WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2639

(By Delegates Brown, D. Poling, Fleischauer, Talbott, Overington and Sobonya)

Passed March 12, 2011

In Effect From Passage
AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making...
Review Committee and as amended by the Legislature; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure and the practice of pharmacy (15 CSR 1); authorizing the Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring (15 CSR 8); authorizing the Board of Physical Therapy to promulgate a legislative rule titled general provisions (16 CSR 1); authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapists and physical therapist assistants (16 CSR 4); authorizing the Board of Physical Therapy to promulgate a legislative rule titled general provisions for athletic trainers (16 CSR 5); authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for athletic trainers (16 CSR 6); authorizing the Board of Sanitarians to promulgate a legislative rule relating to an interim fee schedule (20 CSR 3); authorizing the Board of Sanitarians to promulgate a legislative rule relating to the practice of public health sanitation (20 CSR 4); authorizing the Secretary of State to promulgate a legislative rule relating to the combined voter registration and driver licensing fund (153 CSR 25); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians (3 CSR 1); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to qualifications, training, examination of instructors (3 CSR 2); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to operational standards for schools of barbering and beauty culture (3 CSR 4); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule titled schedule of fees (3 CSR 6); authorizing the Commissioner of Agriculture to promulgate a legislative rule titled the West Virginia Apiary Rule (61 CSR 2); authorizing the repeal of the Commissioner of Agriculture’s legislative rule relating to general groundwater protection for fertilizes and manures (61 CSR 6C); authorizing the Commissioner of Agriculture to promulgate a legislative rule
relating to the inspection of meat and poultry (61 CSR 16); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the organization, operation and licensing of veterinarians (26 CSR 1); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the registration of veterinary technicians (26 CSR 3); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the standards of practice (26 CSR 4); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians (26 CSR 5); authorizing the Board of Veterinary Medicine to promulgate a legislative rule titled schedule of fees (26 CSR 6); authorizing the Board of Optometry to promulgate a legislative rule titled rules of the West Virginia Board of Optometry (14 CSR 1); authorizing the Board of Optometry to promulgate a legislative rule relating to oral pharmaceutical prescriptive authority (14 CSR 2); authorizing the Board of Optometry to promulgate a legislative rule titled schedule of fees (14 CSR 5); authorizing the Board of Optometry to promulgate a legislative rule relating to licensure by endorsement (14 CSR 8); authorizing the Board of Optometry to promulgate a legislative rule relating to contact lenses that contain and deliver pharmaceutical agents (14 CSR 9); authorizing the Board of Optometry to promulgate a legislative rule relating continuing education (14 CSR 10); authorizing the Board of Optometry to promulgate a legislative rule relating to injectable pharmaceutical agents (14 CSR 11); authorizing the Board of Osteopathy to promulgate a legislative rule relating to osteopathic assistants (24 CSR 2); authorizing the Board of Osteopathy to promulgate a legislative rule relating to fees for services rendered by the Board (24 CSR 5); authorizing the Treasurer’s Office to promulgate a legislative rule relating to the establishment of imprest funds (112 CSR 3); and authorizing the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Financing Pilot Program (146 CSR 5).
Be it enacted by the Legislature of West Virginia:

That article nine, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Pharmacy.

(a) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section five, article nine, chapter sixty-a, of this code, relating to the Board of Pharmacy (licensure and the practice of pharmacy, 15 CSR 1), is authorized with the following amendments:

On page thirty-seven, subsection 21.1, by striking out all of subsection 21.1 and inserting in lieu thereof a new subsection 21.1 to read as follows:

“21.1. A prescription to be valid, shall be issued for a legitimate medical purpose by a practitioner acting within the course of legitimate professional practice, and shall bear the preprinted, stamped, typed, or manually printed name, address and telephone number of the prescribing practitioner.

If it is a prescription for a controlled substance listed in Schedules II through V, then it shall also contain the prescriber’s DEA registration number, including any suffix.

