

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2639**

4 (By Delegates Brown, D. Poling, Fleischauer, Talbott, Overington
5 and Sobonya)
6

7 (Originating in the Committee on the Judiciary)

8 [February 17, 2011]
9

10 A BILL to amend and reenact article 9, chapter 64 of the Code of
11 West Virginia, 1931, as amended, relating generally to the
12 promulgation of administrative rules by the various executive
13 or administrative agencies and the procedures relating
14 thereto; legislative mandate or authorization for the
15 promulgation of certain legislative rules; authorizing certain
16 of the agencies to promulgate certain legislative rules in the
17 form that the rules were filed in the State Register;
18 authorizing certain of the agencies to promulgate certain
19 legislative rules with various modifications presented to and
20 recommended by the Legislative Rule-Making Review Committee;
21 authorizing certain of the agencies to promulgate certain
22 legislative rules as amended by the Legislature; authorizing
23 certain of the agencies to promulgate certain legislative
24 rules with various modifications presented to and recommended
25 by the Legislative Rule-Making Review Committee and as amended
26 by the Legislature; authorizing the Board of Pharmacy to
27 promulgate a legislative rule relating to the licensure and
28 the practice of pharmacy (15 CSR 1); authorizing the Board of
29 Pharmacy to promulgate a legislative rule relating to

1 controlled substances monitoring (15 CSR 8); authorizing the
2 Board of Physical Therapy to promulgate a legislative rule
3 titled general provisions (16 CSR 1); authorizing the Board of
4 Physical Therapy to promulgate a legislative rule relating to
5 fees for physical therapists and physical therapist assistants
6 (16 CSR 4); authorizing the Board of Physical Therapy to
7 promulgate a legislative rule titled general provisions for
8 athletic trainers (16 CSR 5); authorizing the Board of
9 Physical Therapy to promulgate a legislative rule relating to
10 fees for athletic trainers (16 CSR 6); authorizing the Board
11 of Sanitarians to promulgate a legislative rule relating to an
12 interim fee schedule (20 CSR 3); authorizing the Board of
13 Sanitarians to promulgate a legislative rule relating to the
14 practice of public health sanitation (20 CSR 4); authorizing
15 the Secretary of State to promulgate a legislative rule
16 relating to the combines voter registration and driver
17 licensing fund (153 CSR 25); authorizing the Board of Barbers
18 and Cosmetologists to promulgate a legislative rule relating
19 to procedures, criteria and curricula for examinations and
20 licensure of barbers, cosmetologists, manicurists and
21 aestheticians (3 CSR 1); authorizing the Board of Barbers and
22 Cosmetologists to promulgate a legislative rule relating to
23 qualifications, training, examination of instructors (3 CSR 2);
24 authorizing the Board of Barbers and Cosmetologists to
25 promulgate a legislative rule relating to operational
26 standards for schools of barbering and beauty culture (3 CSR
27 4); authorizing the Board of Barbers and Cosmetologists to
28 promulgate a legislative rule titled schedule of fees (3 CSR

1 6); authorizing the Commissioner of Agriculture to promulgate
2 a legislative rule titled the West Virginia Apiary Rule (61
3 CSR 2); authorizing the repeal of the Commissioner of
4 Agriculture's legislative rule relating to general groundwater
5 protection for fertilizes and manures (61 CSR 6C); authorizing
6 the Commissioner of Agriculture to promulgate a legislative
7 rule relating to the inspection of meat and poultry (61 CSR
8 16); authorizing the Board of Veterinary Medicine to
9 promulgate a legislative rule relating to the organization,
10 operation and licensing of veterinarians (26 CSR 1);
11 authorizing the Board of Veterinary Medicine to promulgate a
12 legislative rule relating to the registration of veterinary
13 technicians (26 CSR 3); authorizing the Board of Veterinary
14 Medicine to promulgate a legislative rule relating to the
15 standards of practice (26 CSR 4); authorizing the Board of
16 Veterinary Medicine to promulgate a legislative rule relating
17 to certified animal euthanasia technicians (26 CSR 5);
18 authorizing the Board of Veterinary Medicine to promulgate a
19 legislative rule titled schedule of fees(26 CSR 6);
20 authorizing the Board of Optometry to promulgate a legislative
21 rule titled rules of the West Virginia Board of Optometry (14
22 CSR 1); authorizing the Board of Optometry to promulgate a
23 legislative rule relating to oral pharmaceutical prescriptive
24 authority(14 CSR 2); authorizing the Board of Optometry to
25 promulgate a legislative rule titled schedule of fees (14 CSR
26 5); authorizing the Board of Optometry to promulgate a
27 legislative rule relating to licensure by endorsement (14 CSR
28 8); authorizing the Board of Optometry to promulgate a

