

WEST VIRGINIA BOARD OF OPTOMETRY

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Report Regarding Executive Order No. 3-18

This report will list each rule in the format required by this executive order. The Board will be happy to provide any additional information needed by the Governor's Office or Legislative Rule Making Committee. The Board's contact information is listed above.

W.Va. Code of State Rules, §14-1, Rules of the West Virginia Board of Optometry Legislative Rule

Description of the Rule: Rule 14-1: This rule outlines the requirements for licensure as authorized by W.Va. Code, §30-8-1, et. seq. Some examples of these requirements are:

- the education required for licensure, proof of passage of the National Board of Examiners in Optometry Examination and verification of identity such as a birth certificate,
- a requirement for a criminal background check for new applicants as required by W. Va. Code, §30-1D-1(d),
- conditions for License Renewal, Delinquent and Expired Licenses, and
- requirements for Temporary Permits, the Special Volunteer License, and the Inactive License with conditions to re-activate the inactive license.

Date of First Promulgation and Revisions: The rule was first promulgated and filed with the Secretary of State's Office on December 28, 1982. The times of subsequent revisions are April 26, 2001, June 21, 2002, April 6, 2004, April 27, 2006, August 15, 2011, and July 1, 2018.

Recommendation on Continuance Without Change, Modification or Repeal of §14-1: The Board would like to pursue a few changes to W. Va. Code of State Rules, §14-1 at the appropriate time. Some of the changes include:

- to add passage of the (WV Optometric) Online State Law Exam available from the National Board of Examiners in Optometry for licensure as a requirement,
- an expanded eligibility pool for the temporary permit,
- an expansion of the length of time to practice under for a Temporary Permit,
- the addition of requirements for a special volunteer event license required by W.Va. Code, §20-1-21, and
- technical changes to accommodate the additions.

Reason For Recommended Changes: The jurisprudence exam is required for many professions. Optometric laws and rules for practice vary from state to state. Formally requiring the optometry law exam ensures that the applicant will practice within the scope of practice and use practice requirements to secure the protection of West Virginia's citizens. The temporary permit was originally written for one narrow set of circumstances. The changes to the temporary permit eligibility requirements give more flexibility to the Board and to applicants to allow practice under the supervision of an active licensee sooner. The inclusion of an additional 30 days for the temporary permit is to accommodate the Board's meeting schedule for license interviews. It allows the permittee to practice without a gap between the temporary permit and permanent licensure. The addition of requirements for a special volunteer event license is to comply with the recently passed W.Va. Code, §30-1-21. The other requirements in §14-1 do

not need to be revised at this time. A copy of proposed language for changes for W.Va. Code of State Rules, §14-1 is available upon request.

W.Va. Code of State Rules, §14-2, Oral Pharmaceutical Certificate Legislative Rule

Description of the Rule: The Board's rule, §14-2, outlines the training, formulary and application process to be certified to prescribe oral pharmaceuticals. Some of the requirements include:

- training standards and testing to be eligible to obtain an oral pharmaceutical certificate,
- application requirements,
- minimum amounts of liability insurance coverage to protect the public,
- continuing education requirements in ocular pathology or therapeutic pharmacological agents for re-certification,
- a Drug Formulary for certified oral optometrists that has been approved by the Legislature,
- a procedure and standards for the Board to approve new drugs for the formulary, and
- restrictions for optometric oral pharmaceutical practice.

Date of First Promulgation and Revisions: The rule was first promulgated and filed with the Secretary of State's Office on April 6, 1998. The times of subsequent revisions are June 21, 2002, and August 19, 2011.

Recommendation on Continuance Without Change, Modification or Repeal of §14-2: The rule should continue for the protection of the public. The only change to the rule that is recommended at this time is:

- to include the prescription of hydrocodone and hydrocodone-containing drugs for no more than three days as authorized by the Legislature.

Reason For Recommended Change: The Legislature amended W.Va. Code, §30-8-9(b)(3), to include hydrocodone and hydrocodone-containing drugs for certified oral optometrists for no more than three (3) days in 2016. The Board and Legislature could pursue revision of W.Va. Code of State Rules, §14-2, at the appropriate time. A copy of the proposed language is available upon request.

W.Va. Code of State Rules, §14-3, Contested Case Hearing Procedure Procedural Rule

Description of the Rule: This rule specifies the procedure for the adjudication of contested case hearings before the Board. Some of its provisions include:

- a hearing procedure,
- findings of fact and conclusions of law,
- depositions and subpoenas,
- orders, and
- an appeal to the Kanawha County Circuit Court and the West Virginia Supreme Court.

