



State of West Virginia *Board of Medicine*

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November 1, 2018

VIA EMAIL AND U.S. MAIL

The Honorable Jim Justice
West Virginia State Capitol
1900 Kanawha Blvd. E.
Charleston, WV 25305
(via email in care of James.M.Bailey@wv.gov)

West Virginia Legislative Rule-Making Review Committee
Kelli Sobonya, House Chair
Mark Maynard, Senate Chair
West Virginia State Capitol
Building 1, Room MB-49
1900 Kanawha Blvd. E.
Charleston, WV 25305
Kelli.Sobonya@wvhouse.gov
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Re: West Virginia Board of Medicine 2018 Regulatory Review Report

Dear Governor and Committee Co-Chairs:

In accordance with Executive Order No. 3-18, the West Virginia Board of Medicine hereby provides the following Regulatory Review Report with respect to each active rule promulgated by the Board and under its jurisdiction. Currently, the Board has jurisdiction over twelve rule series and co-jurisdiction in association with the West Virginia Board of Osteopathic Medicine and the West Virginia Board of Pharmacy over two rule series.

Several of the Board’s active rules have been updated within the last two years. Two rule series are in the legislative rulemaking process currently. Three additional rules are scheduled for internal review for possible modernization in 2019. The Board is committed to eliminating unnecessary regulatory burden and modernizing all necessary rules in ways that assist professional growth for physicians, podiatric physicians and collaborating physician assistants while ensuring a high level of public protection.

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| Rule Series: | 11 CSR 1A | | |
| Rule Type: | Legislative | | |
| Rule Name: | Licensing and Disciplinary Procedures: Physicians; Podiatric Physicians and Surgeons | | |
| Date Promulgated: | July 1, 1991 ¹ | Dates Modified/Amended: | June 6, 1993 April 1, 1994 June 1, 2001 April 15, 2004 May 1, 2007 July 5, 2017 July 1, 2018 |
| Description: | Series 1A establishes the rules of the West Virginia Board of Medicine regarding the licensing and disciplinary procedures for allopathic physicians (MDs) and podiatric physicians (DPMs). The rule covers all aspects of licensure qualification, application, status, renewal, reinstatement and reactivation. It sets forth the professional conduct standards for MDs and DPMs, complaint and disciplinary penalties and protections and grounds for professional discipline. It also sets forth grounds for licensure denial and for disciplinary action against a licensee of the West Virginia Board of Medicine and establishes the actions the Board may take if it finds an applicant unqualified for a licensee subject to disciplinary action. | | |
| Determination: | This rule should be continued with modification, and the Board has promulgated changes to this rule which are ripe for consideration by the Legislature during the upcoming session. On September 20, 2018, the Legislative Rule-Making Review Committee authorized the Board to promulgate the amended rule as originally filed. | | |
| Rationale: | This is an integral rule of the Board of Medicine which requires routine evaluation and update for current content. | | |

¹ This rule replaced the provisions of 11 CSR 1 dealing with MDs and DPMs. The former rule was originally promulgated in 1986 and is no longer active.

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| Rule Series: | 11 CSR 1B | | |
| Rule Type: | Legislative | | |
| Rule Name: | Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants | | |
| Date Promulgated: | July 1, 1991 ² | Dates Modified/Amended: | June 9, 1993 May 1, 1998 April 1, 1999 June 1, 2001 August 1, 2003 June 1, 2009 May 6, 2013 May 15, 2015 July 5, 2017 July 2, 2018 |
| Description: | Series 1B establishes the rules of the West Virginia Board of Medicine regarding the licensing and disciplinary procedures for physician assistants. The rule covers all aspects of licensure qualification, application, status, renewal, reinstatement and reactivation, collaboration with physicians, practice agreements, prescribing limitations and general scope of practice. The rule establishes continuing education requirements for PA licensees. It sets forth the professional conduct standards for PAs, complaint and disciplinary penalties and protections and grounds for professional discipline. It also sets forth grounds for licensure denial and for disciplinary action against a PA licensee of the West Virginia Board of Medicine and establishes the actions the Board may take if it finds an applicant unqualified for a license or subject to disciplinary action. | | |
| Determination: | This rule was recently amended as a result of SB 1014 (2017), and should be continued without modification. | | |
| Rationale: | This is an integral rule of the Board of Medicine which requires routine evaluation and update for current content. | | |

² This rule replaced the provisions of 11 CSR 1 dealing with physician assistants. The former rule was originally promulgated in 1986 and is no longer active.