The National Provider Identification (NPI) number shall be required on all valid prescriptions beginning January 1, 2012.”

And,

On page forty-seven, after subsection 26.1, by adding a new section 27 to read as follows:

27.1. The purpose of this section is to establish rules for the West Virginia Official Prescription Program Act set forth at West Virginia Code Section §16-5W-1, et seq. for use in writing prescriptions by practitioners.

27.2. Definitions. As used in this rule:

a. "Program Vendor" means the private contractor or contractors selected to manage the production and delivery of official state prescription paper.

b. "West Virginia Official Prescription Paper" means prescription paper, which has been authorized by the state for use, and meets the following criteria:

1. Prevention of unauthorized copying;
2. Prevention of erasure or modification;
3. An ability to prevent counterfeit prescription pads; and
4. Capable of supporting automated validation through pharmacy claims processing systems using the official state prescription control number.

27.3. Minimum Requirements of West Virginia Official Prescription Paper. The prescription paper shall contain the following security features:

a. Shall meet all requirements issued by the Center for Medicare and Medicaid Services for a written prescription for controlled substances as required by Section 2002(b) of PL. 110-28 of the Iraq War Supplemental Appropriations Bill enacted by the United States Congress in 2007;
b. shall contain six (6) quantity check-off boxes printed on the form and in the following quantities shall appear:

1. 1-24;

2. 25-49;

3. 50-74;

4. 75-100;

5. 101-150; and

6. 151 and over:

Provided, That if the blank has the quantity prescribed electronically printed in both numeric and word format, then the quantity check-off boxes shall not be necessary;

c. Shall contain space for the prescriber to indicate number of refills, if any, or to indicate no refills;

d. Shall provide space for the patient’s name and address, the prescribing practitioner’s signature;

e. Shall provide space for the preprinted, stamped, typed, or manually printed name, address and telephone number of the prescribing practitioner, and the practitioner’s DEA registration number and NPI number;

f. Shall contain the following statement printed on the bottom of the prescription blank: “This prescription may be filled with a generically equivalent drug product unless the words ‘Brand Medically Necessary’ are written in the practitioner’s own handwriting, on this prescription form.”; and
g. Each blank must be numbered on the face with a unique identifying control number in both human readable and barcode format.

27.4. The Board will solicit open bids and select a vendor or vendors to provide West Virginia Official Prescription Paper and maintain appropriate records of such product supplied to practitioners based on ability of proposed program to prevent prescription fraud, price and ability to meet these requirements.

a. Practitioners licensed to practice in this State may purchase West Virginia Official Prescription Paper as per individual orders from the selected vendor(s). The cost of the Official Prescription Paper will be borne by the ordering practitioner/institution, unless the state is successful in securing offsetting funds such as federal grants, risk/reward programs or private funding applied for and received by the state for the express purpose of partially or fully funding the West Virginia Official Prescription Program.

b. Orders shall be placed through a vendor supplied secure on-line order capture system or on an order form to be supplied by the Vendor, and must contain the requesting practitioner’s name, specialty, primary address and other practice site address(s), Federal DEA registration number, if any, National Provider Identification number, the State professional practice license number, number of prescriptions requested, and shall be signed by the requesting practitioner.

c. Records of West Virginia Official Prescription Paper supplied to practitioners will be maintained by the vendor or vendors and will be subject to random and regular audits. Discrepancies shall be reported to the Board in a regular and timely manner.
27.5. On and after January 1, 2012 every written prescription written in West Virginia by a practitioner shall be written on West Virginia Official Prescription Paper. A pharmacist may not fill a written prescription from a West Virginia practitioner unless issued upon an official state issued prescription form.