1 legislative rule relating to contact lenses that contain and
2 deliver pharmaceutical agents (14 CSR 9); authorizing the
3 Board of Optometry to promulgate a legislative rule relating
4 continuing education (14 CSR 10); authorizing the Board of
5 Optometry to promulgate a legislative rule relating to
6 injectable pharmaceutical agents (14 CSR 11); authorizing the
7 Board of Osteopathy to promulgate a legislative rule relating
8 to osteopathic assistants (24 CSR 2); authorizing the Board
9 of Osteopathy to promulgate a legislative rule relating to
10 fees for services rendered by the Board (24 CSR 5);
11 authorizing the Treasurer's Office to promulgate a legislative
12 rule relating to the establishment of imprest funds (112 CSR
13 3); and authorizing the State Election Commission to
14 promulgate a legislative rule relating to the West Virginia
15 Supreme Court of Appeals Public Financing Pilot Program (146
16 CSR 5).

17 *Be it enacted by the Legislature of West Virginia:*

18 That article nine, chapter 64 of the Code of West Virginia,
19 1931, as amended, be amended and reenacted to read as follows:

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

22 **§64-9-1. Board of Pharmacy.**

23 (a) The legislative rule filed in the state register on July
24 29, 2010, authorized under the authority of section five, article
25 nine, chapter sixty-a, of this code, relating to the Board of
26 Pharmacy (licensure and the practice of pharmacy, 15 CSR 1), is
27 authorized.

28 (b) The legislative rule filed in the state register on July

1 29, 2010, authorized under the authority of section five, article
2 nine, chapter sixty-a, of this code, relating to the Board of
3 Pharmacy (controlled substances monitoring, 15 CSR 8), is
4 authorized.

5 **§64-9-2. Physical Therapy.**

6 (a) The legislative rule filed in the state register on July
7 30, 2010, authorized under the authority of section six, article
8 twenty, chapter thirty, of this code, modified by the Board of
9 Physical Therapy to meet the objections of the Legislative Rule-
10 Making Review Committee and refiled in the state register on
11 December 21, 2010, relating to the Board of Physical Therapy
12 (general provisions, 16 CSR 1), is authorized, with the following
13 amendments:

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

16 "2.15.a. A physical therapy aide works under the direct
17 supervision of a physical therapist; *Provided*, That a physical
18 therapist assistant may directly supervise a physical therapy aide
19 in emergency situations necessary to provide patient safety."

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

22 **"§16-1-5. Issuance, Renewal or Reinstatement of License.**

23 5.1. The Board reserves the right to evaluate the applicant
24 according to the testing, licensure, and procedural requirements as
25 initiated by the agency responsible for the ownership and
26 development of the National exam.

1 5.2. Licenses expiring on December 31, of each particular
2 year must be renewed by payment of applicable fee along with
3 completed renewal application.

4 5.3. A license not renewed without specific request to place
5 it in "inactive" status will automatically be placed on delinquent
6 status.

7 5.4. Delinquent licensee is responsible for penalty fees
8 including but not limited to: application fee, delinquent license
9 fee, and the current year renewal fee. A licensee must also
10 complete and show proof of board approved continuing education
11 requirements.

