



OPTOMETRIC LAW AND RULES

West Virginia Board of Optometry

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WEST VIRGINIA BOARD OF OPTOMETRY

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 230

(Senators Bowman, Kessler, Yost, Browning, Snyder, D. Facemire and Wells, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to repeal § 30-8- 2a, § 30-8- 2b, § 30-8- 3a, § 30-8- 3b and § 30-8- 5a of the Code of West Virginia, 1931, as amended; to amend and reenact § 30-8- 1, § 30-8- 2, § 30-8- 3, § 30-8- 4, § 30-8- 5, § 30- 8- 6, § 30-8- 7, § 30-8- 8, § 30-8- 9, § 30-8- 10 and § 30-8- 11 of said code; and to amend said code by adding thereto eleven new sections, designated § 30-8- 12, § 30-8- 13, § 30-8- 14, § 30-8- 15, § 30-8- 16, § 30-8- 17, § 30-8- 18, § 30-8- 19, § 30-8- 20, § 30-8- 21 and § 30-8- 22 , all relating to the Board of Optometry; prohibiting the practice of optometry without a license or permit; providing other applicable sections; providing definitions; providing the board composition; setting forth the powers and duties of the board; clarifying the rule-making authority; clarifying the scope of practice; establishing expanded authority for injections; continuing a special revenue account; licensing requirements; exemptions; providing for licensure for persons licensed in another state; clarifying prescriptive authority; clarifying injection authority; establishing special volunteer license; optometric business requirements; establishing renewal requirements; providing permit requirements; setting forth grounds for disciplinary actions; allowing for specific disciplinary actions; providing procedures for investigation of complaints; providing for judicial review and appeals of decisions; setting forth hearing and notice requirements; providing for civil causes of action; providing criminal penalties; and providing that a single act is evidence of practice.

Be it enacted by the Legislature of West Virginia:

That sections §30-8-2a, § 30-8-2b, § 30-8-3a, § 30-8-3b, and §30- 8-5a of the Code of

West Virginia, 1931, as amended, be repealed; that § 30-8- 1, § 30-8- 2, § 30-8- 3, § 30-8- 4, § 30-8- 5, § 30-8- 6, § 30-8- 7, § 30-8- 8, § 30-8- 9, § 30-8- 10 and § 30-8- 11 of said code be amended and reenacted; and that said code be amended by adding thereto eleven new sections, designated § 30-8- 12, § 30-8- 13, § 30-8- 14, § 30-8- 15, § 30-8- 16, § 30-8- 17, § 30-8- 18, § 30-8- 19, § 30-8- 20, § 30-8- 21 and § 30- 8- 22, all to read as follows:

ARTICLE 8. OPTOMETRISTS.

§30-8-1. Unlawful acts.

- (a) It is unlawful for any person to practice or offer to practice optometry in this state without a license or permit issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are an optometrist unless the person has been duly licensed or permitted under the provisions of this article.
- (b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of optometry, except through a licensee or permittee.
- (c) A licensee may not practice optometry as an employee of any commercial or mercantile establishment.
- (d) A licensee may not practice optometry on premises not separate from premises whereon eyeglasses, lenses, eyeglass frames or any other merchandise or products are sold by any other person. For the purposes of this section, any room or suite of rooms in which optometry is practiced shall be considered separate premises if it has a separate and direct entrance from a street or public hallway or corridor within a building, which corridor is partitioned off by partitions from floor to ceiling.
- (e) A person who is not licensed under this article as an optometrist may not characterize himself or herself as an "optometrist" or "doctor of optometry" nor may a person use the designation "OD".

§30-8-2. Applicable law.

The practice of optometry and the Board of Optometry are subject to the provisions of article one of this chapter, the provisions of this article and the board's rules.

§30-8-3. Definitions.

As used in this article:

- (a) "Appendages" means the eyelids, the eyebrows, the conjunctiva and the lacrimal apparatus.
- (b) "Applicant" means any person making application for a license, certificate or temporary permit under the provisions of this article.
- (c) "Board" means the West Virginia Board of Optometry.
- (d) "Business entity" means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity owned by licensees that practices optometry.
- (e) "Certificate" means a prescription certificate issued under section fifteen of this article.
- (f) "Certificate holder" means a person authorized to prescribe certain drugs under section fifteen of this article.
- (g) "Examination, diagnosis and treatment" means a method compatible with accredited optometric education and professional competence pursuant to this article.
- (h) "License" means a license to practice optometry.

- (i) "Licensee" means an optometrist licensed under the provisions of this article.
- (j) "Ophthalmologist" means a physician specializing in ophthalmology licensed in West Virginia to practice medicine and surgery under article thereof of this chapter or osteopathy under article fourteen of this chapter.
- (k) "Permittee" means a person holding a temporary permit.
- (l) "Practice of optometry" means the examining, diagnosing and treating of any visual defect or abnormal condition of the human eye or its appendages within the scope established in this article or associated rules.
- (m) "Temporary permit" or "permit" means a permit issued to a person who has graduated from an approved school, has taken the examination prescribed by the board, and is awaiting the results of the examination.

§30-8-4. Board of Optometry.

- (a) The West Virginia Board of Optometry is continued. The members of the board in office on July 1, 2010, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.
- (b) The board shall consist of the following members appointed by the Governor, by and with the advice and consent of the Senate:
 - (1) Five licensed optometrists; and
 - (2) Two citizen members, who are not licensed under the provisions of this article and who do not perform any services related to the practice of the profession regulated under the provisions of this article.
- (c) Each licensed member of the board, at the time of his or her appointment, must have held a professional license in this state for a period of not less than three years immediately preceding the appointment.
- (d) Each member of the board must be a resident of this state during the appointment term.
- (e) The term shall be three years. A member may not serve more than two consecutive full terms. A member may continue to serve until a successor has been appointed and has qualified.
- (f) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.
- (g) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.
- (h) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, is convicted of a felony under the laws of any jurisdiction, or becomes a nonresident of this state.
- (i) The board shall elect annually a president and a secretary-treasurer from its members who serve at the will of the board.
- (j) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.
- (k) A majority of the members of the board constitutes a quorum.
- (l) The board shall hold at least two meetings a year. Other meetings may be held at the call of the president or upon the written request of two members at the time and place as designated in the call or request.
- (m) Prior to commencing his or her duties as a member of the board, each member shall

take and subscribe to the oath required by section five, article four of the Constitution of this state.

§30-8-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

- (1) Hold meetings, conduct hearings and administer examinations;
- (2) Establish requirements for licenses, certificates and permits;
- (3) Establish procedures for submitting, approving and rejecting applications for licenses, certificates and permits;
- (4) Determine the qualifications of any applicant for licenses, certificates and permits;
- (5) Prepare, conduct, administer and grade examinations for licenses;
- (6) Determine the passing grade for the examinations;
- (7) Maintain records of the examinations by the board or a third party administrator, including the number of persons taking the examinations and the pass and fail rate;
- (8) Hire, discharge, establish the job requirements and fix the compensation of the executive secretary;
- (9) Maintain an office and hire, discharge, establish the job requirements and fix the compensation of employees, investigators and contracted employees necessary to enforce the provisions of this article;
- (10) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;
- (11) Conduct disciplinary hearings of persons regulated by the board;
- (12) Determine disciplinary action and issue orders;
- (13) Institute appropriate legal action for the enforcement of the provisions of this article;
- (14) Maintain an accurate registry of names and addresses of all licensees regulated by the board;
- (15) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;
- (16) Establish the continuing education requirements for licensees;
- (17) Issue, renew, combine, deny, suspend, revoke or reinstate licenses, certificates and permits;
- (18) Establish a fee schedule;
- (19) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and
- (20) Take all other actions necessary and proper to effectuate the purposes of this article.

(c) The board may:

- (1) Contract with third parties to administer the examinations required under the provisions of this article;
- (2) Sue and be sued in its official name as an agency of this state; and
- (3) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

§30-8-6. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

- (1) Standards and requirements for licenses, certificates and permits;
 - (2) Procedures for examinations and reexaminations;
 - (3) Requirements for third parties to prepare and/or administer examinations and reexaminations;
 - (4) Educational and experience requirements;
 - (5) The passing grade on the examinations;
 - (6) Standards for approval of courses and curriculum;
 - (7) Procedures for the issuance and renewal of licenses, certificates and permits;
 - (8) A fee schedule;
 - (9) A prescription drug formulary classifying those categories of oral drugs rational to the diagnosis and treatment of visual defects or abnormal conditions of the human eye and its appendages, which may be prescribed by licensees from Schedules III, IV and V of the Uniform Controlled Substances Act. The drug formulary may also include oral antibiotics, oral nonsteroidal anti-inflammatory drugs and oral carbonic anhydrase inhibitors;
 - (10) Requirements for prescribing and dispensing contact lenses that contain and deliver pharmaceutical agents that have been approved by the Food and Drug Administration as a drug;
 - (11) Continuing education requirements for licensees;
 - (12) The procedures for denying, suspending, revoking, reinstating or limiting the practice of licensees, certificate holders and permittees;
 - (13) Requirements for inactive or revoked licenses, certificates or permits;
 - (14) Requirements for an expanded scope of practice for those procedures that are taught at 50% of all accredited optometry schools; and
 - (15) Any other rules necessary to effectuate the provisions of this article.
- (b) All of the board's rules in effect on July 1, 2010, shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.
- (c) The board shall promulgate procedural and interpretive rules in accordance with section eight, article three, chapter twenty-nine-a of this code.