27.6. Practitioners; control and reporting of West Virginia Official Prescription Paper.

a. Adequate safeguards and security measures shall be undertaken by practitioners holding West Virginia Official Prescription Paper to assure against the loss, destruction, theft or unauthorized use of the forms. The forms may be used only by the practitioner to whom they are issued and are not transferable.

b. The Practitioner must also notify the vendor of any failure to receive Official Prescription Paper within a reasonable time after ordering them. Further, practitioners must immediately notify the Board and vendor in writing of the loss through destruction, theft or loss, or unauthorized use of any Official Prescription Paper blanks, including:

1. Estimated number of blanks affected;

2. Control numbers if available; and

3. Suspected reason for destruction, theft, or loss.

c. The program vendor must provide annual SAS70 or SSAE16 third party audits of the prescription paper printing/personalization facility used in the preparation and distribution of West Virginia Official Prescription Paper blanks upon request. The program vendor must be able to provide such report for each year and for two years prior to the term of the contract.”.
(b) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section five, article nine, chapter sixty-a, of this code, relating to the Board of Pharmacy (controlled substances monitoring, 15 CSR 8), is authorized with the following amendments:

On page two, subsection 2.15, by striking out the words "15-1-27 of the West Virginia Code of State Rules" and inserting in lieu thereof the word "5";

On page six, subdivision 7.3(b), by striking out all of subdivision 7.3(b) and inserting in lieu thereof a new subdivision 7.3(b) to read as follows:

"(b) members of the West Virginia State Police expressly authorized by the superintendent of the West Virginia State Police to have access to the information;";

On page six, subdivision 7.3(e), after the word "(e)" by striking out the word "The" and inserting in lieu thereof the word "the";

On page six, subdivision 7.3(f), after the word "(f)" by striking out the word "A" and inserting in lieu thereof the word "a";

On page six, subdivision 7.3(g), by striking out the word "board" and inserting in lieu thereof the word "Board";

On page six, subdivision 7.3(j), by striking out the word "date" and inserting in lieu thereof the word "data";

On page six, subsection 7.4, by striking out the word "board" and inserting in lieu thereof the word "Board";

And,
On page six, subsection 7.4, after the words “subsection 7.3” by inserting the words “(a) through (i)”.


(a) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty, chapter thirty, of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on December 21, 2010, relating to the Board of Physical Therapy (general provisions, 16 CSR 1), is authorized with the following amendments:

On page two, by striking 2.15a in its entirety and inserting in lieu thereof the following:

“2.15.a. A physical therapy aide works under the direct supervision of a physical therapist; Provided, That a physical therapist assistant may directly supervise a physical therapy aide in emergency situations necessary to provide patient safety.”

On page 3, by striking out section 5 in its entirety and inserting in lieu thereof the following:

§16-1-5. Issuance, Renewal or Reinstatement of License.

5.1. The Board reserves the right to evaluate the applicant according to the testing, licensure, and procedural requirements as initiated by the agency responsible for the ownership and development of the National exam.

5.2. Licenses expiring on December 31, of each particular year must be renewed by payment of applicable fee along with completed renewal application.
5.3. A license not renewed without specific request to place it in “inactive” status will automatically be placed on delinquent status.

5.4. Delinquent licensee is responsible for penalty fees including but not limited to: application fee, delinquent license fee, and the current year renewal fee. A licensee must also complete and show proof of board approved continuing education requirements.

5.5. To reinstate an “inactive” license, the licensee must submit an application for renewal along with a non-refundable application fee and license renewal fee.

5.6. A volunteer license will be marked as a “volunteer” license and is restricted to practicing in accordance with §30-20-13.

5.7. Any change in personal contact and employer/supervisor information must be submitted in writing to the board as changes occur.”

On page 4, by striking out subsection 6.1 in its entirety and inserting in lieu thereof the following:

“6.1. An individual possessing a temporary permit issued by the Board to practice Physical Therapy or act as a physical therapist assistant in the State of West Virginia shall practice under the on-site supervision of a Physical Therapist. All progress notes written by the Physical Therapist or physical therapist assistant with a temporary permit shall be cosigned by a Physical Therapist supervisor within twenty-four (24) hours.”