12 5.5. To reinstate an "inactive" license, the licensee must
13 submit an application for renewal along with a non-refundable
14 application fee and license renewal fee.

15 5.6. A volunteer license will be marked as a "volunteer"
16 license and is restricted to practicing in accordance with §30-20-
17 13.

18 5.7. Any change in personal contact and employer/supervisor
19 information must be submitted in writing to the board as changes
20 occur."

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

23 "6.1. An individual possessing a temporary permit issued by
24 the Board to practice Physical Therapy or act as a physical
25 therapist assistant in the State of West Virginia shall practice
26 under the on-site supervision of a Physical Therapist. All progress
27 notes written by the Physical Therapist or physical therapist
28 assistant with a temporary permit shall be cosigned by a Physical

1 Therapist supervisor within twenty-four (24) hours.”

2 On page six, by inserting a new subsection 7.7, to read as
3 follows:

4 “7.7. A licensee must report to the board any discipline
5 received in another jurisdiction within 30 days of that discipline.
6 The board reserves the right to discipline up to and including
7 revocation of a license until disciplinary process in the other
8 jurisdiction is completed. If the licensee fails to report
9 discipline in another jurisdiction, they are subject to
10 disciplinary procedures in our jurisdiction determined by the
11 board.”

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

14 “8.2.a. When care is delivered in a hospital or other
15 acute-care center, free-standing, outpatient, or independent
16 practice setting, a Physical Therapist must provide on-site
17 supervision, with the exception that general supervision is
18 permitted in a hospital or other acute-care center, free-standing,
19 outpatient, or independent practice setting 40% of the time once
20 the physical therapist assistant performing treatment has at least
21 1000 hours of experience.”

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

24 “8.2.b. General supervision may be utilized when care is
25 delivered in a skilled/unskilled nursing facility, distinct part
26 skilled/unskilled nursing unit or swing-bed unit in an acute-care
27 hospital, home health, or school system setting, and the following
28 requirements must be observed and documented in the patient records

1 when general supervision is used:"

2 On page seven, by striking out subparagraph 8.2.b.1 in its
3 entirety and inserting in lieu thereof the following:

4 "8.2.b.1. A physical therapist must be accessible by
5 telecommunications to the physical therapist assistant at all times
6 that the physical therapist assistant is treating patients; and
7 available to make a joint onsite visit with the physical therapist
8 assistant within 24 hours as prudent practice indicates."

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

11 "8.2.b.2 The physical therapist must visit the patient at
12 least once every 10 physical therapist assistant visits, or within
13 30 calendar days, whichever occurs first."

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

16 "8.2.b.3. In the event that the supervising physical therapist
17 changes, the new supervising physical therapist assistant must
18 discuss the patient's diagnosis and plan of care with the previous
19 supervising physical therapist before the next physical therapist
20 visit is made. Either physical therapist must document such
21 communication."

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

24 "8.5. In an emergency situation, such as serious illness of
25 the therapist or therapist's family member or death of a family
26 member, which causes the unanticipated absence of the supervising
27 physical therapist for not more than 3 consecutive days, a licensed
28 physical therapist assistant may continue to render services, under

1 the supervision of another physical therapist, to only those
2 patients for which the licensed physical therapist assistant has
3 previously participated in the intervention for established plans
4 of care not to exceed the regularly scheduled operational hours of
5 the particular day or days the supervising physical therapist is
6 absent.'"

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

9 "8.6. In a temporary situation which causes the unanticipated
10 absence of the supervising physical therapist up to 1 day, a
11 licensed physical therapist assistant may continue to render
12 services, under the supervision of another physical therapist, to
13 only those patients for which the licensed physical therapist
14 assistant has previously participated in the intervention for
15 established plans of care not to exceed the regularly scheduled
16 operational hours of the particular day or days the supervising
17 physical therapist is absent."