Date of First Promulgation and Revisions: The rule was first promulgated and filed with the Secretary of State's Office on December 28, 2000. The latest revision was filed on February 5, 2011.

Recommendation of Continuance Without Change, Modification or Repeal of §14-3: The rule complies with both W.Va. Code, §29A-1, et. seq. and W.Va. Code, §30-1-1, et. seq. The rule provides due process rights for licensees and should be continued. There are only two sets of changes that could be made to the rule. Those changes are:

- an amendment of W.Va. Code of State Rules, §14-3-3.4. to include a complaint made upon a motion of the Board to comply with W.Va. Code, §30-8-18 and
- small technical changes.

Reason for Recommended Changes: The changes to §14-3 are made to match the wording in W.Va. Code, §30-8-18, closely and to make minor technical corrections. A copy of the proposed changes to W.Va. Code of State Rules, §14-3, is available upon request.

W.Va. Code of State Rules, §14-4, Disciplinary and Complaint Procedures For Optometrists Procedural Rule

Description of the Rule: The rule specifies a procedure for the investigation and resolution of complaints against optometrists. Some of the features included are:

- types of information required when filing a complaint,
- a period for the optometrist to respond in writing to the complaint,
- forms of communication with the complainant, and
- a procedure to file an injunction in Kanawha Circuit Court regarding an unlicensed individual practicing optometry without a license.

Date of First Promulgation and Revisions to the Rule: W.Va. Code of State Rules, §14-4, was first promulgated and filed with the Secretary of State's Office on December 28, 2000. Subsequent revisions of the rule were filed on January 3, 2003, September 11, 2003, and on February 5, 2011.

Recommendation on Continuance Without Change, Modification or Repeal of the Rule: The rule has been revised several times and should be continued to ensure due process rights for licensees and to protect the public. Only minor technical changes should be made to the rule.

Reason for Recommended Changes: Only commas, etc. need to be changed with one exception. The addition of electronic mail as an additional method of communication so the optometrist may assist the complainant as quickly as possible. A copy of proposed changes for §14-4 is available upon request.

W.Va. Code of State Rules, §14-5, Schedule of Fees Legislative Rule

Description of the Rule: The establishes fees for the Board as approved by the Legislature such as an application, license, and renewal fees.

Date of First Promulgation and Revisions: The rule was first promulgated and filed with the Secretary of State's Office on June 21, 2002. Subsequent revisions were filed on April 27, 2006, and August 15, 2011, to comply with changes to W.Va. Code, §30-8-8, et. seq.

Recommendation on Continuance Without Change, Modification or Repeal of §14-5: The Board wishes to continue the rule with no changes to it.

W.Va. Code of State Rules, §14-6, Interview Evaluation Legislative Rule

Description of the Rule: The rule establishes the procedures that shall be followed in the preparation, administration, and evaluation of each license interview by the Board of Optometry. Provisions listed in the rule include:

- rules for anonymity during the interview,
- preparation of the license interview questions, and
- reaching a finding of passage or failure by consensus.

Date of First Promulgation and Revisions: W.Va. Code of State Rules, §14-6, was first promulgated and filed with the Secretary of State's Office on July 12, 2001. Subsequent revisions were filed on February 21, 2003, and August 15, 2011.

Recommendation on Continuance Without Change, Modification or Repeal of §14-6: The Board recommends the continuance of the rule with a few changes. Those changes include:

- interviewing applicants using the preliminary license numbers rather than random slips of paper,
- provision for examination of each applicant's file of credentials following the license interview, and
- changing interview preparation language to be permissive rather than mandatory language.

Reason For Recommended Changes: The changes allow for the more efficient use of time before the interviews to reduce inconvenience for the applicants, codify a common practice of examining each applicant's qualifications in the application file after the interviews and allow for more flexibility in preparing the interview questions. Sections were re-arranged for a more logical flow of the rule. A copy of the proposed language changes for §14-6 is available upon request.

W.Va. Code of State Rules, 14-7, Administration and Board Meetings Procedural Rule

Description of the Rule: W.Va. Code, §14-7, establishes procedures for the election of officers and operation of meetings for the West Virginia Board of Optometry. Some of the provisions listed in the rule include:

- election of officers at an annual meeting,
- duties of the Board President and Secretary, and
- quorums and employment of administrative staff.

Date of First Promulgation and Revisions: W.Va. Code of State Rules, §14-7 was first promulgated and filed with the Secretary of State's office on July 5, 2001. The rule was revised on September 8, 2003.

Recommendation of Continuance Without Change, Modification or Repeal of §14-7: The Board recommends the continuance of the rule with some changes. Those changes include:

- elimination of a redundant audit,
- more flexibility in scheduling license interviews,
- the flexibility of transmitting materials to be considered by the Board,
- compliance with W.Va. Code, §30-1-1, et al. regarding board member per diem, and
- technical corrections.