On page six, by inserting a new subsection 7.7, to read as follows:
7. A licensee must report to the board any discipline received in another jurisdiction within 30 days of that discipline. The board reserves the right to discipline up to and including revocation of a license until disciplinary process in the other jurisdiction is completed. If the licensee fails to report discipline in another jurisdiction, they are subject to disciplinary procedures in our jurisdiction determined by the board.”

On page seven, by striking subdivision 8.2.a in its entirety and inserting in lieu thereof the following:

“8.2.a. When care is delivered in a hospital or other acute-care center, free-standing, outpatient, or independent practice setting, a Physical Therapist must provide on-site supervision, with the exception that general supervision is permitted in a hospital or other acute-care center, free-standing, outpatient, or independent practice setting 40% of the time once the physical therapist assistant performing treatment has at least 1000 hours of experience. The supervising physical therapist shall document when general supervision is utilized under this subdivision.”

On page seven, by striking out subdivision 8.2.b. in its entirety and inserting in lieu thereof the following:

“8.2.b. General supervision may be utilized when care is delivered in a skilled/unskilled nursing facility, distinct part skilled/unskilled nursing unit or swing-bed unit in an acute-care hospital, home health, or school system setting, and the following requirements must be observed and documented in the patient records when general supervision is used:”

On page seven, by striking out subparagraph 8.2.b.1 in its entirety and inserting in lieu thereof the following:
"8.2.b.1. A physical therapist must be accessible by telecommunications to the physical therapist assistant at all times that the physical therapist assistant is treating patients; and available to make a joint onsite visit with the physical therapist assistant within 24 hours as prudent practice indicates."

On page seven, by striking out subparagraph 8.2.b.2 in its entirety and inserting in lieu thereof the following:

"8.2.b.2 The physical therapist must visit the patient at least once every 10 physical therapist assistant visits, or within 30 calendar days, whichever occurs first."

On page seven, by striking out subparagraph 8.2.b.3 in its entirety and inserting in lieu thereof the following:

"8.2.b.3. In the event that the supervising physical therapist changes, the new supervising physical therapist must discuss the patient's diagnosis and plan of care with the previous supervising physical therapist before the next physical therapist assistant visit is made. Either physical therapist must document such communication."

On page 8, by striking out subsection 8.5 in its entirety and inserting in lieu thereof the following:

"8.5. In an emergency situation, such as serious illness or injury of the therapist or therapist's family member or death of a family member, which causes the unanticipated absence of the supervising physical therapist for not more than three consecutive days, and no more than twelve days per calendar year, a licensed physical therapist assistant may continue to render services, under the supervision of another physical therapist, to only those patients for which the licensed physical therapist assistant has previously participated in the intervention for established plans of care not to exceed the

99 regularly scheduled operational hours of the particular day or
100 days the supervising physical therapist is absent. When this
101 provision is utilized, the ratio in subdivision 8.1.c. may be
102 exceeded and the physical therapist shall document the dates
103 and the emergency situation.”

104 On page 8, by striking out subsection 8.6 in its entirety
105 and inserting in lieu thereof the following:

106 “8.6. In a temporary situation, which causes the absence
107 of the supervising physical therapist up to one day, and no
108 more than eighty hours in a calendar year, a licensed physical
109 therapist assistant may continue to render services, under
110 general supervision of the supervising physical therapist, to
111 only those patients for which the licensed physical therapist
112 assistant has previously participated in the intervention for
113 established plans of care not to exceed the regularly
114 scheduled operational hours of the particular day the
115 supervising physical therapist is absent. When this provision
116 is utilized, the level of supervision in subdivision 8.2.a. may
117 be exceeded and the physical therapist shall document the
118 hours, date and temporary situation.”

119 On page 9, by inserting a new section 10 to read as
120 follows:

§16-1-10. Continuing Education.

1 10.1. A “unit” is one clock hour spent in a continuing
2 education activity unless otherwise defined in this section.

