



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Optometry

RULE TYPE: Legislative

TITLE-SERIES: 14-01

RULE NAME: RULES OF THE WEST VIRGINIA
BOARD OF OPTOMETRY

CITE AUTHORITY: 30-8-1 et. seq.

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Lesley Mccallister -- 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, 2024.~~

1.4. Effective Date. -- ~~May 9, 2024~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~August 1, 2029.~~ August 1, 2031.

§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, Medicaid, or the Supplemental Nutrition Assistance Program.

2.7. "Member of the Military" 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 thereof.

2.8. "Military spouse" means any person lawfully married to a member of the military who is a resident of this state or who is assigned to this state, or on federal active duty in this state.

2.9. "Temporary permit for Non-military Members" or "permit" means a permit issued to a person who has graduated from an accredited optometry school, has taken all required parts of the prescribed National Board Examination and is awaiting results of the examination.

2.10. "National Board Examination" means the prescribed national examination in optometry composed and administered by the National Board of Examiners in Optometry or its successor or equivalent.

2.11. "Online State ~~Rule~~ 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 or equivalent.

2.12. "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.

2.13. "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.

2.14. "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 an ~~written~~ application on the board's website application form, which will be supplied by the board or its designee. The application shall require the following: the applicant's 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 with his or her signature. ~~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~~ be sent directly to the board from each institution. 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 required 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 or its successor, or equivalent 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 days prior to ~~the first day of~~ the interview dates. The thirty-day requirement can be waived by the board when deemed appropriate. The completed application, records and fees are to be submitted electronically and/or mailed to the board or its designee, in one (1) parcel and ~~a~~All certified transcripts must be mailed or emailed directly to the board or its designee by the issuing institution or its designee. ~~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.~~ Applicants may also apply for licensure using the board's designated online application process ~~on the Board's website.~~

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

3.9. Only applicants qualified for the highest level of ~~certification~~ licensure shall be granted a license and no license of any description shall be granted except those including, at a minimum, oral prescriptive authority, and injection certifications, and laser certification. Applicants who do not satisfy all the requirements for oral, ~~and injection, and laser~~ certification, and any other certification that may ~~from time to time~~ be established, shall not be permitted to sit for the license interview and shall not be granted a license of any description.

3.10. The fee for the application and each license certification fee shall be determined by the board's rule, Schedule of Fees, W. Va. Code of State Rules, §14CSR5.

3.11. 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.

3.11.a1. 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 days.

§14-1-4. Criminal History Record Check

4.1. ~~Beginning July 1, 2018, and i~~n addition to all of the requirements for licensure, all applicants for any 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 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~~1~~. To the individual who is the subject of the criminal history record check,

4.11.b~~2~~. With the written authorization of the individual who is the subject of the criminal history record check; or

4.11.e~~3~~. 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.

The board shall conduct interviews for a license as specified in ~~series 6W, Va. Code of State Rules,~~ §14CSR6.

§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~~ that is accredited by the Accreditation Council on Optometric Education or its successor or equivalent is approved by the board.

~~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 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 credit card, ~~or~~ 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~~ to 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 that 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 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.”~~

~~—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~~10. Temporary Permit for Non-military Applicants.

~~11~~10.1. 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 of Optometric Education or its successor. The applicant shall also meet the requirements of subsections ~~11-2-11-3~~10.2-10.3, 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 before the applicant passes all sections of the prescribed exam administered by the National Board of Examiners in Optometry, its successor or equivalent. A certified copy of the applicant’s accredited optometry school transcript indicating successful completion of the requirements for a doctorate degree in optometry must be submitted to qualify for a non-military temporary permit. The provisions of §14-1-~~18~~17 of this rule establish alternative temporary permit requirements for members of the military and their spouses.

~~11~~10.2 An application for a temporary permit shall also include the following documents:

~~11~~10.2.1. Proof of passing of the exam administered by the National Board of Examiners of Optometry, its successor or its equivalent, 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~~10.2.2. A certified report showing the passage of the National Board Online State ~~Rule~~ Law Exam.

~~11~~10.2.3. A letter from an active licensee who has agreed to the onsite supervision of the applicant shall be submitted with the application for a temporary permit. The active licensee shall submit the prescribed form for proof of malpractice insurance in the amount of not less than one million dollars per occurrence and not less than three million dollars aggregate coverage. The active licensee shall ensure that the permittee will be covered by this insurance.

~~11~~10.3. If the permittee receives a failing score on the board-prescribed examination, the temporary permit expires immediately.

~~11~~10.4. 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 consecutive days.

~~11~~10.5. 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 forty-eight hours.

§14-1-~~12~~11. Special Volunteer License.

~~4211~~.1. A Special Volunteer License shall be issued by the board using the provisions listed in W. Va. Code §30-8-16.

~~4211~~.2. The applicant for a special volunteer license must submit the prescribed application.

~~4211~~.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.

~~4211~~.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 per occurrence.

§14-1-~~4312~~. Special Volunteer Event License for A Charitable Function or Event.

~~4312~~.1. The applicant for a charitable function or event shall comply with the provisions of W. Va. Code, §30-1-21.

~~4312~~.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: 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.

~~4312~~.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. 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 years and any pending or completed disciplinary action taken regarding optometric licensure.

~~4312~~.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 days.

~~4312~~.5. The board shall not charge a fee to issue the special volunteer event license.