Reason for Recommended Changes: The last revision of §14-7 was in 2003. The changes modernize the language and bring it into compliance with provisions of the W.Va. Code. The changes also add flexibility to the times a license interview may be conducted. A copy of the proposed language changes is available upon request.

W.Va. Code of State Rules, §14-8, License By Reciprocity
Legislative Rule

Description of the Rule: The rule establishes requirements of the West Virginia Board of Optometry for licensure by reciprocity for doctors of optometry licensed in other states. The provisions of the rule include:

- an applicant shall apply for the highest level of therapeutic licensure in the state,
- the applicant shall not have committed any act that would constitute grounds for disciplinary action under the W.Va. Code, §30-8-18, or rules of the Board, and
- the applicant shall take and pass the West Virginia Online State Law Examination available through the National Board of Examiners in Optometry.

Date of First Promulgation and Revisions: W.Va. Code of State Rules, §14-8, was first promulgated and filed with Secretary of State's Office on August 8, 2003. The rule was revised and filed on August 15, 2011.

Recommendation of Continuance Without Change, Modification or Repeal of §14-8: The Board recommends the continuance of the rule with a few changes. The changes include:

- addition of the required sunset clause,
- addition of a birth certificate as part of the application, and
- the addition of passage of the West Virginia Optometric State Law Exam available through the National Board of Examiners in Optometry.

Reason for recommended changes: The changes comply with the W.Va. Code, ensure proper identification of the applicant and establish that the optometrist will be able to practice under the scope of practice and guidelines of the W.Va. Code and W.Va. Code of State Rules. A copy of the proposed language changes is available upon request.

W.Va. Code of State Rules, §14-9, Contact Lenses That Contain and Deliver Pharmaceutical Agents Certificate
Legislative Rule

Description of the Rule: This rule establishes the requirements, procedures, and standards for the certification of a licensee to prescribe and dispense contact lenses that deliver pharmaceutical agents from his or her own office for his or her own patients only.

Date of First Promulgation and Revisions: W.Va. Code of State Rules, §14-9, was first promulgated and filed with the Secretary of State's Office on August 15, 2011. The rule has not been revised.

Recommendation of Continuance Without Change, Modification or Repeal of §14-9. The Board recommends the continuance of this rule without change. A copy of the rule is available upon request.

W.Va. Code of State Rules, §14-10, Continuing Education
Legislative Rule

Description of the Rule: W.Va. Code of Rules, §14-10, Continuing Education, contains requirements for the hours needed to be obtained for license renewal. Some of the requirements include:

- a minimum of 43 hours of continuing education hours to be obtained per every even-numbered two year period including the number of hours to be obtained in designated categories of practice,
- a list of pre-approved providers and accreditors of continuing education,

- drug diversion education requirements, and
- a method to approve courses that do not fit into the pre-approved category.

Date of First Promulgation and Revisions: W.Va. Code of State Rules, §14-10 was first promulgated and filed with the Secretary of State's Office as a separate rule on August 15, 2011. The rule was revised on July 12, 2013, and June 7, 2017.

Recommendation on Continuance Without Change, Modification or Repeal of §14-10: The Board recommends that the rule be continued without change due to its recent revision.

W.Va. Code of Rules, §14-11, Injectable Pharmaceutical Agents Certificate Legislative Rule

Description of the Rule: 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 diagnoses and treatment of the human eye and its appendages for optometrists. Some of the features included are:

- training and testing from an accredited optometry school including teaching and testing of procedures on human subjects,
- treatment guidelines including procedures for an adverse reaction,
- a Board-approved list of sites and agents for injection administration,
- reporting of the injection to a primary care provider,
- continuing education for recertification and restrictions on injection administration.

Date of First Promulgation and Revisions: §14-11 was first promulgated and filed with the Secretary of State's Office on November 1, 2011. The rule has not been revised.

Recommendation on Continuance Without Change, Modification or Repeal of §14-11: The Board recommends that the rule be continued with one change:

- Elimination of the injection log book.

Reason for the Recommended Change: The goal of the Legislature has been to eliminate burdensome regulations when possible. The log book was included in the first version of the rule to ensure that the treatment guidelines were followed. Optometric injection administration has been practiced without incident for seven years. The log has served its purpose, but it is time for it to be eliminated. Elimination of the log book will reduce paperwork that takes the optometrist away from time with his or her patients. The Board has retained a reporting requirement for any adverse reaction so any problems may be addressed.

Respectfully submitted,

Pamela Carper
Executive Director