requested by the Board as set forth in subsection 5.3. of this rule is prima facie evidence of renewing a license to practice medicine or podiatry by fraudulent misrepresentation and the licensee is subject to disciplinary proceedings under W. Va. Code §30-3-14.

5.5. Inactive License. -- A licensee who holds an inactive license and who makes a written request to the Board for an active license shall submit written documentation of successful completion of a minimum of fifty hours of continuing education as required in section 3 of this rule. The Board shall not consider a change of status request from an inactive to an active license until all written documentation accompanied by a certification in accordance with section 4 of this rule is submitted to and approved by the Board.

5.6. Reinstatement Applicants. - As a part of a reinstatement application, an eligible applicant shall certify his or her completion of all required continuing education for the previous reporting period, and shall submit written documentation satisfactory to the Board corroborating applicant's certification of continuing education compliance.

5.7. Reactivation applicants. – An eligible applicant seeking reactivation of licensure shall submit a reactivation application packet, which includes an initial licensure application accompanied by any corroborating documentation or verifications required by the Board for reactivation applicants, the reactivation application fee, and one of the following:

5.7.a. Certification and written documentation of successful completion of continuing education for the reporting period associated with the applicant's last period of licensure with the Board;

5.7.b. Certification and written documentation of successful completion of fifty hours of continuing education satisfactory to the Board within two-year period preceding the application submission date; or

5.7.c. An attestation by the applicant that he or she holds an active status license in another state which requires the periodic completion of a minimum number of continuing education hours as a condition of continued licensure, and that the applicant is currently compliant with all such continuing education requirements.

§11-6-6. Board Approval of Drug Diversion Training and Best Practice Prescribing of Controlled Substances Training Courses.

6.1. The biennial requirement to complete a minimum of three hours of drug diversion training and best practice prescribing of controlled substances training requires successful completion of a Board-approved course.

6.2. The Board shall maintain and publish on its website a current list of all educational activities which have been approved by the Board to satisfy the drug diversion training and best practice prescribing of controlled substances training continuing education requirement.

6.3. To obtain Board approval that an educational activity satisfies the drug diversion training and best practice prescribing of controlled substances training requirement, a provider or sponsor shall submit a written request to the Board at least thirty days in advance of the educational activity:

6.3.a. Identifying the provider, sponsor, all presenters and the full name of the educational activity for which Board approval is sought;

6.3.b. Identifying all dates and locations that the educational activity will be offered;

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6.3.c. Confirming that the educational activity includes all required training components which are set forth in subsection 2.5; and

6.3.d. Providing sufficient documentation of the course content and objectives to permit the Board to evaluate whether approval should be granted.

6.4. Board-approval for a proposed continuing education activity is valid for a period of one year. If additional dates or locations of a Board-approved training are offered within the approval period, the course sponsor or presenter shall notify the Board of the date and location of all such additional course offerings.

6.5. To obtain approval in a subsequent year for an updated educational activity which was previously approved pursuant to this section, a provider or sponsor shall submit a written request to the Board at least thirty days in advance of the educational activity:

6.5.a. Identifying full name of the educational activity which was previously approved and any changes to the name for the updated course;

6.5.b. Identifying all dates and locations that the updated educational activity will be offered;

6.5.c. Confirming that the updated educational activity includes all required training components which are set forth in subsection 2.5; and

6.5.d. Providing sufficient information regarding the updated information incorporated into the course content to permit the Board to evaluate whether approval should be granted.

6.6. Board staff shall respond to all requests submitted pursuant to this section, in writing, within twenty days of receipt of the request.