§30-8-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "West Virginia Board of Optometry Fund", which is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the State Treasury.

§30-8-8. License to practice optometry.

- (a) To be eligible for a license to engage in the practice of optometry, the applicant must:
- (1) Be at least twenty-one years of age;
 - (2) Be of good moral character;
 - (3) Graduate from a school approved by the Accreditation Council on Optometric Education or successor organization;

- (4) Pass an examination prescribed by the board;
- (5) Complete an interview with the board;
- (6) Not be addicted to the use of alcohol, drugs or other controlled substances;
- (7) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for license, which conviction has not been reversed; and
- (8) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of optometry, which conviction has not been reversed.

(b) A registration to practice issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: *Provided*, That a person holding a registration issued prior to July 1, 2010, must renew pursuant to the provisions of this article.

§30-8-9. Scope of Practice.

(a) An licensee may:

- (1) Examine, diagnosis and treat diseases and conditions of the human eye and its appendage within the scope established in this article or associated rules ;
- (2) Administer or prescribe any drug for topical application to the anterior segment of the human eye for use in the examination, diagnosis or treatment of diseases and conditions of the human eye and its appendages: *Provided*, That the licensee has first obtained a certificate;
- (3)(A) Administer or prescribe any drug from the drug formulary, as established by the board pursuant to section six of this article, for use in the examination, diagnosis or treatment of diseases and conditions of the human eye and its appendages: *Provided*, That the licensee has first obtained a certificate;
- (B) New drugs and new drug indications may be added to the drug formulary by approval of the board;
- (4) Administer epinephrine by injection to treat emergency cases of anaphylaxis or anaphylactic shock;
- (5) Prescribe and dispense contact lenses that contain and deliver pharmaceutical agents and that have been approved by the Food and Drug Administration as a drug;
- (6) Prescribe, fit, apply, replace, duplicate or alter lenses, prisms, contact lenses, orthoptics, vision training, vision rehabilitation;
- (7) Perform the following procedures:
 - (A) Remove a foreign body from the ocular surface and adnexa utilizing a non-intrusive method;
 - (B) Remove a foreign body, external eye, conjunctival, superficial, using topical anesthesia;
 - (C) Remove embedded foreign bodies or concretions from conjunctiva, using topical anesthesia, not involving sclera;
 - (D) Remove corneal foreign body not through to the second layer of the cornea using topical anesthesia;
 - (E) Epilation of lashes by forceps;
 - (F) Closure of punctum by plug; and
 - (G) Dilatation of the lacrimal puncta with or without irrigation;
- (8) Furnish or provide any prosthetic device to correct or relieve any defects or abnormal conditions of the human eye and its appendages;

- (9) Order laboratory tests rational to the examination, diagnosis, and treatment of a disease or condition of the human eye and its appendages;
 - (10) Use a diagnostic laser; and
 - (11) A licensee is also permitted to perform those procedures authorized by the board prior to January 1, 2010.
- (b) A licensee may not:
- (1) Perform surgery except as provided in this article or by legislative rule;
 - (2) Use a therapeutic laser;
 - (3) Use Schedule II controlled substances;
 - (4) Treat systemic disease; or
 - (5) Present to the public that he or she is a specialist in surgery of the eye.

§30-8-10. Exceptions from licensure.

The following persons are exempt from licensure under this article:

- (1) Persons licensed to practice medicine and surgery under article three of this chapter or osteopathy under article fourteen of this chapter; and
- (2) Persons and business entities who sell or manufacture ocular devices in a permanently established place of business, who neither practice nor attempt to practice optometry.

§30-8-11. Issuance of license; renewal of license; renewal fee.

- (a) A licensee shall annually or biennially on or before July 1, renew his or her license by completing a form prescribed by the board, paying the renewal fee and submitting any other information required by the board.
- (b) The board shall charge a fee for renewal of a license, and a late fee for any renewal not paid by the due date.
- (c) The board shall require as a condition of renewal of a license that each licensee complete continuing education.
- (d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

§30-8-12. Temporary permits.

- (a) Upon proper application and the payment of a fee, the board may issue, without examination, a temporary permit to engage in the practice of optometry in this state.
- (b) If the permittee receives a passing score on the examination, a temporary permit expires thirty days after the permittee receives the results of the examination.
- (c) If the permittee receives a failing score on the examination, the temporary permit expires immediately.
- (d) 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 this article. In no event may a permittee practice on a temporary permit beyond a period of ninety consecutive days.
- (e) A temporary permittee under this section shall work under the supervision of a licensee, with the scope of such supervision to be defined by the board by legislative rule.

§30-8-13. License from another jurisdiction; license to practice in this state.

- (a) The board may issue a license to practice to an applicant of good moral character who holds a valid license or other authorization to practice optometry from another jurisdiction, if the applicant demonstrates that he or she:

- (1) Holds a license or other authorization to practice optometry in another state which requirements are substantially equivalent to those required in this state;
- (2) Does not have charges pending against his or her license or other authorization to practice, and has never had a license or other authorization to practice revoked;
- (3) Has not previously failed an examination for professional licensure in this state;
- (4) Has paid the applicable fee;
- (5) Has passed the examination prescribed by the board; and
- (6) Has fulfilled any other requirement specified by the board.

(b) In its discretion, the board may interview and examine an applicant for licensing under this section. The board may enter into agreements for reciprocal licensing with other jurisdictions having substantially similar requirements for licensure.

§30-8-14. Prescriptive authority.

(a) A licensee may prescribe: (1) topical pharmaceutical agents, (2) oral pharmaceutical agents that are included in the drug formulary established by the board pursuant to section six of this article or new drugs or new drug indications added by a decision of the board, and (3) contact lenses that contain and deliver pharmaceutical agents that have been approved by the Food and Drug Administration as a drug.

(b) An applicant must:

- (1) Submit a completed application;
- (2) Pay the appropriate fee;
- (3) Show proof of current liability insurance coverage;
- (4) Complete the board required training;
- (5) Pass an examination; and
- (6) Complete any other criteria the board may establish by rule.

§30-8-15. Administration of injectable pharmaceutical agents

(a) A licensee may not administer pharmaceutical agents by injection, other than epinephrine to treat emergency cases of anaphylaxis or anaphylactic shock, unless the provisions of this section, along with any legislative rule promulgated pursuant to this section, have been met.

(b) Additional pharmaceutical agents by injection may be included in the rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. These rules shall provide, at a minimum, for the following:

- (1) Establishment of a course, or provide a list of approved courses, in administration of pharmaceutical agents by injection;
- (2) Definitive treatment guidelines which shall include, but not be limited to, appropriate observation for an adverse reaction of an individual following the administration of a pharmaceutical agent by injection;
- (3) A requirement that a licensee shall have completed a board approved injectable administration course and completed an American Red Cross or American Heart Association basic life-support training, and maintain certification in the same;
- (4) Continuing education requirements for this area of practice;
- (5) Reporting requirements for licensees administering pharmaceutical agents by injection to report to the primary care physician or other licensed health care provider as identified by the person receiving the pharmaceutical agent by injection;
- (6) Reporting requirements for licensees administering pharmaceutical agents by injection to report to the appropriate entities;

- (7) That a licensee may not delegate the authority to administer pharmaceutical agents by injection to any other person; and
- (8) Any other provisions necessary to implement the provisions of this section.

(c) In no event may a licensee be granted authority under this section to administer a pharmaceutical agent by injection directly into the globe of the eye.

§30-8-16. Special volunteer license; civil immunity for voluntary services rendered to indigents.

(a) There is established a special volunteer license for optometrists who are retired or are retiring from the active practice of optometry and wish to donate their expertise for the care and treatment of indigent and needy patients in the clinic setting of clinics organized, in whole or in part, for the delivery of health care services without charge.

(b) The special volunteer license shall be issued by the board to optometrists licensed or otherwise eligible for licensure under this article without the payment of an application fee, license fee or renewal fee, and shall be issued for the remainder of the licensing period, and renewed consistent with the board's other licensing requirements.

(c) The board shall develop application forms for the special volunteer license provided in this section which shall contain the optometrist's acknowledgment that:

(1) The optometrist's practice under the special volunteer license will be exclusively devoted to providing optometrical care to needy and indigent persons in West Virginia;

(2) The optometrist will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any optometrical services rendered under the special volunteer license;

(3) The optometrist will supply any supporting documentation that the board may reasonably require; and

(4) The optometrist agrees to continue to participate in continuing education as required by the board for a special volunteer license.

(d) Any optometrist who renders any optometrical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge, under a special volunteer license authorized under this section without payment or compensation or the expectation or promise of payment or compensation is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the optometrical service at the clinic unless the act or omission was the result of the optometrist's gross negligence or willful misconduct. In order for the immunity under this subsection to apply, before the rendering of any services by the optometrist at the clinic, there must be a written agreement between the optometrist and the clinic stating that the optometrist will provide voluntary uncompensated optometrical services under the control of the clinic to patients of the clinic before the rendering of any services by the optometrist at the clinic: *Provided*, That any clinic entering into such written agreement is required to maintain liability coverage of not less than \$1 million per occurrence.