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

19 **"§16-1-10. Continuing Education.**

20 10.1. A "unit" is one clock hour spent in a continuing
21 education activity unless otherwise defined in this section.

22 10.2. All licensees desiring to remain "active" and in good
23 standing must complete 24 units of board approved continuing
24 education within the two year licensing period. If the licensee
25 does not complete the 24 units of board approved continuing
26 education within the license period, that licensee will be placed

1 on delinquent status and will be subject to all fees associated
2 with delinquent status.

3 10.2.a. For those applicants reinstating their license for a
4 period of 6 months or less, only 6 units are required for that
5 year.

6 10.2.b. Volunteer licensees need only to complete twenty (20)
7 units of board approved continuing education activities within a
8 two year renewal cycle.

9 10.2.c. Accumulated CEU's may not be carried over from one
10 renewal period to another.

11 10.2.d. A new graduate does not need continuing education
12 hours for the current year of graduation.

13 10.3. Completion of examinations, residencies, fellowships,
14 tools, and courses for continuing education credit.

15 10.3.a. A maximum of 8 units per license period can be
16 obtained from any combination of clinical instruction or competency
17 tools.

18 10.3.b. Passing the following specialty examinations will
19 qualify for twenty-four contact hours of continuing education in
20 the year the examination is taken:

21 10.3.b.1 Specialty examinations and recertification
22 administered by the American board of physical therapy specialties
23 (ABPTS).

24 10.3.b.2. The hand therapy certification commission (HTCC)
25 certification examination.

26 10.3.b.3. Continuing education course instructors can receive
27 1 unit per hour of class instruction time will be awarded for board
28 approved continuing education courses in the year the course given.

1 Credit awarded to the instructor for said course will be granted
2 only one time.

3 10.3.c. The successful completion of an American physical
4 therapy association credentialed residency or fellowship program
5 will qualify for twenty-four contact hours of continuing education
6 in the year the residency or fellowship is completed.

7 10.3.d. The successful completion of a practice review tool of
8 the federation of state boards of physical therapy pertaining to
9 continued competence will qualify for continuing education.

10 10.3.d.1. Eight contact hours of continuing education will be
11 awarded for completion of a practice review tool.

12 10.3.d.2. Licensees may use a practice review tool identified
13 in paragraph 3.d.1 of this section no more than every other renewal
14 period.

15 10.3.e. Clinical instruction.

16 10.3.e.1. Providing clinical instruction to PT or PTA
17 student(s) enrolled in a CAPTE approved physical therapist or
18 physical therapist assistant program can qualify for up to a
19 maximum 8 units per year.

20 10.3.e.2. Four weeks of clinical instruction is equal to 1
21 unit of continuing education.

22 10.3.f. Continuing education courses are subject to board
23 approval.

24 10.3.f.1 One unit per hour of class instruction time will be
25 awarded for board approved continuing education courses in the year
26 the course is taken.

27 10.3.g. One unit per hour of class instruction time shall be
28 awarded and automatically approved for CAPTE College/University,

1 American Physical Therapy Association or West Virginia Physical
2 Therapy Association sponsored continuing education courses in the
3 year the course is taken.

4 10.3.h. One unit per hour of class instructions for CAPTE
5 college or university physical therapy or doctorate physical
6 therapy programs.

7 10.4. The board may grant a waiver of the continuing education
8 requirements in the case of illness, disability or undue hardship.

9 10.4.a. A request for waiver form must be completed in full.
10 In the case of illness or disability, a physician's statement is
11 required.

12 10.4.b. All completed forms must be received by the Board for
13 consideration no later than the first day of October of the year
14 preceding the renewal date.

15 10.4.c. A waiver may be granted for any period of time not to
16 exceed one renewal cycle.

17 10.4.d. In the event that the illness, disability or hardship
18 continues to the next renewal cycle, then a new waiver request is
19 required.