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| Rule Series: | 11 CSR 2 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Establishment and Regulation of Restricted License Issued to an Applicant in Extraordinary Circumstances | | |
| Date Promulgated: | April 28, 1986 | Dates Modified/Amended: | June 1, 2009 |
| Description: | Series 2 establishes rules to regulate the application, issuance and monitoring of restricted licenses issued in extraordinary circumstances. This license is reserved for very rare instances where the board finds that the applicant, who does not meet the qualifications for a regular license, has exceptional education, training and practice credentials and the applicant's practice in the state would be beneficial to the public welfare. | | |
| Determination: | This rule should be continued without modification. | | |
| Rationale: | This is an integral rule of the Board of Medicine for extraordinary circumstances. While restricted licensees in extraordinary circumstances are rarely issued, this rule provides the necessary process and framework for consideration of such applications. | | |

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| Rule Series: | 11 CSR 3 | | |
| Rule Type: | Procedural | | |
| Rule Name: | Board Organization and Meeting Procedure; Complaint and Contested Case Hearing Procedures | | |
| Date Promulgated: | May 6, 1983 | Dates Modified/Amended: | April 10, 1989 September 24, 1999 May 1, 2001 June 10, 2010 |
| Description: | Series 3 establishes processes and procedures for: the establishment of Board Committees; scheduling and convening meetings of the West Virginia Board of Medicine and its Committees; the processing of complaints; hearings and the adjudication of formal contested case hearings excepting hearings held under the provisions of W. Va. Code §30-3-14(k); and the issuance of recommended decisions and final Board orders. | | |
| Determination: | This rule should be continued without current modification; however, modernization of this rule is anticipated within the next 12 months. | | |
| Rationale: | The Board has identified this rule as in need of modernization, and plans to amend the rule for this purpose in 2019. | | |

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| Rule Series: | 11 CSR 4 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Fees for Services Rendered by the Board of Medicine Including Assistance to the Board-Designated Physician Health Program for Physicians, Podiatrists, and Physician Assistants | | |
| Date Promulgated: | April 12, 1988 | Dates Modified/Amended: | April 5, 1991 April 1, 1995 May 1, 2000 May 1, 2010 |
| Description: | This legislative rule establishes the fees to be charged by the Board of Medicine for services rendered including assistance to the board-designated physician health program. | | |
| Determination: | This rule should be continued without modification. | | |
| Rationale: | The Board has not sought modification to its Fee rule since 2010. The Board has no current plans to seek a modification to this rule or any change in the fees included therewith. | | |

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| Rule Series: | 11 CSR 5 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Dispensing of Prescription Drugs by Practitioners | | |
| Date Promulgated: | July 1, 1989 | Dates Modified/Amended: | July 5, 2017 |
| Description: | Series 5 establishes the rules of the Board of Medicine related to the office-based dispensing of prescription drugs by licensees of the Board. It requires practitioners who dispense controlled substances to maintain current registration with the Board and establishes protocols and procedures for the maintenance, security and dispensing of prescription medication in an office-based setting. | | |
| Determination: | This rule should be continued without modification. | | |
| Rationale: | In 2016, the Board undertook a review of the rule and identified a significant need for clarification and modernization of the registration requirements for licensees who seek to engage in the office-based dispensing and administering of prescription drugs, as well the standards for engaging in a dispensing practice. As a result, this rule was significantly modernized in 2017 and is currently up to date. This rule is necessary as it provides required standards for the office-based maintenance and dispensing of prescription medications, including controlled substances. | | |