(e) Notwithstanding the provisions of subsection (d) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge is not relieved from imputed liability for the negligent acts of an optometrist rendering voluntary optometrical services at or for the clinic under a special volunteer license under this

section.

(f) For purposes of this section, "otherwise eligible for licensure" means the satisfaction of all the requirements for licensure in this article except the fee requirements.

(g) Nothing in this section may be construed as requiring the board to issue a special volunteer license to any optometrist whose license is or has been subject to any disciplinary action or to any optometrist who has surrendered a license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her license, or who has elected to place a license in inactive status in lieu of having a complaint initiated or other action taken against his or her license, or who has been denied a license.

(h) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any optometrist covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the care and treatment of needy and indigent patients by an optometrist who holds a special volunteer license.

§30-8-17. Optometric business entities.

(a) Only licensees may own a business entity that practices optometry.

(b) A licensee may be employed by the business entity.

(c) A business entity shall cease to engage in the practice of optometry when it is not wholly owned by licensees: *Provided*, That the personal representative of a deceased shareholder shall have a period, not to exceed eighteen months from the date of such shareholder's death, to dispose of such shares.

§30-8-18. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, certificate holder or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, certificate or permit or the imposition of sanctions against the licensee, certificate holder or permittee. Any hearing shall be held in accordance with the provisions of this article, and the provisions of articles five and six, chapter twenty-nine-a of this code.

(e) Any member of the board or the executive secretary of the board may issue subpoenas and subpoenas duces tecum on behalf of the board to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive secretary may sign a consent decree or other

legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license, certificate or permit of, impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

- (1) Obtaining a license, certificate or permit by fraud, misrepresentation or concealment of material facts;
- (2) Being convicted of a felony or other crime involving moral turpitude;
- (3) Being guilty of unprofessional conduct which placed the public at risk;
- (4) Intentional violation of a lawful order;
- (5) Having had an authorization to practice optometry revoked, suspended, other disciplinary action taken, by the proper authorities of another jurisdiction;
- (6) Having had an application to practice optometry denied by the proper authorities of another jurisdiction;
- (7) Exceeded the scope of practice of optometry;
- (8) Aiding or abetting unlicensed practice;
- (9) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public; or
- (10) False and deceptive advertising; this includes, but is not limited to, the following:
 - (A) Advertising "free examination of eyes," or words of similar import and meaning; or
 - (B) Advertising frames or mountings for glasses, contact lenses, or other optical devices which does not accurately describe the same in all its component parts.

(h) For the purposes of subsection (g) of this section disciplinary action may include:

- (1) Reprimand;
- (2) Probation;
- (3) Administrative fine, not to exceed \$1,000 per day per violation;
- (4) Mandatory attendance at continuing education seminars or other training;
- (5) Practicing under supervision or other restriction;
- (6) Requiring the licensee or certificate holders to report to the board for periodic interviews for a specified period of time; or
- (7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

§30-8-19. Procedures for hearing; right of appeal.

(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive secretary of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee, certificate holder or permittee

has violated the provisions of this article or the board's legislative rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

§30-8-20. Judicial review.

Any licensee, certificate holder or permittee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-8-21. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee, certificate holder or permittee has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) A person violating section one of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or confined in jail not more than six months, or both fined and confined.

§30-8-22. Single act evidence of practice.

In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

**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.

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

1.3. Filing Date. -- August 12, 2011.

1.4. Effective Date. -- August 15, 2011.

§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 Rules, §14-1, et. seq.

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

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

2.4. "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 Rules, §14-1, et. seq.

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

2.7. "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 Rules, §14-1, et. seq.

2.8. "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 Rules, §14-5.

§14-1-4. Rules For the Interview.

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

§14-1-5. Colleges Of Optometry.

5.1. 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.

5.2. 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. Licenses.

6.1. 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.

6.2. 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.

6.3. 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. Renewals.

7.1. 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.

7.2. Renewal fees shall be paid by

check, money order or credit card made payable to the West Virginia Board of Optometry.

7.3. 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.

7.4. 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.

7.5. 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. Delinquent and Expired License Requirements.

8.1. 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.

8.2. 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.

8.3. 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.

8.4. 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. Unlawful Use of The Prefix “Doctor” or “Dr.”

9.1. Under the West Virginia 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. Temporary Permit.

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 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 – 10.3.1 and pay the temporary permit fee required in the Board’s rule, Schedule of Fees, W.Va. Code of Rules, §14-5. The temporary permit may be issued prior to the applicant’s taking and the prescribed exam.

10.2. 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.

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

permit.

10.3.1. 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.

10.4. 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.

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

10.6. 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.

10.7. 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.

§14-1-11. Special Volunteer License.

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

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

11.3. 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 Rules, §14-10.

11.4. 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.

§14-1-12. Inactive License.

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

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

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

12.4. 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.

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

12.7. 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.

TITLE 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY

SERIES 2
ORAL PHARMACEUTICAL CERTIFICATE

§14-2-1. General.

1.1. Scope. -- This legislative rule establishes the requirements, procedures and standards for the certification and re-certification of licensees to obtain an oral pharmaceutical certificate.

1.2. Authority. -- W. Va. §30-8-6, §30-8-9, and §30-8-14 .

1.3. Filing Date. -- August 12, 2011.

1.4. Effective Date. – August 19, 2011.

§14-2-2. Requirements For Oral Pharmaceutical Certificate.

2.1. To be permitted to prescribe oral drugs under the provisions of W. Va. Code §§30-8-9 and 30-8-14, a licensee shall apply to the Board for certification. To qualify for certification, a licensee:

2.1.a. Shall satisfactorily complete a course in clinical pharmacology as applied to optometry. This course shall have particular emphasis on the administration of oral pharmaceutical agents for the diagnosis and treatment of visual defects or abnormal conditions of the human eye and its appendages. In addition, the course shall include instruction on the clinical use of Schedule III, IV, and V agents. This course shall consist of a minimum of thirty (30) hours in clinical systemic pharmacology. The course shall be taught by:

2.1.a.1. a school or college of optometry or a medical school, accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or by the United States Department of Education;

2.1.a.2. a federally sponsored health education center; or

2.1.a.3. other non-profit continuing education agencies in cooperation with appropriate optometry or medical school faculty. All courses of instruction shall be approved by the Board; and

2.1.b. Shall pass an examination relating to the treatment and management of ocular disease, which is prepared, administered, and graded by the National Board of Examiners in Optometry or other nationally recognized optometric organization as approved by the Board.

§14-2-3. Certificate Application.

3.1. The licensee shall complete the prescribed oral pharmaceutical certificate application form.

3.2. The licensee shall submit a certificate of successful completion by the licensee for the course listed in section 2 of this rule. The Board or its designee shall verify successful completion of the course directly with the provider.

3.3. The licensee shall submit the passing score report for the examination listed in 2.1.b. of this rule. The Board or its designee shall verify passage of the examination directly with the provider.

3.4. The licensee shall submit a copy of a liability insurance certificate in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million (\$3,000,000) aggregate coverage.

3.5. The licensee shall submit the fee listed in the Board's rule, Schedule of Fees,

W. Va. Code of Rules, §14-5.

§14-2-4. Certification.

4.1. Upon the licensee’s successful completion of the requirements and application listed in sections 2 and 3 and approval by the Board or its designee a certificate may be issued.

4.2. Upon issuance of the certificate, the licensee’s license number shall be changed. The license number will be followed by a dash and “OD” for oral prescriptive authority.

§14-2-5. Re-certification.

5.1. The certificate holder applying for re-certification shall have available for the Board, satisfactory evidence that he or she has acquired the continuing education hours required under the W. Va. Code of Rules, §14-10 and this rule, to renew his or her annual license. Of those required hours, an optometrist certified under the provisions of this rule shall furnish to the Board satisfactory evidence that at least six (6) hours of the required hours were acquired in educational optometric programs in ocular pathology or therapeutic pharmacological agents.

5.2. The certificate holder shall submit a copy of a liability insurance certificate in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million (\$3,000,000) aggregate coverage.

5.3. The certificate holder shall submit the fee listed in the W. Va. State Code of Rules, §14-5, Schedule of Fees.

5.4. It is the responsibility of each licensee to furnish proof of current liability insurance coverage to the Board upon application for certification and re-certification.

§14-2-6. Insurance.

6.1. All licensees certified under this rule shall carry liability insurance coverage in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate coverage. No

licensee shall practice under the provisions of this rule unless and until he or she has submitted to the board evidence of the liability insurance coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate coverage.

§14-2-7. Drug Formulary.

7.1. Licensees certified under the provisions of this rule may prescribe the drugs set forth in W. Va. Code §§30-8-9, 30-8-14 and this section.

7.2. W. Va. Code §30-8-6 authorizes the Board to develop a formulary of categories of oral drugs to be considered rational to the diagnosis and treatment of visual defects or abnormal conditions of the human eye and its appendages from Schedules III, IV and V, excluding Schedule I and Schedule II of the Uniform Controlled Substances Act. The categories include:

7.2.a. Oral Antibiotics;

7.2.b. Oral Nonsteroidal Anti-inflammatory Drugs;

7.2.c. Oral Carbonic Anhydrase Inhibitors;

7.2.d. Antihistamines;

7.2.e. Oral Corticosteroids, may be prescribed for a duration of no more than six days;

7.2.f. Analgesics, provided that no oral narcotic analgesic may be prescribed for a duration of more than three days; and

7.2.g. Nutritional Supplements.