20 10.4.e. Should a waiver be granted due to disability or
21 illness, the section may require the individual to provide
22 appropriate documentation from a physician or another qualified and
23 appropriate practitioner to verify the individual's competency and
24 ability to practice physical therapy in the state of West Virginia
25 prior to the return to active practice of physical therapy in West
26 Virginia.".

27 (b) The legislative rule filed in the state register on July
28 30, 2010, authorized under the authority of section six, article

1 twenty, chapter thirty, of this code, relating to the Board of
2 Physical Therapy (fees for physical therapists and physical
3 therapist assistants, 16 CSR 4), is authorized.

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

12 (d) The legislative rule filed in the state register on July
13 30, 2010, authorized under the authority of section four, article
14 twenty-a, chapter thirty, of this code, modified by the Board of
15 Physical Therapy to meet the objections of the Legislative Rule-
16 Making Review Committee and refiled in the state register on
17 September 20, 2010, relating to the Board of Physical Therapy (fees
18 for athletic trainers, 16 CSR 6), is authorized.

19 **§64-9-3. Sanitarians.**

20 (a) The legislative rule filed in the state register on July
21 29, 2010, authorized under the authority of section six, article
22 seventeen, chapter thirty, of this code, relating to the of Board
23 of Sanitarians (interim fee schedule, 20 CSR 3), is authorized.

24 (b) The legislative rule filed in the state register on July
25 29, 2010, authorized under the authority of section six, article
26 seventeen, chapter thirty, of this code, relating to the Board of
27 Sanitarians (practice of public health sanitation, 20 CSR 4), is
28 authorized, with the following amendments:

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

3 "4.1.d. Has not previously failed an examination for
4 licensure in this state;"

5 And,

6 By re-designating the remaining subdivisions accordingly.

7 **§64-9-4. Secretary of State.**

8 The legislative rule filed in the state register on November
9 12, 2010, authorized under the authority of twelve, article two,
10 chapter three, of this code, relating to the Secretary of State
11 (combined voter registration and driver licensing fund, 153 CSR
12 25), is authorized, with the following amendments:

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

16 On page three, subdivision 4.2.2 following the words "under
17 this subsection on a", by striking out the word "quarterly" and
18 inserting in lieu thereof the word "annual";

19 On page three, subsection 4.3, following the words "collection
20 and transmission of the completed forms:", by striking out the
21 proviso in its entirety, and inserting in lieu thereof the
22 following proviso "Provided, That the total reimbursement shall not
23 exceed sixty (60) percent of the total annual revenue of the Fund.
24 In any year in which the revenue is insufficient to pay the
25 reimbursement rate of \$1.00 per completed registration as provided
26 in this subsection, the amount per registration application shall
27 be reduced proportionally.";

28 And,

1 On page four, by striking out subsection 4.4 and subdivisions
2 4.4.1, 4.4.2, 4.4.3 and 4.4.4 in their entirety and renumbering the
3 remaining sections of the rule.

4 **§64-9-5. Board of Barbers and Cosmetologists.**

5 (a) The legislative rule filed in the state register on July
6 30, 2010, authorized under the authority of section six, article
7 twenty-seven, chapter thirty, of this code, modified by the Board
8 of Barbers and Cosmetologists to meet the objections of the
9 Legislative Rule-Making Review Committee and refiled in the state
10 register on October 18, 2010, relating to the Board of Barbers and
11 Cosmetologists (procedures, criteria and curricula for examinations
12 and licensure of barbers, cosmetologists, manicurists and
13 aestheticians, 3 CSR 1), is authorized.