14-1-~~4413~~. Inactive License.

~~4413~~.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.

~~4413~~.2. A licensee who does not want to continue an active practice shall notify the board in writing and be granted inactive status.

~~4413~~.3. A person granted inactive status is not subject to the payment of any fee and may not practice optometry in this state.

~~4413~~.4. When the person wants to return to the practice of optometry within thirty-six months of obtaining inactive status, the person shall submit an application for renewal along with all applicable fees as set by rule.

~~1413.5.~~ The board may require, ~~after the~~ an interview, remedial education and/or examination passage prior to active licensure reinstatement.

~~1413.6.~~ 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.

~~1413.7.~~ After thirty-six 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~~414.~~ Consideration of Criminal Convictions Regarding Licensure.

~~1414.1.~~ The board may not disqualify an applicant from an 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:

~~1414.1.a1.~~ The nature and seriousness of the crime for which the individual was convicted;

~~1414.1.b2.~~ The passage of time since the commission of the crime;

~~1414.1.e3.~~ The relationship of the crime to the ability, capacity and fitness required to perform the duties and discharge the responsibilities of an optometrist; and

~~1414.1.f4.~~ Any evidence of rehabilitation or treatment undertaken by the individual.

~~1414.2.~~ 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:

~~1414.2.a1.~~ A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

~~1414.2.b2.~~ The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

~~1414.2.e3.~~ 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.

~~1414.3.~~ 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.

~~1414.3.a1.~~ Then the petition shall be submitted on an application form prescribed by the board available from the board 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, and the specific nature of the conviction.

~~1414.3.b2.~~ 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.

~~14.3.e3.~~ The board shall provide the determination of licensure eligibility within sixty days of receiving the petition.

§14-1-~~4615.~~ Member of Military License.

~~4615.1.~~ The board shall issue a license to a member of the military who is assigned to active duty in this state, and satisfies the following conditions:

~~4615.1.1.~~ Holds a current license from another jurisdiction, and that jurisdiction's requirements for licensure are substantially equivalent to or exceed the requirements for licensure for licensure for the board; and

~~4615.1.2.~~ Has demonstrated competency in optometry as determined by the board; and

~~4615.1.3.~~ Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension or revocation of a license to practice that occupation in this state at the time the act was committed; and

~~4615.1.4.~~ Is in good standing; has not been disciplined by the agency that has had jurisdiction to issue the license, certification or permit; and has no pending complaints.

~~4615.2.~~ A nonresident licensed under this section is entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by the board.

~~4615.3.~~ Any member of the military shall receive expedited application processing. The board shall review the application for a waiver and issue a decision for approval or disapproval within fifteen days.

~~4615.4.~~ The board shall issue a license to a member of the military or shall notify an applicant when the applicant's military training or experience does not satisfy the requirements for licensure and specify the criteria or requirements that the board determined the applicant failed to meet and the basis for that determination.

~~4615.5.~~ All initial fees for applications under this section shall be waived by the board.

14-1-~~4716.~~ Military Spouse License.

~~4716.1.~~ The board shall issue a license to the spouse of a resident member of the military who is assigned to active duty in this state if the spouse satisfies the following conditions:

~~4716.1.1.~~ Holds a current license from another jurisdiction, and that jurisdiction's requirements for licensure are substantially equivalent to or exceed the requirements for licensure of the board; and

~~4716.1.2.~~ Has demonstrated competency in optometry as determined by the board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application; and

~~4716.1.3.~~ Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension or revocation of a license to practice that occupation in this state at the time the act was committed; and

~~4716.1.4.~~ Is in good standing; has not been disciplined by the agency that had jurisdiction to issue the license to practice, certification or permit; and has no pending complaints.

~~4716.2.~~ All relevant experience of a military spouse, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under this rule.

~~4716.3.~~ A nonresident licensed under this section is entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by the board.

~~4716.4.~~ Any spouse of a resident member of the military shall receive expedited application processing. The board shall review the application for a waiver and issue a decision for approval or disapproval of the military family waiver within fifteen days.

~~4716.5.~~ All initial fees for applications under this section shall be waived by the board.

14-1-~~4817.~~ Temporary Permits for Military Trained Applicants and Their Spouses.

~~4817.1.~~ Any military-trained applicant, or his or her spouse who has been licensed in another jurisdiction, if the licensing jurisdiction has licensure standards substantially equivalent to the standards for licensure of the Board, shall be eligible for a temporary license permit while the applicant is satisfying licensure requirements of the board. The temporary practice permit shall be issued using the same information as provided by the applicant in the licensure application and remain valid for one year or the required renewal or until a license is granted by the board. A temporary practice permit may be denied or revoked for a pending complaint after notice is provided.

~~4817.2.~~ The temporary permit, if issued, shall be in effect for the period of one year or the required renewal date for optometrists, or until a license is granted by the board. All initial fees for applications under this section shall be waived by the board.

14-1-~~4918.~~ Submission of Forms.

~~4918.1~~ All required documentation shall be submitted with the applicant's application for licensure. All forms are available from the board.

~~4918.2.~~ The applicant shall attest to the validity of the information provided by signing a written declaration provided by the board. The declaration will state that any falsification, omission or withholding of information of facts regarding eligibility shall be sufficient grounds for the suspension, cancellation, or revocation of his or her optometry license or temporary permit.