7.2. h. New drugs or new drug indications from Schedules III, IV and V, excluding Schedule I and Schedule II of the Uniform Controlled Substances Act which, regardless of their listed classification, have been shown to be effective in the examination, diagnosis or treatment of diseases and conditions of the human eye and its appendages may be

approved by the Board according to the provisions of W. Va. Code §§30-8-9 and 30-8-14.

7.2.i. A list of approved new drugs and new drug indications proven to be effective in the examination, diagnosis or treatment of diseases and conditions of the human eye and its appendages will be maintained by the Board for public inspection.

7.2.j. The approval of Schedule I and Schedule II drugs is prohibited.

§14-2-8. New Drug Approval.

8.1. The addition of new drugs or drug indications by the Board as cited in subsection 7.2 of this rule may be based on any of the following criteria:

8.1.a. A new or existing drug has been approved by the Food and Drug Administration for the treatment of the eye or its appendages.

8.1.b. A new drug or new drug indication has gained accepted use in the eye care field. Such acceptance may be indicated by its inclusion in the curriculum of an optometry school accredited by the Accreditation Council on Optometric Education or its successor approved by the U.S. Department of Education or approved post-graduate continuing education, through peer-reviewed, evidence-based research and professional journal articles, or by inclusion in established standards of practice and care published by professional organizations.

§14-2-9. Education and Training on the Use of New Drugs and New Drug Indications.

9.1. Additional education and training may be required by the Board as it deems appropriate when it adds new drugs or new drug indications.

9.2. This training may be provided through an optometry school accredited by the Accreditation Council on Optometric Education or its successor recognized by the U.S. Department of Education or approved post-graduate training.

9.3. A list of Board required training for new drugs or new drug indications will be maintained by the Board for public inspection.

§14-2-10. Restrictions.

10.1. A certificate holder may not establish a pharmacy in an optometric office or sell oral pharmaceutical agents prescribed in treatment unless there is a licensed pharmacist on staff and present when the prescriptions are filled.

10.1.a. The certificate holder may also pass on to the patient a charge for any medications provided to initiate treatment which reflects only the actual amount paid by the optometrist for the agents. In no event shall an optometrist increase the cost of the pharmaceutical agent beyond the wholesale cost of that medication.

10.2. The certificate holder practicing under the authority of this rule shall be held to the same standards of care as that of other health care practitioners providing similar services.

**TITLE 14
PROCEDURAL RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 3
CONTESTED CASE HEARING PROCEDURE**

§14-3-1. General.

1.1. Scope. -- This rule specifies the procedure for the adjudication of contested case hearings before the Board.

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

1.3. Filing Date. -- January 4, 2011.

1.4. Effective Date. -- January 5, 2011.

§14-3-2. Definitions.

The following words and phrases as used in this rule shall have the following meanings, unless the context otherwise requires:

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

2.2. "Demanding Party" means an individual who has been denied a license to practice optometry by the Board and who, as a result, demands that a hearing be held before the Board on the issue of such denial.

2.3. The term "Charged Party" means an individual who holds a license to practice optometry or permit issued by the Board and who has been charged by the Board as described in Section 3.4 of these rules.

2.4. "License" means a license or permit issued by the Board pursuant to W. Va. Code §30-8-1 et seq.

2.5. The term "Licensee" means an individual who holds a license to practice optometry issued by the Board.

2.6. "Permittee" means a person who holds a temporary optometry permit.

2.7. "Practice of optometry" means the practice of optometry" as defined in W. Va. Code §30-8-3.

§14-3-3. Hearing Procedure.

3.1. Any applicant denied a license or permit or any licensee or permit holder who has had their license or permit suspended by the Board who believes such denial was in violation of W. Va. Code §§30-1-1 et seq. and/or 30-8-1 et seq. shall be entitled to a hearing on the action denying or suspending such license or permit.

3.2. Any person who desires a hearing for the reason described in subsection 3.1 of this section must present a written demand for such to the Board.

3.3. When the Chair of the Board or his or her authorized designee is presented with such a demand for a hearing, he or she shall schedule a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement.

3.4. Charges may be instituted against any licensee or permittee by the Board when probable cause exists for believing that the licensee or permittee may have engaged in conduct, practices or acts in such condition that his or her license or permit should be suspended, revoked or otherwise disciplined for one or more of the grounds set forth in W. Va. Code §30-8-18, et seq. or the Board's legislative rules. Charges may be based upon information received by way of a verified written complaint filed with the Board and further information gathered by the Board in the process of investigating such complaint. Charges may also be based upon information received solely through investigative activities undertaken by the Board.

3.5. Charges instituted against a licensee or

permittee as described in subsection 3.4 of this section shall be set forth in a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of optometry. Such Complaint and Notice of Hearing shall designate the Board as the "Complainant", and shall designate the licensee or permittee involved in the proceeding as the "Respondent"; shall set out the substance of each offense charged with sufficient particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition complained of therein; and shall state the date, time and place for the hearing.

3.6. Upon receipt of a demand for a hearing described in subsections 3.1 and 3.2 of this section, the chair or his or her designee shall provide the demanding party, with a Complaint and Notice of Hearing issued in the name of the Board. Such Complaint and Notice of Hearing shall designate the demanding party as the "Complainant" and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license or permit with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue therein; and shall state the date, time and place for the hearing.

3.7. The Board may amend the charges set forth in a Complaint and Notice of Hearing as it deems proper.

3.8. A Complaint and Notice of Hearing shall be served upon the demanding or charged party at least thirty (30) days prior to the date of hearing.

3.9. Upon written motion received by the Board no later than twenty (20) days prior to the date of hearing, a more definite statement of the matters charged or the reasons stated for denial of Licensure shall be provided to the demanding or charged party or his or her counsel, at least fifteen (15) days prior to the hearing date.

3.10. Hearings shall be conducted as follows:

3.10.1. Any party to a hearing shall have the right to be represented by an attorney-at-law, duly qualified to practice law in the state of West Virginia.

3.10.2. The Board shall be represented by the West Virginia Attorney General's Office.

3.10.3. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded from the hearing. Furthermore, the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. However, when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

3.10.4. The rules of privilege recognized by the law of this state shall be followed.

3.10.5. Objections to evidentiary offers shall be noted in the record. Any party to the hearing may vouch the record as to any excluded testimony or other evidence.

3.10.6. Any party to a hearing may appear with witnesses to testify on his or her behalf; may be heard in person, by counsel or both; may present such other evidence in support of his or her position as deemed appropriate by the Board or hearing examiner and, when appropriate, may cross-examine witnesses called by the Board in support of the charges or in defense of its decision to deny licensure or a permit.

3.10.7. The hearing shall be held at such time and place as is designated by the Board, but no hearing shall be conducted unless and until at least thirty (30) days written notice thereof has been served upon the charged or demanding party and/or his or her attorney in person; or if he or she cannot be found, by delivering such notice at his or her usual place of abode, and giving information of its purport, to his wife or her husband, or to any other person found there who is a member of his or her family and above the age of sixteen (16) years;

or if neither his wife or her husband nor any such person can be found there, and he or she cannot be found, by leaving such notice posted at the front door of such place of abode; or if he or she does not reside in this state, such notice may be served by the publication thereof once a week for three successive weeks in a newspaper published in this state; or such notice may be served by registered or certified mail.

3.10.8. The hearing shall be open to the general public.

3.10.9. Members of the Board and its officers, agents and employees shall be competent to testify at the hearing as to material and relevant matters: Provided, That no member of the Board who testifies at such hearing shall thereafter participate in the deliberations or decisions of the Board with respect to the case in which he testified.

3.10.10. The hearing shall be conducted by a quorum of the Board; or, if the Board so chooses, a hearing examiner chosen by the Board.

3.10.11. A record of the hearing, including the complaint(s), if applicable, the notice of hearing, all pleadings, motions, rulings, stipulations, exhibits, documentary evidence, evidentiary depositions and the stenographic report of the hearing, shall be made and a transcript thereof maintained in the Board's files. Upon request, a copy of the transcript shall be furnished to any party at his or her expense.

3.10.12. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

3.10.13. Where a hearing is held upon the instance of the Board after charges have been brought against a licensee pursuant to subsection 3.4 and 3.5 of this section, the Board shall have the burden of proof and shall present its evidence and/or testimony in support of the charges first.

3.10.14. Where a hearing is held upon demand under the provisions of subsections 3.1, 3.2, 3.3, and 3.6 of this action, the demanding party shall have the burden of proof and shall

therefore be required to present his or her evidence first. The Board may require the person demanding the hearing to give security for the costs thereof and if the demanding party does not substantially prevail, such facts may be assessed against them and may be collected in a civil action or by other proper remedy.

3.10.15. Following the conclusion of the Board's presentation of evidence in accordance with subsection 3.10.13 of this section the Respondent or charged party shall have the right to submit his or her evidence in defense.

3.10.16. Following the conclusion of the demanding party's presentation of evidence in accordance with subsection 3.10.14 of this section, the Board shall have the right to offer its evidence in rebuttal.

3.10.17. The Board may call witnesses to testify in support of its decision to deny licensure, to deny a permit or in support of the charges instituted against a licensee or permittee; may present such other evidence to support its position; and may cross-examine witnesses called by the demanding party or charged party in support of his or her position.