14 (b) The legislative rule filed in the state register on July
15 30, 2010, authorized under the authority of section six, article
16 twenty-seven, chapter thirty, of this code, modified by the Board
17 of Barbers and Cosmetologists to meet the objections of the
18 Legislative Rule-Making Review Committee and refiled in the state
19 register on October 18, 2010, relating to the Board of Barbers and
20 Cosmetologists (qualifications, training, examination of licensure
21 of instructors, 3 CSR 2), is authorized, with the following
22 amendments:

23 On page one, by striking out subdivision 2.1.1 in its entirety
24 and inserting in lieu thereof the following: "2.1.1 Have been
25 licensed 5 years with 5 years of salon/shop experience.";

26 And,

1 On page one, subdivision 2.1.6 by striking out the percentage
2 amount "70%" and inserting in lieu thereof the percentage amount
3 "80%";

4 And,

5 On page 1, by striking out subdivision 2.1.7 and the remainder
6 of the section and inserting in lieu thereof the following:

7 "2.1.7 Submit an application to the board;

8 2.1.8 Pay applicable certification, examination and
9 registration fees." .

10 (c) The legislative rule filed in the state register on July
11 30, 2010, authorized under the authority of section six, article
12 twenty-seven, chapter thirty, of this code, modified by the Board
13 of Barbers and Cosmetologists to meet the objections of the
14 Legislative Rule-Making Review Committee and refiled in the state
15 register on October 18, 2010, relating to the Board of Barbers and
16 Cosmetologists (operational standards for schools of barbering and
17 beauty culture, 3 CSR 4), is authorized.

18 (d) The legislative rule filed in the state register on June
19 18, 2010, authorized under the authority of section six, article
20 twenty-seven, chapter thirty, of this code, relating to the Board
21 of Barbers and Cosmetologists (schedule of fees, 3 CSR 6), is
22 authorized.

23 **§64-9-6. Commissioner of Agriculture.**

24 (a) The legislative rule filed in the state register on July
25 26, 2010, authorized under the authority of section four, article
26 thirteen, chapter nineteen, of this code, modified by the
27 Commissioner of Agriculture to meet the objections of the
28 Legislative Rule-Making Review Committee and refiled in the state

1 register on September 21, 2010, relating to the Commissioner of
2 Agriculture (West Virginia Apiary Rule, 61 CSR 2), is authorized.

3 (b) The legislative rule filed in the state register on July
4 12, 2010, authorized under the authority of section five-c, article
5 twelve, chapter twenty-two, of this code, relating to the
6 Commissioner of Agriculture (general groundwater protection rules
7 for fertilizers and manures, 61 CSR 6C), is authorized.

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

13 **§64-9-7. Board of Veterinary Medicine.**

14 The legislative rule filed in the state register on July 27,
15 2010, authorized under the authority of section six, article ten,
16 chapter thirty, of this code, modified by the West Virginia, 1931,
17 as amended, relating to authorizing the Board of Veterinary
18 Medicine to meet the objections of the Legislative Rule-Making
19 Review Committee and refiled in the state register on November 24,
20 2010, relating to the West Virginia, 1931, as amended, relating to
21 the Board of Veterinary Medicine (organization and operation and
22 licensing of veterinarians, 26 CSR 1), is authorized, with the
23 following amendments:

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

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

1 a West Virginia licensed supervising veterinarian. During the
2 period of supervision of a temporary permittee, the supervising
3 veterinarian must remain within one hour's physical access to the
4 location where the temporary permittee is rendering veterinary
5 care."

6 And,

7 On page twelve, subsection 8.2, in the last sentence of the
8 subsection, by striking out the word "supervisory" and inserting in
9 lieu thereof the word "supervising".

10 (b) The legislative rule filed in the state register on July
11 27, 2010, authorized under the authority of section six, article
12 ten, chapter thirty of this code, modified by the Board of
13 Veterinary Medicine to meet the objections of the Legislative Rule-
14 Making Review Committee and refiled in the state register on
15 November 24, 2010, relating to the Board of Veterinary Medicine
16 (registration of veterinary technicians, 26 CSR 3), is authorized.