3 10.2. All licensees desiring to remain “active” and in
4 good standing must complete 24 units of board approved
5 continuing education within the two year licensing period. If
6 the licensee does not complete the 24 units of board approved
7 continuing education within the license period, that licensee
will be placed on delinquent status and will be subject to all
fees associated with delinquent status.

10.2.a. For those applicants reinstating their license for a
period of 6 months or less, only 6 units are required for that
year.

10.2.b. Volunteer licensees need only to complete twenty
(20) units of board approved continuing education activities
within a two year renewal cycle.

10.2.c. Accumulated CEU’s may not be carried over from
one renewal period to another.

10.2.d. A new graduate does not need continuing
education hours for the current year of graduation.

10.3. Completion of examinations, residencies,
fellowships, tools, and courses for continuing education
credit.

10.3.a. A maximum of 8 units per license period can be
obtained from any combination of clinical instruction or
competency tools.

10.3.b. Passing the following specialty examinations will
qualify for twenty-four contact hours of continuing education
in the year the examination is taken:

10.3.b.1 Specialty examinations and recertification
administered by the American Board of Physical Therapy
specialties (ABPTS).

10.3.b.2. The Hand Therapy Certification Commission
(HTCC) certification examination.
10.3.b.3. Continuing education course instructors can receive 1 unit per hour of class instruction time will be awarded for board approved continuing education courses in the year the course given. Credit awarded to the instructor for said course will be granted only one time.

10.3.c. The successful completion of an American Physical Therapy Association credentialed residency or fellowship program will qualify for twenty-four contact hours of continuing education in the year the residency or fellowship is completed.

10.3.d. The successful completion of a practice review tool of the federation of state boards of physical therapy pertaining to continued competence will qualify for continuing education.

10.3.d.1. Eight contact hours of continuing education will be awarded for completion of a practice review tool.

10.3.d.2. Licensees may use a practice review tool identified in paragraph 3.d.1 of this section no more than every other renewal period.

10.3.e. Clinical instruction.

10.3.e.1. Providing clinical instruction to PT or PTA student(s) enrolled in a CAPTE approved physical therapist or physical therapist assistant program can qualify for up to a maximum 8 units per year.

10.3.e.2. Four weeks of clinical instruction is equal to 1 unit of continuing education.

10.3.f. Continuing education courses are subject to board approval.
10.3.f.1 One unit per hour of class instruction time will be awarded for board approved continuing education courses in the year the course is taken.

10.3.g. One unit per hour of class instruction time shall be awarded and automatically approved for CAPTE College/University, American Physical Therapy Association or West Virginia Physical Therapy Association sponsored continuing education courses in the year the course is taken.

10.3.h. One unit per hour of class instruction time shall be awarded and automatically approved for CAPTE College or university physical therapy or doctorate physical therapy programs.

10.4. The board may grant a waiver of the continuing education requirements in the case of illness, disability or undue hardship.

10.4.a. A request for waiver form must be completed in full. In the case of illness or disability, a physician’s statement is required.

10.4.b. All completed forms must be received by the Board for consideration no later than the first day of October of the year preceding the renewal date.

10.4.c. A waiver may be granted for any period of time not to exceed one renewal cycle.

10.4.d. In the event that the illness, disability or hardship continues to the next renewal cycle, then a new waiver request is required.

10.4.e. Should a waiver be granted due to disability or illness, the section may require the individual to provide appropriate documentation from a physician or another qualified and appropriate practitioner to verify the
individual's competency and ability to practice physical therapy in the state of West Virginia prior to the return to active practice of physical therapy in West Virginia."

(b) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty, chapter thirty, of this code, relating to the Board of Physical Therapy (fees for physical therapists and physical therapist assistants, 16 CSR 4), is authorized.

(c) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section four, article twenty-a, chapter thirty, of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on September 20, 2010, relating to the Board of Physical Therapy (general provisions for athletic trainers, 16 CSR 5), is authorized.

(d) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section four, article twenty-a, chapter thirty, of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on September 20, 2010, relating to the Board of Physical Therapy (fees for athletic trainers, 16 CSR 6), is authorized.