3.10.18. All parties shall have the right to offer opening and closing arguments, not to exceed ten (10) minutes for each presentation.

3.10.19. Hearings held by the Board or hearing examiner as a result of charges instituted against a licensee or permittee may be continued or adjourned to a later date or different place by the Board or its designee by appropriate notice to all parties.

3.10.20. Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for continuance must be in writing and received in the office of the Board no later than seven (7) days before the hearing date. In determining whether good cause exists, consideration will be given to the ability of the party requesting the continuance to proceed effectively without a continuance. A motion for a continuance filed less than seven (7) days from the hearing date may be denied unless the reason for the motion could not have been ascertained

earlier. Motions for continuance filed prior to the date of hearing shall be ruled on by the chair or executive secretary of the Board. All other motions for continuance shall be ruled on by the Board member(s), ~~or~~ the member presiding over the hearing or hearing examiner.

3.10.21. All motions related to a case set for hearing before the Board, except motions for continuance and those made during the hearing, shall be in writing and shall be received in the office of the Board at least ten (10) days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the hearing prior to the commencement of testimony. The Board member(s) presiding at the hearing or the hearing examiner shall hear the motions and the response from the non-moving party and shall rule on such motions accordingly.

§14-3-4. Transcription of Testimony and Evidence.

4.1. All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

4.2. All reported materials shall be transcribed. The Board shall have the responsibility to make arrangements for the transcription of the reported testimony and evidence.

4.3. Upon the motion of the Board or any party assigning error or omission in any part of any transcript, the Board chair, ~~or~~ presiding member or the hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and/or revised as appropriate so as to make it conform to the truth.

4.4. A transcript of the hearing shall be provided to all members of the Board for review at least ten (10) days before the vote is taken on its decision in any licensure or permit disciplinary matter.

§14-3-5. Submission of Proposed Findings of

Fact and Conclusions of Law.

5.1. Any party may submit proposed findings of fact and conclusions of law at a time and manner designated by the Board.

§14-3-6. Conferences; Informal Disposition of Cases.

6.1. At any time prior to the hearing or thereafter, the Board, or its designee may hold conferences for the following purposes:

6.1.1. To dispose of procedural requests, pre-hearing motions or similar matters;

6.1.2. To simplify or settle issues by consent of the parties; or,

6.1.3. To provide for the informal disposition of cases by stipulation or agreement.

6.2. The Board may cause such conferences to be held on its own motion or by the request of a party.

6.3. The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into such stipulations and/or agreements without conference.

§14-3-7. Depositions.

7.1. Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this state.

§14-3-8. Subpoenas.

8.1. Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by any member of the Board, ~~or~~ its Executive Secretary or its Assistant Executive Secretary. Such subpoenas shall be issued pursuant to W. Va. Code §29A-5-1(b).

8.2. Written requests by a party for the issuance of subpoenas or subpoenas duces tecum as provided in subsection 8.1 of this section must be received by the Board no later than ten

(10) days before a scheduled hearing. Any party requesting the issuance of subpoenas duces tecum shall see that they are properly served in accordance with W. Va. Code §29A-5-1(b)

§14-3-9. Orders.

9.1. Any final order entered by the Board following a hearing conducted pursuant to these rules shall be made pursuant to the provisions of W. Va. Code §§29A-5-3 and 30-1-8(d). Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law

9.2. The findings of fact and conclusions of law must be approved by a majority of the Board either by a poll or vote at a regular meeting, before a final order is entered. The Board may assess administrative costs to the licensee if the licensee is found to have violated the provisions of W. Va. Code §§30-8-1 et. seq. or the Board's rules, 14CSR. Any costs which are assessed shall be placed into the special account of the Board. A copy of the final order approved by a majority of the Board shall be served upon the demanding or charged party and/or his or her attorney of record, if any, within ten (10) days after entry by the Board by personal service or by registered or certified mail.

§14-3-10. Appeal.

10.1. An appeal from any final order entered in accordance with these rules shall comply with the provisions of W. Va. Code §§30-1-9 and W. Va. Code 29A-6-1 et seq.

**TITLE 14
PROCEDURAL RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 4
DISCIPLINARY AND COMPLAINT PROCEDURES FOR OPTOMETRISTS**

§14-4-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against optometrists.

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

1.3. Filing Date. -- .

1.4. Effective Date. -- .

§14-4-2. Application.

2.1 This rule applies to all licensed optometrists.

§14-4-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1. "Applicant" means any person making application for an original or renewal license pursuant to W. Va. Code §§30-8-1 et seq.

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

3.3. "License" means a license issued by the Board pursuant to W. Va. Code §§30-8-1 et seq.

3.4. "Optometrist" means a person who practices optometry as defined in W. Va. Code §30-8-3.

3.5. "Investigator" means a person who is hired by the Board for the purpose of reviewing complaints against optometrists.

§14-4-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Optometrists.

4.1. The Board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Board, upon satisfactory proof that a licensee has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §§30-8-1 et seq. or the rules of the Board.

§14-4-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges an optometrist or unlicensed individual or entity engaged in the practice of optometry with a violation of W. Va. Code §§30-8-1 et seq. or of conduct which would be a violation of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the optometrist or unlicensed individual or entity engaged in the practice of optometry against whom the complaint is lodged;

5.1.2. The date of care;

5.1.3. The name of any person who may have treated the patient after the alleged incident; and,

5.1.4. The name of any health care institution in which the patient was an inpatient or outpatient after or during the alleged incident.

5.2. A complaint against an optometrist or unlicensed individual or entity engaged in the practice of optometry shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §§30-8-1 et seq. or the rules of the Board.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee, or unlicensed individual or entity engaged in the practice of optometry in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30)

days of the date of such correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees or unlicensed individuals or entities engaged in the practice of optometry shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or unlicensed individual or entity engaged in the practice of optometry to keep the Board informed of his or her current address.

5.9. Upon receipt of a licensee's or unlicensed individual or entity engaged in the practice of optometry's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.2 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to a Board member or an investigator for review and investigation.

5.12. Upon receipt of a complaint the investigator shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the care provided, the records reviewed and a statement of the investigator's findings and recommendations. The investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee, or unlicensed individual or entity engaged in the practice of optometry in question or other involved parties, a report of which shall be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee, or chairperson, executive secretary or the Board's designee may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The investigator may request the Board, its president, investigating committee or chairperson, executive secretary or the Board's designee to issue a subpoena or subpoena duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which an optometrist or unlicensed individual or entity engaged in the practice of optometry may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or an investigator, the committee or investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§14-4-6. Methods of Discipline.

6.1. When the Board finds that any applicant is unqualified to be granted a license or finds that any licensee or permittee should be disciplined pursuant to W. Va. Code §30-8-1 et. seq. or rules of the Board, the Board may take

any of the actions listed in W. Va. Code §30-8-18.

6.2. In addition to and in conjunction with the foregoing actions, the Board may make a finding adverse to the licensee or applicant, but withhold imposition of judgment and penalty, or it may impose the judgment and penalty but suspend or otherwise stay enforcement thereof and place the applicant, licensee or permittee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. In its discretion, the Board may restore and reissue a license to practice optometry issued under W. Va. Code §30-8-1 et seq., or any antecedent law, and as a condition of reinstatement, it may impose any disciplinary or corrective measure(s) provided for in this rule or in the W. Va. Code §30-8-1 et. seq. The provisions of §14-4-6.2 shall not apply to revoked licenses.

6.3. The Board may assess administrative costs to the licensee if the licensee is found to have violated the provisions of W. Va. Code §§30-8-1 et. seq. or the Board's rules, 14CSR. Any costs which are assessed shall be placed in the special account of the Board.

§14-4-7. Contested Case Hearings.

7.1. The Board may refuse to renew a license, suspend or revoke a license or bring an action in a court of competent jurisdiction to enforce the provisions of W. Va. Code §30-8 against an unlicensed individual or entity engaged in the practice of optometry if it determines there is probable cause to believe that the optometrist's or unlicensed individual or entity engaged in the practice of optometry's conduct, practices or acts constitute an immediate danger to the public.

§14-4-8. Appeals.

8.1. Any applicant or unlicensed individual or entity engaged in the practice of optometry who has had his or her application for a license denied or had court action taken against him or her by order of the Board may appeal the order within thirty (30) days of that action in

accordance with the contested case hearing procedures set forth in W. Va. Code §§29A-6-1 et seq. and the rules of the Board: Provided, That the appeal shall not include cases in which the Board denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination.

§14-4-9. Court Action and the Unlicensed Practice Of Optometry.

9.1. The Board may institute, in its own name, proceedings to temporarily or permanently restrain and enjoin the practice of optometry by the following:

9.1.1. An individual who is not licensed to practice optometry pursuant to Chapter 30-8, or who is involved in conduct not specifically exempted from the requirement of Chapter 30-8; or

9.1.2. An individual who was previously licensed by the Board to practice optometry but is currently practicing optometry in violation of Chapter 30-8, regardless of whether the respondent has been convicted of violating the penal provisions thereof.

9.2. Petition for injunction filed under subsection (1) of this section may be filed in Kanawha Circuit Court or the circuit court of the county in which said violation occurred, and the Board shall not be required to pay any costs or filing fees or furnish any bond in connection therewith.