17 (c) The legislative rule filed in the state register on July
18 27, 2010, authorized under the authority of section six, article
19 ten, chapter thirty of this code, modified by the Board of
20 Veterinary Medicine to meet the objections of the Legislative Rule-
21 Making Review Committee and refiled in the state register on
22 November 24, 2010, relating to the Board of Veterinary Medicine
23 (standards of practice, 26 CSR 4), is authorized, with the
24 following amendments:

25 On page four, subsection 3.6, in the title to the subsection,
26 by striking out the words "position or trust" and inserting in lieu
27 thereof the words "position of trust".

1 (d) The legislative rule filed in the state register on July
2 27, 2010, authorized under the authority of section six, article
3 ten, chapter thirty of this code, modified by the Board of
4 Veterinary Medicine to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the state register on
6 November 24, 2010, relating to the Board of Veterinary Medicine
7 (certified animal euthanasia technicians, 26 CSR 5), is authorized,
8 with the following amendment:

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

11 (e) The legislative rule filed in the state register on July
12 27, 2010, authorized under the authority of section six, article
13 ten, chapter thirty of this code, modified by the Board of
14 Veterinary Medicine to meet the objections of the Legislative Rule-
15 Making Review Committee and refiled in the state register on
16 November 24, 2010, relating to the Board of Veterinary Medicine
17 (schedule of fees, 26 CSR 6), is authorized.

18 **§64-9-8. Board of Optometry.**

19 (a) The legislative rule filed in the state register on July
20 30, 2010, authorized under the authority of section six, article
21 eight, chapter thirty, of this code, modified by the Board of
22 Optometry to meet the objections of the Legislative Rule-Making
23 Review Committee and refiled in the state register on November 24,
24 2010, relating to the Board of Optometry (rules of the West
25 Virginia Board of Optometry, 14 CSR 1), is authorized.

26 (b) The legislative rule filed in the state register on July
27 30, 2010, authorized under the authority of section six, article

1 eight, chapter thirty, of this code, modified by the Board of
2 Optometry to meet the objections of the Legislative Rule-Making
3 Review Committee and refiled in the state register on January 3,
4 2011, relating to the Board of Optometry (oral pharmaceutical
5 prescriptive authority, 14 CSR 2), is authorized.

6 (c) The legislative rule filed in the state register on July
7 30, 2010, authorized under the authority of section six, article
8 eight, chapter thirty, of this code, modified by the Board of
9 Optometry to meet the objections of the Legislative Rule-Making
10 Review Committee and refiled in the state register on November 24,
11 2010, relating to the Board of Optometry (schedule of fees, 14 CSR
12 5), is authorized.

13 (d) The legislative rule filed in the state register on July
14 30, 2010, authorized under the authority of section six, article
15 eight, chapter thirty, of this code, modified by the Board of
16 Optometry to meet the objections of the Legislative Rule-Making
17 Review Committee and refiled in the state register on November 24,
18 2010, relating to the Board of Optometry (examination and scoring
19 policy, 14 CSR 6), is authorized.

20 (e) The legislative rule filed in the state register on July
21 30, 2010, authorized under the authority of section six, article
22 eight, chapter thirty, of this code, modified by the Board of
23 Optometry to meet the objections of the Legislative Rule-Making
24 Review Committee and refiled in the state register on November 24,
25 2010, relating to the Board of Optometry (licensure by endorsement,
26 14 CSR 8), is authorized.

27 (f) The legislative rule filed in the state register on July
28 30, 2010, authorized under the authority of section six, article

1 eight, chapter thirty, of this code, modified by the Board of
2 Optometry to meet the objections of the Legislative Rule-Making
3 Review Committee and refiled in the state register on November 24,
4 2010, relating to the Board of Optometry (contact lenses that
5 contain and deliver pharmaceutical agents certificates, 14 CSR 9),
6 is authorized.

7 (g) The legislative rule filed in the state register on July
8 30, 2010, authorized under the authority of section six, article
9 eight, chapter thirty, of this code, modified by the Board of
10 Optometry to meet the objections of the Legislative Rule-Making
11 Review Committee and refiled in the state register on November 24,
12 2010, relating to the Board of Optometry (continuing education, 14
13 CSR 10), is authorized.