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| Rule Series: | 11 CSR 6 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Continuing Education for Physicians and Podiatric Physicians | | |
| Date Promulgated: | April 10, 1992 | Dates Modified/Amended: | July 1, 2008 April 30, 2013 July 1, 2018 |
| Description: | Series 6 establishes the rules of the West Virginia Board of Medicine regarding continuing education for physicians and podiatric physicians. The rule includes Board authority to conduct CME audits, and what CME must be provided to the Board when a physician/podiatric physician seeks to reinstate or reactivate a license. It includes requirements for mandatory CME in a Board-approved course on drug diversion and best practices prescribing of controlled substances and a process for approval of such courses. | | |
| Determination: | This rule should be continued without modification. | | |
| Rationale: | The Board modified this rule in 2017, and the modified version became effective July 1, 2018. The amendments modernize and clarify the language of the existing rule. This rule provides necessary guidance on the continuing education responsibilities of physicians and podiatric physicians. | | |

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| Rule Series: | 11 CSR 7 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Formation and Approval of Professional Limited Liability Companies | | |
| Date Promulgated: | June 1, 1997 | Dates Modified/Amended: | May 1, 2012 |
| Description: | Series 7 addresses procedures for the formation and approval of professional limited liability companies for physicians, podiatrists, and others legally authorized to render the same or compatible professional services under W. Va. Code §31B-13-1301 et seq. | | |
| Determination: | This rule should be continued without modification at this time. However, the Board does plan to review the rule in 2019 and may possibly propose amendments or modifications at that time. | | |
| Rationale: | This rule is a necessary rule of the Board because it provides necessary guidelines for the formation of “medical” and “podiatric” PLLCs. | | |

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|-------------------|--|-------------------------|------|
| Rule Series: | 11 CSR 8 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Collaborative Pharmacy Practice | | |
| Date Promulgated: | July 1, 2008 | Dates Modified/Amended: | None |
| Description: | This rule is jointly promulgated by the Boards of Pharmacy, Medicine, and Osteopathic Medicine and pertains to a pharmacist's scope of practice pursuant to collaborative pharmacy practice and collaborative pharmacy practice agreements, and the selection of up to five pilot project sites in the community-based pharmacy setting for collaborative pharmacy practice. | | |
| Determination: | This rule should be continued without modification at this time. | | |
| Rationale: | While collaborative pharmacy practice is not widely practiced, it is likely to continue to grow, and the ethics and reporting requirements are necessary for those who are engaging in this collaboration. | | |

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| Rule Series: | 11 CSR 9 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Certification, Disciplinary and Complaint Procedures, Continuing Education, Radiologist Assistants | | |
| Date Promulgated: | July 1, 2008 | Dates Modified/Amended: | None |
| Description: | Series 9 establishes such rules. The rule covers all aspects of certification, qualification, application, status, renewal, supervision, and general scope of practice. The rule establishes continuing education requirements for RA-Cs. It sets forth the professional conduct standards for RA-Cs, complaint and disciplinary penalties and protections and grounds for professional discipline. | | |
| Determination: | This rule should be continued without modification. | | |
| Rationale: | W. Va. Code §30-3-7a requires the Board of Medicine to regulate the practice of Radiologist Assistants, and with the advice of the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners, to propose rules to establish the scope of practice of a Radiologist Assistant, develop the education and training requirements for a Radiologist Assistant and regulate Radiologist Assistants. Accordingly, this is a necessary rule for regulation of this profession. | | |