(a) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section six, article seventeen, chapter thirty, of this code, relating to the of Board of Sanitarians (interim fee schedule, 20 CSR 3), is authorized.
(b) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section six, article seventeen, chapter thirty, of this code, relating to the Board of Sanitarians (practice of public health sanitation, 20 CSR 4), is authorized, with the following amendments:

On page three, following subdivision 4.1.c, by inserting a new subdivision 4.1.d. to read as follows:

"4.1.d. Has not previously failed an examination for licensure in this state;";

And,

By re-designating the remaining subdivisions accordingly.

§64-9-4. Secretary of State.

The legislative rule filed in the state register on November 12, 2010, authorized under the authority of section twelve, article two, chapter three, of this code, relating to the Secretary of State (combined voter registration and driver licensing fund, 153 CSR 25), is authorized with the following amendments:

On page one, section two, following the words "For the purposes of this rule:”, by striking out subsection 2.1 in its entirety and renumbering the following subsections of section two;

On page three, subdivision 4.2.2 following the words "under this subsection on a”, by striking out the word "quarterly” and inserting in lieu thereof the word “annual”;
striking out the proviso in its entirety, and inserting in lieu thereof the following proviso "Provided, That the total reimbursement shall not exceed sixty (60) percent of the total annual revenue of the Fund. In any year in which the revenue is insufficient to pay the reimbursement rate of $1.00 per completed registration as provided in this subsection, the amount per registration application shall be reduced proportionally."

And,

On page four, by striking out subsection 4.4 and subdivisions 4.4.1, 4.4.2, 4.4.3 and 4.4.4 in their entirety and renumbering the remaining sections of the rule.

§64-9-5. Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on October 18, 2010, relating to the Board of Barbers and Cosmetologists (procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians, 3 CSR 1), is authorized with the following amendments:

On page two, by striking out the words "43.1" and inserting in lieu thereof the word "3.1."

And,

On page three, subsection 4.2, after the word "obtain" by inserting the word "a". 
(b) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on October 18, 2010, relating to the Board of Barbers and Cosmetologists (qualifications, training, examination of licensure of instructors, 3 CSR 2), is authorized, with the following amendments:

On page one, by striking out subdivision 2.1.1 in its entirety and inserting in lieu thereof the following:

"2.1.1 Have been licensed 5 years with 5 years of salon/shop experience."

On page one, subdivision 2.1.6 by striking out the percentage amount "70%" and inserting in lieu thereof the percentage amount "80%";

And,

On page one, by striking out all of subdivisions 2.1.7. and 2.1.8. and inserting in lieu new subdivisions 2.1.7. and 2.1.8. to read as follows:

"2.1.7. Submit an application to the board;

2.1.8. Pay applicable certification, examination and registration fees."

(c) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on October 18, 2010, relating to
the Board of Barbers and Cosmetologists (operational standards for schools of barbering and beauty culture, 3 CSR 4), is authorized with the following amendments:

On page five, by striking out section caption “3-4-5. Enrollment” and inserting in lieu thereof a new section caption to read as follows:

“§3-4-5. Enrollment”; And,

On page six, by striking out the section caption “3-4-8. Teaching Staff” and inserting in lieu thereof a new section caption to read as follows:

“§3-4-8 Teaching Staff”.

(d) The legislative rule filed in the state register on June 18, 2010, authorized under the authority of sections six, article twenty-seven, chapter thirty, of this code, relating to the Board of Barbers and Cosmetologists (schedule of fees, 3 CSR 6), is authorized with the following amendment:

On page one, subsection 2.1, by striking out the words “$99.00” and inserting in lieu thereof the words “Based on the National Interstate Council Index with a cap of $107.00”.


(a) The legislative rule filed in the state register on July 26, 2010, authorized under the authority of section four, article thirteen, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on September 21, 2010, relating to the
Commissioner of Agriculture (West Virginia Apiary Rule, 61 CSR 2), is authorized.