9.2.1. In the petition, it shall be sufficient to charge that the respondent on a day certain in a named county engaged in the practice of optometry in violation of Chapter 30-8. No showing of damage or injury shall be required.

9.2.2. Issuance of an injunction shall enjoin any act specified under Chapter 30-8 and shall remain in place as long as necessary to prevent the unlawful practice of optometry.

9.2.3. Issuance of an injunction shall not relieve the respondent from being subject to any other proceeding under law provided by Chapter 30-8 or otherwise.

9.2.4. Violation of an injunction or restraining order shall be punished as a contempt without the intervention of a jury.

9.3. Any person who violates any of the provisions of Chapter 30-8 or the rules of the board shall be guilty of a Class A misdemeanor and shall pay a fine not to exceed five thousand dollars (\$5,000) per violation.

**TITLE 14
EMERGENCY LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 5
SCHEDULE OF FEES**

§14-5-1. General.

- 1.1. Scope. -- This schedule establishes the fees to be charged by the Board.
- 1.2. Authority. -- W. Va. Code §30-8-5.
- 1.3. Filing Date. -- August 12, 2011.
- 1.4. Effective Date. -- August 15, 2011.

§14-5-2. Schedule of Fees.

2.1.	Application Fee	\$300.00
2.2.	Reciprocity Application Fee.....	\$300.00
2.3.	Active License Restoration Fee.....	\$400.00
2.4.	Temporary Permit.....	\$300.00
2.5.	Oral Pharmaceutical Certificate.....	\$200.00
2.6.	Contact Lenses That Deliver Pharmaceuticals Certificate.....	\$50.00
2.7.	Pharmaceuticals By Injection Certificate.....	\$200.00
2.8.	License Card and Certificate	\$100.00
2.9.	Duplicate License Card	\$15.00
2.10.	Duplicate Certificate.....	\$25.00
2.11.	Annual Renewal Fee	\$400.00
2.12.	Late Renewal Fee	\$200.00
2.13.	Continuing Education Provider Fee.....	\$50.00
2.14.	Confirmation of Licensure.....	\$25.00
2.15.	Business Entity Verification Fee.....	\$25.00
2.16.	Roster of WV Optometrists Electronic or Hard Copy.....	\$200.00

14CSR5

2.17. Rules and Practice Act \$25.00

2.18. Written Change of Name..... \$10.00

2.19. Written Change of Address \$ 10.00

2.20. Copies of Public Records (Per page)..... \$.50

2.21. Fees are payable to the West Virginia Board of Optometry by check, money order, certified check, or credit card.

**TITLE 14
PROCEDURAL RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 6
INTERVIEW EVALUATION**

§14-6-1. General.

1.1. Scope. -- This rule establishes the procedures that shall be followed in the preparation, administration, and evaluation of the interview by The West Virginia Board of Optometry.

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

1.3. Filing Date. -- August 12, 2011.

1.4. Effective Date. -- August 15, 2011.

§14-6-2. Interview and Anonymity.

2.1. The Board shall conduct the interview with a quorum of the Board being present.

2.2. After the applicants have arrived, the Board or its designee shall have each applicant draw a piece of paper that contains a unique number. This number shall be used during the interview to ensure anonymity of the applicant.

2.3. The Board or its designee, as an added safeguard, shall place the applicant's unique number in a sealed envelope along with the applicant's 7-digit telephone number.

2.4. At the beginning of any video-recorded interview, the applicant shall state his or her unique number. The interviewers shall question the applicant on any and all topics necessary to value the candidate's competency to practice optometry.

2.5. After the interviews have been evaluated the Board or its designee shall then open the envelope and match the applicants' numbers with their names.

§14-6-3. Preparation.

3.1. The President of the West Virginia Board of Optometry shall appoint members to an Interview Committee consisting of two or more Board members (including the Secretary) to prepare the interview deemed appropriate to evaluate those subject areas necessary to ensure the safe practice of optometry.

3.2. Each board member shall prepare questions for the Board interview. The member shall print each question and follow it with the correct response.

§14-6-4. Evaluation.

4.1. A Board quorum may evaluate the applicant's successful or unsuccessful completion of the interview by consensus.

**TITLE 14
PROCEDURAL RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 7
ADMINISTRATION AND BOARD MEETINGS**

§14-7-1. General.

1.1. Scope. -- This rule establishes the procedures for the administration and operation of meetings for the West Virginia Board of Optometry.

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

1.3. Filing Date. -- August 8, 2003.

1.4. Effective Date. -- September 8, 2003.

§14-7-2. Administration.

2.1. At the annual meeting in July of each year the Board shall elect a president and secretary. Any vacancy in the officers of the Board may be filled at any duly convened meeting of the Board.

2.2. The president has power to appoint committees from the Board membership and the duties of the committees shall be to consider such matters, pertaining to the enforcement of the Optometry Laws of this State and the rules promulgated in accordance with the laws, as shall be referred to the committees and they shall make recommendations to the Board. The president shall preside over all meeting of the Board and shall be ex officio chairman of all committees.

2.3. The secretary-treasurer shall make and keep records of all meetings, keep records of examination results on the applicants, receive all moneys due the Board and account with a financial statement at the regular annual meeting in July of each year. In addition to this financial statement he or she shall have a regular audit by a representative of the Auditor's Office of the State of West Virginia every three (3) years or when turning over the records of the secretary's

office to his successor and he or she shall executive a bond as required by law. Under the direction of the president he or she shall serve as chairman of the Committee on Examinations and shall designate the subjects on examinations to members of the Board. He or she shall represent the Board in attempting to eliminate a violation of the Code governing the practice of Optometry and she or she shall perform any other duties that may come with his office. He or she shall also receive office expenses which have been presented and allowed by the West Virginia Department of Finance and Administration.

2.4. Compensation of members: expenses - Every member of the Board shall receive \$100.00 for each day actually spent in attending the sessions of the Board or of its committees and the travel necessary thereto. Every member shall be similarly reimbursed at the stated per diem amount plus expenses for attending all activities approved by the Board and while performing all activities which are pertinent to the operation and function of the Board, and for all reasonable and necessary expenses incurred in carrying out the provisions of W. Va. Code §§30-10-1 et seq.

2.5. The Board may, in its discretion, employ an executive secretary, or any other administrative staff member(s) as the Board may consider necessary. These Board employees shall be empowered to perform those activities and discharge duties required of the Board and the secretary-treasurer of the Board pursuant to West Virginia law and these rules.

2.6. Location of office - The official office of the Board is, unless otherwise designated by the Board, located at the office of the executive secretary.

§14-7-3. Meetings of the Board.

3.1. The Board shall hold a regular meeting at least once a year at which time an examination of applicants for license shall be given. This meeting will be held on the second Sunday, Monday and Tuesday of July, unless otherwise directed by the president, but Tuesday is to be applicable when the president of the Board deems it advisable for purpose of further business session or the secretary for purpose of further examination of applicants taking the Board examinations or by majority vote of the members of the Board.

3.2. Special meetings of the Board shall be held upon request of a majority of the members of the Board or upon the call of the secretary as directed by the president. The meetings may be held in person or by teleconference. A minimum of five (5) days notice of such meeting shall be given in writing setting forth the time and place of such meeting.

3.3. Quorums - Before any action can be taken on any matter properly before the Board, at least a majority of the current members must be in attendance at the place and time set for the meeting of the Board. A majority vote of the members in attendance is required before any motion is passed.

3.4. Whenever there are matters requiring action by the Board in the interim between meetings, the president may submit such matters to all members of the Board by mail and, if a vote is required, members may cast their votes by mail, facsimile, or e-mail ballots and such votes shall be recorded and shall have the same force and effect as if cast in a regular or special meeting. The president shall have authority to submit matters to the Board by mail, facsimile, or e-mail at any time, at his discretion, and shall do so upon the written request of one or more members of the Board.

3.5. The following procedure will be followed to permit guests to address the Board at meetings:

(a) all guests will sign the guest sign-in sheet; if there are written materials for the Board

members, the guests will leave them on the sign-in table; guests will not distribute materials to Board members;

(b) at the time designated for speakers to address the Board, guests will be called upon to speak one at a time using the guest sign-in sheet;

(c) each guest will be allotted five minutes to speak; a member of the Board may move that additional time be allotted to a guest up to a maximum of an additional ten minutes; if the motion is approved by a majority of the Board, the speaker may proceed for the period of time described in the motion;

(d) questions may be asked by any Board member of any guest speaker; the speaker will be recognized for a response;

(e) the Board will not enter into a discussion or debate with any guest speaker;

(f) the Board President will take the matter(s) presented under advisement, and if appropriate, refer the matter to the Executive Committee for review;

(g) if any guest disrupts the meeting so that orderly conduct of the meeting is compromised, the Board President will ask that the guest be removed from the room;

(h) if any guest continues to interrupt the orderly conduct of the meeting, the Board President will advise the guest that he/she may be arrested for committing a misdemeanor crime with a possible penalty of a \$100 fine an/or imprisonment in the county jail of up to six months as listed in the W. Va. Code §61-6-19, Willful disruption of governmental processes;

(i) if the guest persists in his/her disruptive behavior, the Board President shall ask that the guest be arrested for violating the W. Va. Code §61-6-19, Willful disruption of governmental processes.