14 (h) The legislative rule filed in the state register on July
15 30, 2010, authorized under the authority of section fifteen,
16 article eight, chapter thirty, of this code, modified by the Board
17 of Optometry to meet the objections of the Legislative Rule-Making
18 Review Committee and refiled in the state register on December 23,
19 2010, relating to the Board of Optometry (injectable pharmaceutical
20 agents certificate, 14 CSR 11), is authorized with the following
21 amendments:

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

24 "11.1 A certificate holder may not establish a pharmacy in an
25 optometric office or sell injectable pharmaceutical agents
26 prescribed in treatment unless there is a licensed pharmacist on
27 staff or present when the prescription is filled. Nothing in this

1 rule shall prohibit the optometrist from charging a usual and
2 customary fee for performing the injection.

3 11.2 Retrobulbar injections are prohibited.

4 11.3. The board shall establish a formulary of pharmaceutical
5 agents to be administered by injection.

6 11.3.1. The injection formulary shall be created from those
7 agents that certificate holders have been authorized previously to
8 administer or prescribe as topical agents or oral medication
9 categories listed in the oral formulary of the Board in the W.Va.
10 Code of State Rules, §14-2-7.2a through §14-2-7.2g.

11 11.3.2. New drugs or drug indications may be added to the
12 formulary by a decision of the Board based on any of the following
13 criteria:

14 11.3.2.1. A new or existing drug has been approved by the
15 Food and Drug Administration for the treatment of the eye or its
16 appendages.

17 11.3.2.2. A new drug or new drug indication has gained
18 accepted use in the eye care field. Such acceptance may be
19 indicated by its inclusion in the curriculum of an optometry school
20 accredited by the Accreditation Council on Optometric Education or
21 its successor approved by the U.S. Department of Education or
22 approved post-graduate continuing education, through peer-reviewed,
23 evidence-based research and professional journal articles, or by
24 inclusion in established standards of practice and care published
25 by professional organizations."

26 **§64-9-9. Board of Osteopathy.**

27 (a) The legislative rule filed in the state register on July
28 30, 2010, authorized under the authority of section one, article

1 fourteen-a, chapter thirty, of this code, modified by the Board of
2 Osteopathy to meet the objections of the Legislative Rule-Making
3 Review Committee and refiled in the state register on November 29,
4 2010, relating to the Board of Osteopathy (osteopathic physician
5 assistants, 24 CSR 2), is authorized.

6 (b) The legislative rule filed in the state register on July
7 28, 2010, authorized under the authority of section three, article
8 fourteen-a, chapter thirty, of this code, modified by the Board of
9 Osteopathy to meet the objections of the Legislative Rule-Making
10 Review Committee and refiled in the state register on November 29,
11 2010, relating to the Board of Osteopathy (fees for services
12 rendered by the Board, 24 CSR 5), is authorized.

13 **§64-9-10. Treasurer's Office.**

14 The legislative rule filed in the state register on July 30,
15 2010, authorized under the authority of section two, article two,
16 chapter twelve, of this code, modified by the Treasurer's Office to
17 meet the objections of the Legislative Rule-Making Review Committee
18 and refiled in the state register on July 30, 2010, relating to the
19 Treasurer's Office (establishment of imprest funds, 112 CSR 3), is
20 authorized.

21 **§64-9-11. State Election Commission.**

22 The legislative rule filed in the state register on the July
23 29, 2010, authorized under the authority of section fourteen,
24 article twelve, chapter three, of this code, modified by the State
25 Election Commission to meet the objections of the Legislative Rule-
26 Making Review Committee and refiled in the state register on
27 January 14, 2011, relating to the State Election Commission (West

1 Virginia Supreme Court of Appeals Public Campaign Financing Pilot
2 Program, 146 CSR 5), is authorized, with the following amendment:

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