(b) The legislative rule filed in the state register on July 12, 2010, authorized under the authority of section five-c, article twelve, chapter twenty-two, of this code, relating to the Commissioner of Agriculture (general groundwater protection rules for fertilizers and manures, 61 CSR 6C), is authorized.

(c) The legislative rule filed in the state register on the July 20, 2010, authorized under the authority of section three, article two-B, chapter nineteen, of this code, relating to the Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

§64-9-7. Board of Veterinary Medicine.

The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section six, article ten, chapter thirty, of this code, modified by the West Virginia, 1931, as amended, relating to authorizing the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the West Virginia, 1931, as amended, relating to the Board of Veterinary Medicine (organization and operation and licensing of veterinarians, 26 CSR 1), is authorized with the following amendments:

On page two, subdivision 2.4.4, by striking out the subdivision in its entirety;

On page twelve, subsection 8.1, by striking out the words "the supervision of a West Virginia licensed veterinarian" and inserting in lieu thereof the words "the indirect or general supervision of a West Virginia licensed supervising

18 veterinarian. During the period of supervision of a temporary
19 permittee, the supervising veterinarian must remain within
20 one hour’s physical access to the location where the
21 temporary permittee is rendering veterinary care.”
22
23 And,

24 On page twelve, subsection 8.2, in the last sentence of the
25 subsection, by striking out the word “supervisory” and
26 inserting in lieu thereof the word “supervising”.

27 (b) The legislative rule filed in the state register on July
28 27, 2010, authorized under the authority of section six, article
29 ten, chapter thirty of this code, modified by the Board of
30 Veterinary Medicine to meet the objections of the Legislative
31 Rule-Making Review Committee and refiled in the state
32 register on November 24, 2010, relating to the Board of
33 Veterinary Medicine (registration of veterinary technicians,
34 26 CSR 3), is authorized.

35 (c) The legislative rule filed in the state register on July
36 27, 2010, authorized under the authority of section six, article
37 ten, chapter thirty of this code, modified by the Board of
38 Veterinary Medicine to meet the objections of the Legislative
39 Rule-Making Review Committee and refiled in the state
40 register on November 24, 2010, relating to the Board of
41 Veterinary Medicine (standards of practice, 26 CSR 4), is
42 authorized, with the following amendments:

43 On page four, subsection 3.6, in the title to the
44 subsection, by striking out the words “position or trust” and
45 inserting in lieu thereof the words “position of trust”.

46 (d) The legislative rule filed in the state register on July
47 27, 2010, authorized under the authority of section six, article
48 ten, chapter thirty of this code, modified by the Board of
49 Veterinary Medicine to meet the objections of the Legislative
Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Veterinary Medicine (certified animal euthanasia technicians, 26 CSR 5), is authorized, with the following amendment:

On page eight, subdivision 10.1.d., by striking out the words "Section 10" and inserting in lieu thereof the words "Section 13".

(e) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section six, article ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Veterinary Medicine (schedule of fees, 26 CSR 6), is authorized.

§64-9-8. Board of Optometry.

(a) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (rules of the West Virginia Board of Optometry, 14 CSR 1), is authorized.

(b) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on January 3, 2011, relating to the Board of Optometry (oral pharmaceutical prescriptive authority, 14 CSR 2), is authorized.
(c) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (schedule of fees, 14 CSR 5), is authorized.