§14-7-4. Severability.

4.1. If any rule or regulation promulgated pursuant to W. Va. Code §§30-10-1, et seq., or the application thereof to any person or circumstance is held unconstitutional or invalid, unconstitutionality or invalidity shall not affect other provisions or applications of these rules and regulations, and to this end the complete rules and regulations of the Board are severable.

**TITLE 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 8
LICENSURE BY RECIPROCITY**

§14-8-1. General.

1.1. Scope. -- This rule establishes requirements of the West Virginia Board of Optometry for licensure by reciprocity for doctors of optometry.

1.2. Authority. -- W. Va. Code §30-8-13.

1.3. Filing Date. -- August 12, 2011.

1.4. Effective Date. -- August 15, 2011.

§14-8-2. Requirements for Licensure by Reciprocity.

2.1. An applicant for licensure by reciprocity shall be of good moral character and hold a current optometry license in good standing from another state or states which requirements are substantially equivalent to those required in this state.

2.2. Unless waived by the Board, an applicant for licensure by reciprocity shall:

2.2.1. Apply for the highest level of therapeutic licensure in this state;

2.2.2. Be current in the continuing education requirements of his or her current states of licensure;

2.2.3. Have engaged in the active practice of optometry (or on the faculty of a school or college of optometry or in active federal service) for at least five (5) of the seven (7) years immediately preceding his or her application;

2.2.4. Have not committed any act that would constitute grounds for disciplinary action under the W. Va. Code §30-8-18 or rules of the Board; and

2.2.5. Not be subject to any unresolved disciplinary action.

2.2.6. At the option of the Board, an applicant for licensure by reciprocity may be required to take the National Board Examination.

§14-8-3. Application for Licensure by Reciprocity.

3.1. The applicant shall submit the prescribed application and include two (2) current photographs of him or herself not to exceed two (2) inches by two (2) inches.

3.2. The applicant shall submit certification from the Council on Endorsed Licensure Mobility for Optometrists, a subdivision of the Association of Regulatory Boards of Optometry, or

3.2.a. The applicant shall arrange for proof from the optometry board in each state where he or she holds or has ever held a license to be submitted directly to the Board.

3.3. The applicant shall arrange for a current copy of his or her record from the National Practitioner Data Bank (NPDB) and the Healthcare Integrity & Protection Data Bank (HIP-DB) to be submitted directly to the Board.

3.4. The applicant shall supply written evidence that he or she has met all criteria for the highest level of licensure as listed in W. Va. Code, §30-8-1, et. seq. and the rules of the Board.

3.5. 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.

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

3.7. The Board shall deny the right to licensure by reciprocity to any applicant 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.

3.8. The applicant shall pay the fee established by the Board's rule, Schedule of Fees, W.Va. Code of State Rules, §14-5.

3.9. The board may require an applicant to interview with the board.

**TITLE 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 9
CONTACT LENSES THAT CONTAIN AND DELIVER PHARMACEUTICAL AGENTS
CERTIFICATE**

§14-9-1. General.

1.1. Scope. -- This rule establishes the requirements, procedures and standards for the certification of a licensee with the authority to prescribe and dispense contact lenses that contain and deliver pharmaceutical agents and that have been approved by the Food and Drug Administration as a drug.

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

1.3. Filing Date. -- August 12, 2011.

1.4. Effective Date. -- August 15, 2011.

§14-9-2. Requirement.

2.1. In order to qualify for certification, a licensee shall successfully complete the requirements for licensure in West Virginia and must have an active practice within the state of West Virginia.

§14-9-3. Application.

3.1. The licensee shall submit the Board's prescribed certificate application form to the Board;

3.2. The licensee shall attach a copy of his or license and each physical address from which the optometrist intends to dispense contact lenses that contain and deliver pharmaceutical agents; and

3.3. Shall pay the fee listed in the Board's rule, Schedule of Fees, W.Va. Code of State Rules, §14-5.

§14-9-4. Dispensation.

4.1. A licensee with certification under

the provisions of this rule may dispense contact lenses that deliver pharmaceutical agents approved by the Food and Drug Administration as a drug from his or her optometric office.

4.2. The licensee shall be permitted to charge reasonable and customary fees for the dispensation of contact lenses that contain and deliver pharmaceutical agents approved by the Food and Drug Administration as a drug.

4.3. Optometrists who are certified to prescribe and dispense contact lenses that contain and deliver pharmaceutical agents may dispense these lenses to their own patients, but not fill prescriptions written by other health care practitioners.

**TITLE 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 10
CONTINUING EDUCATION**

§14-10-1. General.

1.1. Scope -- This legislative rule establishes requirements for continuing education for licensees.

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

1.3. Filing Date -- August 12, 2011.

1.4. Effective Date -- August 15, 2011.

§14-10-2. Definition.

2.1. "Licensee" means an optometrist licensed under the provisions of W. Va. Code §30-8-1 et. seq. and the provisions of the Board's rules, W.Va. Code of State Rules, 14-1, et. seq.

§14-10-3. Continuing Education.

3.1. It is the responsibility of a licensed optometrist to maintain evidence of meeting the continuing education requirements for license renewal for random audit by the Board.

3.2. A licensee shall complete a minimum of forty (40) hours of continuing education for each even numbered two (2) year cycle.

3.3. Of the required 40 hours, the licensee shall complete:

(a) a minimum of twelve (12) hours of study in pharmacology or therapeutics courses;

(b) a maximum of six (6) hours of study in practice management;

(c) a maximum of ten (10) hours of optometric study may be taken by correspondence, or via the Internet;

3.4. Of the required 40 hours, a licensee who holds an Injectable Pharmaceutical Agents Certificate shall complete two (2) hours of instruction in administering pharmaceutical agents by injection.

3.5. Of the required 40 hours, a licensee who holds an oral pharmaceutical certificate shall complete at least twelve (12) hours of instruction in ocular pathology and therapeutic pharmacological agents.

3.6. All continuing education study must be sponsored by one of the organizations listed in subsection 4.1 of this rule or pre-approved by the Board as outlined in section 5 of this rule.

3.7. In addition to the above listed continuing education requirements, a licensee who holds an Injectable Pharmaceutical Agents Certificate shall obtain and maintain current certification from the American Red Cross, American Heart Association or their successor organizations in basic life support.

14-10-4. Approved Continuing Education Programs.

4.1. Educational programs sponsored by the following organizations approved as meeting the minimum standards are:

(a) the American Optometric Association or its affiliated organizations;

(b) the West Virginia Optometric Association and other state optometric associations;

(c) the American Academy of Optometry;

(d) postgraduate courses offered at any accredited school or college of optometry;

(e) the Southern Council of Optometry or its affiliates; and

(f) the Council on Optometric Practitioner Education (COPE).

§14-10-5. Pre Approval of Continuing Education Courses or Events.

5.1. A continuing education provider may submit a written request to the Board for continuing education course or event approval if the continuing education provider is not listed as an approved sponsor in section §14-10-4 of this rule. Each application shall include payment of the fee established in the Board's rule, W.Va. Code of State Rules, §14-5.

5.2. A request for approval from a continuing education provider must be received at least thirty (30) days prior to the course, meeting or seminar; however, the Board may wave this requirement at its discretion.

5.3. The Board may approve courses, meetings or seminars either within or without the State of West Virginia.

5.4. The continuing education provider shall include a Curriculum Vitae for the instructor as well as a copy of all handouts, power point presentations, or other electronic or non electronic materials that are part of the continuing education course as part of its application for Board approval.

5.5. Upon review the Board may reject the continuing education course, approve the continuing education course or approve the continuing education course conditionally.

(a) If the Board approves the course conditionally, the continuing education provider must submit evidence that the conditions have been met prior to the continuing education event for the event to be approved by the Board.

5.6. All decisions of the Board are final and there is no appeal process. If the Board rejects a continuing education course or event and the continuing education provider wishes to pursue Board approval, a new application must

be submitted in compliance with the requirements of this rule.

5.7. In no event shall the Board consider approval of a continuing education course or event retroactively.

5.8. The Board president may designate a committee to recommend approval or disapproval of the continuing education courses submitted. The committee members may or may not be members of the Board. The committee shall report its findings to the Board for action.

§14-10-6. Required Documentation.

6.1. Evidence of attendance by shall be furnished by the continuing education provider or sponsoring organization to each registrant at the program showing the date and place of the meeting or instruction, speaker or instructor, the title of the course, the sponsor of the meeting, and hours in attendance, by correspondence, Internet or other electronic means. The licensee shall maintain evidence of attendance, subject to audit by the Board, for renewal of his or her license.

§14-10-7. Exemptions.

7.1. A licensee who has graduated from an optometry school accredited by the Accreditation Council on Optometric Education or its successor recognized by the U.S. Department of Education within one year of successfully completing the licensing interview shall be exempt from the requirements of sections §§14-10-3 for a period of time from the date successful completion of the licensing interview to the licensee's first license renewal.

(a) The requirements of §§14-10-3 of this rule shall be required of the licensee listed in subsection 7.1 of this section in all succeeding license renewals.

7.2. Those licensees not covered by the provisions of 7.1 of this section may make a sworn request for exemption from the continuing education requirements listed in §§14-10-3. The sworn affidavit shall contain reasons acceptable to the Board for

noncompliance with the Board's continuing education requirements and shall be filed with the Board before he or she applies for renewal of his or her license.