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| Rule Series: | 11 CSR 10 | | |
| Rule Type: | Emergency and Legislative | | |
| Rule Name: | Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database | | |
| Date Promulgated: | July 5, 2012 ³ May 6, 2013 | Dates Modified/Amended: | None |
| Description: | This rule identifies the circumstances upon which a practitioner licensed by the Board must check the West Virginia Controlled Substance Monitoring Database prior to issuing a prescription for a pain-relieving controlled substance. | | |
| Determination: | This rule should be continued without modification. However, the Board may review this rule in 2019 to determine if there are any appropriate updates after the 2019 legislative session concludes. | | |
| Rationale: | This rule addresses use of the CSMP when treating chronic pain, and provided necessary guidance to licensees on that subject. | | |

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|-------------------|--|-------------------------|------|
| Rule Series: | 11 CSR 11 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities | | |
| Date Promulgated: | June 30, 2015 ⁴ July 12, 2016 | Dates Modified/Amended: | None |
| Description: | On June 11, 2015, W. Va. Code §30-3-11b was added to the West Virginia Medical Practice Act authorizing allopathic physicians “to provide services to patients or residents of state-run veterans’ facilities by allowing them to obtain license without the required examination from the appropriate licensing agency of this state.” This rule provides the qualifications and application process for this limited license type. | | |
| Determination: | This rule should be continued without modification. | | |
| Rationale: | This is a necessary rule of the Board because physicians who treat patients at federal VA Centers are not required to hold a West Virginia license while practicing at the federal facility. This rule provides guidelines for those physicians to obtain a limited license to treat VA patients at state-run veterans’ facilities. | | |

³ 11 CSR 10 was initially promulgated as an emergency rule with an effective date of July 5, 2012. The legislative rule became effective May 6, 2013.

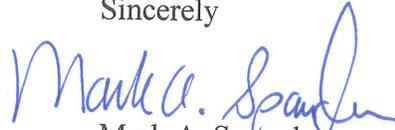
⁴ 11 CSR 11 was initially promulgated as an emergency rule with an effective date of June 30, 2015. The legislative rule became effective July 12, 2016.

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|-------------------|---|-------------------------|--------------------|
| Rule Series: | 11 CSR 12 | | |
| Rule Type: | Emergency | | |
| Rule Name: | Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows | | |
| Date Promulgated: | August 7, 2018 | Dates Modified/Amended: | September 18, 2018 |
| Description: | House Bill 4027 (2018) establishes a requirement that all participants in medical residency and fellowships in West Virginia hold a training permit issued by the West Virginia Board of Medicine. All residents and fellows must comply with this requirement by July 1, 2019, but the statute authorizes the Board to promulgate emergency rules to implement the provisions of HB 4027 prior to that date. This emergency rule implements the educational permit requirements. | | |
| Determination: | This rule should be promulgated, and continued without modification. On September 20, 2018, the Legislative Rule-Making Review Committee authorized the Board to promulgate the amended rule as originally filed. | | |
| Rationale: | This rule is necessary for implementation of HB 4027 (2018). | | |

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| Rule Series: | 115 CSR 12 | | |
| Rule Type: | Legislative | | |
| Rule Name: | Immunizations Administered By Pharmacists and Pharmacy Interns | | |
| Date Promulgated: | July 1, 2009 | Dates Modified/Amended: | April 4, 2012 May 17, 2015 March 23, 2018 |
| Description: | This rule is jointly promulgated by the Boards of Pharmacy, Medicine, and Osteopathic Medicine to provide the rules for pharmacists and pharmacy interns to administer immunizations to patients in West Virginia. | | |
| Determination: | This rule, which was last modified in March 2018, should be continued without modification. On September 20, 2018, the Legislative Rule-Making Review Committee authorized the Board to promulgate the amended rule as originally filed. | | |
| Rationale: | This rule is necessary to identify immunizations jointly approved by the Board of Medicine, Board of Osteopathic Medicine and the Board of Pharmacy for pharmacist/pharmacy intern administration. | | |

Please do not hesitate to contact me should you have any questions concerning this report.

Sincerely

A handwritten signature in blue ink that reads "Mark A. Spangler". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark A. Spangler
Executive Director