(d) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (examination and scoring policy, 14 CSR 6), is authorized with the following amendments:

On page one, subsection 2.1., by striking out all of subsection 2.1. and inserting in lieu thereof a new subsection 2.1. to read as follows:

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

On page one, subsection 3.2, after the word "The" by inserting the word "Board";

And,

On page two, subsection 4.1., by striking out all of subsection 4.1. and inserting a new subsection 4.1. to read as follows:

"4.1. A Board quorum may evaluate the applicant's successful or unsuccessful completion of the interview by consesus."
(e) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (licensure by endorsement, 14 CSR 8), is authorized with the following amendments:

On page one, after subdivision 2.2.5., by inserting a new subdivision 2.2.6. to read as follows:

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

On page one, subsection 3.2., by striking out the word “licensee” and inserting in lieu thereof the word “applicant”;

On page two, subsection 3.7, by striking out the word “person” and inserting in lieu thereof the word “applicant”;

On page two, subsection 3.8, after the words “Code of”, by inserting the word “State”;

And,

On page two, subsection 3.9., by striking out all of subsection 3.9. and inserting in lieu thereof a new subsection 3.9. to read as follows:

“3.9. The Board may require an applicant to interview with the Board.”.

(f) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of
Optometry to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the state register on
November 24, 2010, relating to the Board of Optometry
(contact lenses that contain and deliver pharmaceutical agents
certificates, 14 CSR 9), is authorized with the following
amendment:

On page one, subsection 3.3., after the words “Code of”,
by inserting the word “State”.

(g) The legislative rule filed in the state register on July
30, 2010, authorized under the authority of section six, article
eight, chapter thirty, of this code, modified by the Board of
Optometry to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the state register on
November 24, 2010, relating to the Board of Optometry
(continuing education, 14 CSR 10), is authorized with the
following amendments:

On page one, subsection 2.1., after the words “Code of”
by inserting the word “State”;

On page one, subsection 3.2., after the word “hours” by
inserting the words “of continuing education”;

On page one, subsection 3.6., after the word “outlined”
by inserting the word “in”;

On page one, subsection 3.7., by striking out the word
“hold” and inserting in lieu thereof the word “holds”;

On page two, subdivision 4.1(d), by striking out the
word “Postgraduate” and inserting in lieu thereof the word
“postgraduate”;

On page two, subsection 5.1., after the words “Code of”
by inserting the word “State”;
On page two, subsection 6.1, after the word “instruction” by striking out the words “by correspondence, Internet or other electronic means”;

And,

On page two, subsection 6.1, after the word “attendance” by changing the period to a comma and inserting the words “by correspondence, Internet or other electronic means.”

(h) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section fifteen, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on December 23, 2010, relating to the Board of Optometry (injectable pharmaceutical agents certificate, 14 CSR 11), is authorized with the following amendments:

On page five, subsection 10.1., by striking out the word ‘not’;

And,

On page five, by striking out subsection 11.1 in its entirety and inserting in lieu thereof the following:

“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 §14-2-7.2g.

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.


(a) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section one, article fourteen-a, chapter thirty, of this code, modified by the
Board of Osteopathy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 29, 2010, relating to the Board of Osteopathy (osteopathic physician assistants, 24 CSR 2), is authorized with the following amendments:

On page nine, subsection 6.6., after the words “Board and the”, by striking out the word “board” and inserting in lieu thereof the word “Board”;

And,

On page eleven, subsection 8.6., after the words “and expire with, the”, by inserting the word “osteopathic”.

(b) The legislative rule filed in the state register on July 28, 2010, authorized under the authority of section three, article fourteen-a, chapter thirty, of this code, modified by the Board of Osteopathy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 29, 2010, relating to the Board of Osteopathy (fees for services rendered by the Board, 24 CSR 5), is authorized.

§64-9-10. Treasurer’s Office.

The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section two, article two, chapter twelve, of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on July 30, 2010, relating to the Treasurer’s Office (establishment of imprest funds, 112 CSR 3), is authorized.

The legislative rule filed in the state register on the July 29, 2010, authorized under the authority of section fourteen, article twelve, chapter three, of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on January 14, 2011, relating to the State Election Commission (West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, 146 CSR 5), is authorized, with the following amendment:

On page nine, subdivision 6.9.a., by striking out “per W. Va. Code §3-12-9(f)” and inserting in lieu thereof “as required by W. Va. Code §3-12-9(g)”.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

Acting President of the Senate

The within is disapproved this the 18th day of March, 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 110 AM