(a) The Board will review the affidavit and grant or reject the request for exemption.

(b) If the exemption is rejected, the Board may grant the licensee a specified period of time to obtain the remaining required continuing education hours.

(c) The Board shall notify the licensee of its decision by certified mail within thirty (30) days of the receipt of the licensee's request.

**TITLE 14
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF OPTOMETRY**

**SERIES 11
INJECTABLE PHARMACEUTICAL AGENTS CERTIFICATE**

§14-1-1. General.

1.1. Scope. -- This rule establishes the requirements, procedures and standards for the certification of a licensee to administer injectable pharmaceutical agents which are considered rational to the diagnosis and treatment of the human eye and its appendages. The provisions of this rule excludes the administration of epinephrine to treat emergency cases of anaphylaxis or anaphylactic shock which is permitted through W. Va. Code §30-8-15(a).

1.2. Authority. -- W. Va. Code §30-8-6 and 30-8-15.

1.3. Filing Date. -- August 12, 2011.

1.4. Effective Date. -- November 1, 2011.

14-11-2. Definitions.

2.1. "Certificate Holder" means a licensee who has met the requirements of this rule and has been issued an Injectable Pharmaceutical Agents Certificate by the Board.

2.2. "Adverse Reaction" For the purposes of this rule, an adverse reaction shall be defined as any reaction that causes injury to a patient as the result of the medical intervention by injection.

§14-11-3. Certification Generally.

3.1. A licensee shall complete an application and meet all requirements as listed in this rule in order to be certified to administer injectable pharmaceutical agents.

3.2. A licensee shall obtain oral

prescriptive certification prior to application for certification to administer pharmaceutical injections.

3.3. An applicant for licensure by examination, by reciprocity, or by reinstatement after March 1, 2011 shall only be granted licensure if the applicant meets the requirements for injection certification.

§14-11-4. Certification Requirements.

To be certified the licensee shall:

4.1. Complete the required application form;

4.2. Submit proof of oral pharmaceutical certification;

4.3. Submit proof of attendance and satisfactory completion of the required course in injection administration. The Board shall verify successful completion of the cited course directly with the provider;

4.4. Submit proof of current certification from the American Red Cross or the American Heart Association or their successor organizations in basic life support;

4.5. Submit the Pharmaceuticals By Injection Certificate Fee as listed in the Board's rule, W. Va. Code of Rules, §14-5.

§14-11-5. Education and Training.

5. 1. The Board shall accept a course for certification that is provided by or through a school or college of optometry accredited by the Accreditation Council on Optometric Education or its successor organization provided, the

course includes the criteria listed in subsections 5.2.1 through 5.2.3.

5.2. The Board, at its discretion, may approve courses provided through organizations other than accredited schools or colleges of optometry certifying that the optometrist is competent in providing the administration of pharmaceuticals by injection if, and only if, the course meets the following minimum criteria:

5.2.1. Each course shall include indications, contra-indications, medications, techniques, risks, benefits and sharps management;

5.2.2. Each course shall contain appropriate follow up and management of any adverse reactions caused by an injection;

5.2.3. Each course shall teach the procedures of injection on human subjects in a closely supervised environment with a proficiency assessment examination.

5.3. A list of approved courses for injection administration instruction will be maintained by the Board for public inspection.

5.4. A licensee shall obtain current certification from the American Red Cross or the American Heart Association or their successor organizations in basic life support.

5.5. The license granted to an applicant who graduated from an accredited school or college of optometry and who passed the Injection Portion of the National Board Examination in 2011 or thereafter shall be deemed to have met the education and training criteria listed in listed in section 5.

§14-11-6. Certification.

6.1. Upon the licensee's successful completion of the requirements and application listed in sections 3 through 5 and approval by the Board or its designee an injectable pharmaceutical agents certificate may be issued.

6.2. Upon issuance of the certificate, the licensee's license number shall be changed. The

license number will be followed by a dash and the initial "I" for injectable pharmaceuticals.

14-11-7. Treatment Guidelines.

7.1. A certificate holder may administer injections which are considered rational to the diagnosis and treatment of the human eye or its appendages.

7.2. The Board will maintain a list of approved sites and agents for the administration of pharmaceuticals by injection for public inspection. The list will contain treatment guidelines for each agent approved by the Board for injection.

7.3. The certificate holder shall follow all applicable Occupational Safety and Health Administration (OSHA) and Centers for Disease Control (CDC) guidelines pertaining to administration of injections.

7.4. The certificate holder shall adhere to generally accepted standards of care and follow established clinical guidelines for administering injections. The certificate holder shall monitor the patient for an adverse reaction and provide appropriate follow up care for patients treated by injections.

7.5. Unless requested through an emergency rule of the West Virginia Legislature or the Federal Government through the Department of Homeland Security or its successor organizations, a certificate holder shall only administer agents through injection that are for the treatment and management of abnormalities of the eye or its appendages.

7.6. In no event may a certificate holder administer a pharmaceutical agent by injection directly in the globe of the eye.

§14-11-8. Reporting.

8.1. A certificate holder shall comply with the following reporting requirements.

8.2. Reporting that contains patient Protected Health Information (PHI) shall be done in accordance with the Health Insurance

Portability and Accountability Act (HIPAA) patient privacy requirements.

8.3. The certificate holder shall notify the primary care physician or other health care provider as identified by the person receiving the pharmaceutical agent(s) by injection. Such notification shall include the diagnosis, treatment and expected results of the injection.

8.4. The certificate holder shall document in the patient's record that the patient's primary care provider was notified of an injection given to the patient for record documentation. This notification shall be made by fax, documented phone call or standard U.S. mail.

8.4.1. If the patient does not have a primary care provider or refuses to provide written permission to report the injection(s) to his or her primary care provider the certificate holder may provide a written statement to the patient regarding the injection(s) administered with instruction to the patient to give the listed injection information to his or her current primary care provider or any primary care provider they would choose to see in the future.

8.4.2. The above reporting procedure serves to inform the patient's primary care physician as to the rationale and outcome of a licensee's treatment, report any adverse reaction, and assist in collaborative care of common patients. In no event shall such reporting be construed as permission or approval of an order for treatment by injection.

8.5. A log book of all injections given shall be maintained including:

8.5.1. The patient's initials, age, gender and race;

8.5.2. A statement indicating the purpose of the injection;

8.5.3. The name of the medication administered and the type and location of the injection;

8.5.4. The treatment guidelines

followed which must be compliant with the guidelines approved by the Board which are on file at the Board Office.

8.5.5. The name and certification or licensure level of any persons working in conjunction with the licensee to administer pharmaceutical agents through injections;

8.5.6. How the primary care provider was notified that the patient had been given an injection.

8.6. A copy of the injection log book shall be submitted to the Board upon request. This log book may be requested at any time by the Board with or without cause.

8.7. The Board may require a certificate holder to supply the complete medical record for any of the patients listed in the log book for review. The Board may also request an audit of the certificate holder's full records to ensure compliance with injection certificate requirements.

8.8. If a patient has an adverse reaction related to the administration of any agent through injection, they shall provide the Board with an incident report listing the details of the adverse reaction and the measures used to correct that reaction. This report must be received by the Board within 5 business days of the resolution of the adverse reaction.

§14-11-9. Recertification.

A certificate holder shall meet the following requirements for recertification:

9.1. The certificate holder shall submit proof of current certification in basic life support from the American Red Cross or American Heart Association or their successors.

9.2. The certificate holder shall submit proof of a minimum of two (2) hours of continuing education instruction in administering pharmaceutical agents by injection per two year continuing education cycle as listed in W. Va. Code of Rules, §14-10, Continuing Education.

9.3. The certificate holder shall submit the fee as listed in the W. Va. Code of Rules, §14-5.

§14-11-10. Delegation.

10.1. Nothing in this rule or W. Va. Code shall permit a licensee who has been certified to administer injections of pharmaceutical agents by the Board to delegate to any individual the administration of pharmaceutical agents through injection.

§14-11-11. Restrictions

11.1. A certificate holder may not establish a pharmacy in an optometric office or sell injectable pharmaceutical agents prescribed in treatment unless there is a licensed pharmacist on staff or present when the prescription is filled. Nothing in this rule shall prohibit the optometrist from charging a usual and customary fee for performing the injection.

11.2. Retrobulbar and Peribulbar injections are prohibited.

11.3 The board shall establish a formulary of pharmaceutical agents to be administered by injection.

11.3.1. The injection formulary shall be created from those agents that certificate holders have been authorized previously to administer or prescribe as topical agents or oral medication categories listed in the oral formulary of the Board in the W. Va. Code of State Rules, §14-2-7.2a through §14-2-7.2.g.

11.3.2. New drugs or drug indications may be added to the formulary by a decision of the Board based on any of the following criteria:

11.3.2.1. A new or existing drug has been approved by the Food and Drug Administration for the treatment of the eye or its appendages.

11.3.2.2. A new drug or new drug indication has gained accepted use in the eye care field. Such acceptance may be indicated by its inclusion in the curriculum of an optometry school accredited by the Accreditation Council on Optometric Education or its successor approved by the U.S. Department of Education or approved post-graduate continuing education, through peer-reviewed, evidence-based research and professional journal articles, or by inclusion in established standards of practice and care published by professional organizations.