

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2639**

5 (By Delegates Brown, D. Poling, Fleischauer, Talbott, Overington  
6 and Sobonya)  
7

8 [Amended and again passed, in an effort to meet the objections of  
9 the Governor, March 18, 2011; in effect ninety days from  
10 passage.]  
11

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

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

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

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

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

22 That article nine, chapter 64 of the Code of West Virginia,  
23 1931, as amended, be amended and reenacted to read as follows:

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

26 **§64-9-1. Board of Pharmacy.**

27 (a) The legislative rule filed in the state register on July  
28 29, 2010, authorized under the authority of section five, article

1 nine, chapter sixty-a, of this code, relating to the Board of  
2 Pharmacy (licensure and the practice of pharmacy, 15 CSR 1), is  
3 authorized with the following amendments:

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

7       "21.1. A prescription to be valid, shall be issued for a  
8 legitimate medical purpose by a practitioner acting within the  
9 course of legitimate professional practice, and shall bear the  
10 preprinted, stamped, typed, or manually printed name, address and  
11 telephone number of the prescribing practitioner. If it is a  
12 prescription for a controlled substance listed in Schedules II  
13 through V, then it shall also contain the prescriber's DEA  
14 registration number, including any suffix. The National Provider  
15 Identification (NPI) number shall be required on all valid  
16 prescriptions beginning January 1, 2012."

17       And,

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

20 **"15-1-27. West Virginia Official Prescription Paper Program Rules.**

21 27.1. The purpose of this section is to establish rules for the  
22 West Virginia Official Prescription Program Act set forth at West  
23 Virginia Code Section §16-5W-1, et seq. for use in writing  
24 prescriptions by practitioners.

25       27.2. Definitions. As used in this rule:

26       a. "Program Vendor" means the private contractor or  
27 contractors selected to manage the production and delivery of

1 official state prescription paper.

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

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

11       27.3. Minimum Requirements of West Virginia Official  
12 Prescription Paper. The prescription paper shall contain the  
13 following security features:

14       a. Shall meet all requirements issued by the Center for  
15 Medicare and Medicaid Services for a written prescription for  
16 controlled substances as required by Section 2002(b) of PL. 110-28  
17 of the Iraq War Supplemental Appropriations Bill enacted by the  
18 United States Congress in 2007;

19       b. shall contain six (6) quantity check-off boxes printed on  
20 the form and in the following quantities shall appear:

- 21       1. 1-24;
- 22       2. 25-49;
- 23       3. 50-74;
- 24       4. 75-100;
- 25       5. 101-150; and
- 26       6. 151 and over:

27       *Provided*, That if the blank has the quantity prescribed  
28 electronically printed in both numeric and word format, then the

1 quantity check-off boxes shall not be necessary;

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

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

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

10 f. Shall contain the following statement printed on the bottom  
11 of the prescription blank: "This prescription may be filled with a  
12 generically equivalent drug product unless the words 'Brand  
13 Medically Necessary' are written in the practitioner's own  
14 handwriting, on this prescription form."; and

15 g. Each blank must be numbered on the face with a unique  
16 identifying control number in both human readable and barcode  
17 format.

18 27.4. The Board will solicit open bids and select a vendor or  
19 vendors to provide West Virginia Official Prescription Paper and  
20 maintain appropriate records of such product supplied to  
21 practitioners based on ability of proposed program to prevent  
22 prescription fraud, price and ability to meet these requirements.

23 a. Practitioners licensed to practice in this State may  
24 purchase West Virginia Official Prescription Paper as per  
25 individual orders from the selected vendor(s). The cost of the  
26 Official Prescription Paper will be borne by the ordering  
27 practitioner/institution, unless the state is successful in  
28 securing offsetting funds such as federal grants, risk/reward

1 programs or private funding applied for and received by the state  
2 for the express purpose of partially or fully funding the West  
3 Virginia Official Prescription Program.

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

12       c. Records of West Virginia Official Prescription Paper  
13 supplied to practitioners will be maintained by the vendor or  
14 vendors and will be subject to random and regular audits.  
15 Discrepancies shall be reported to the Board in a regular and  
16 timely manner.

17       27.5. On and after January 1, 2012 every written prescription  
18 written in West Virginia by a practitioner shall be written on West  
19 Virginia Official Prescription Paper. A pharmacist may not fill a  
20 written prescription from a West Virginia practitioner unless  
21 issued upon an official state issued prescription form.

22       27.6. Practitioners; control and reporting of West Virginia  
23 Official Prescription Paper.

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

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

- 7           1. Estimated number of blanks affected;
- 8           2. Control numbers if available; and
- 9           3. Suspected reason for destruction, theft, or loss.

10          c. The program vendor must provide annual SAS70 or SSAE16  
11 third party audits of the prescription paper  
12 printing/personalization facility used in the preparation and  
13 distribution of West Virginia Official Prescription Paper blanks  
14 upon request. The program vendor must be able to provide such  
15 report for each year and for two years prior to the term of the  
16 contract.”.

17          (b) The legislative rule filed in the state register on July  
18 29, 2010, authorized under the authority of section five, article  
19 nine, chapter sixty-a, of this code, relating to the Board of  
20 Pharmacy (controlled substances monitoring, 15 CSR 8), is  
21 authorized with the following amendments:

22           On page two, subsection 2.15, by striking out the words “15-1-  
23 27 of the West Virginia Code of State Rules” and inserting in lieu  
24 thereof the word “5”;

25           On page six, subdivision 7.3(b), by striking out all of  
26 subdivision 7.3(b) and inserting in lieu thereof a new subdivision  
27 7.3(b) to read as follows:

1       “(b) members of the West Virginia State Police expressly  
2 authorized by the superintendent of the West Virginia State Police  
3 to have access to the information;”;

4       On page six, subdivision 7.3(e), after the word “(e)”, by  
5 striking out the word “The” and inserting in lieu thereof the word  
6 “the”;

7       On page six, subdivision 7.3(f), after the word “(f)” by  
8 striking out the word “A” and inserting in lieu thereof the word  
9 “a”;

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

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

14       On page six, subsection 7.4, by striking out the word “board”  
15 and inserting in lieu thereof the word “Board”;

16       And,

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

19 **§64-9-2. Physical Therapy.**

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

28       On page two, by striking 2.15a in its entirety and inserting

1 in lieu thereof the following:

2 "2.15.a. A physical therapy aide works under the direct  
3 supervision of a physical therapist; *Provided*, That a physical  
4 therapist assistant may directly supervise a physical therapy aide  
5 in emergency situations necessary to provide patient safety."

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

8 **§16-1-5. Issuance, Renewal or Reinstatement of License.**

9 5.1. The Board reserves the right to evaluate the applicant  
10 according to the testing, licensure, and procedural requirements as  
11 initiated by the agency responsible for the ownership and  
12 development of the National exam.

13 5.2. Licenses expiring on December 31, of each particular year  
14 must be renewed by payment of applicable fee along with completed  
15 renewal application.

16 5.3. A license not renewed without specific request to place  
17 it in "inactive" status will automatically be placed on delinquent  
18 status.

19 5.4. Delinquent licensee is responsible for penalty fees  
20 including but not limited to: application fee, delinquent license  
21 fee, and the current year renewal fee. A licensee must also  
22 complete and show proof of board approved continuing education  
23 requirements.

24 5.5. To reinstate an "inactive" license, the licensee must  
25 submit an application for renewal along with a non-refundable  
26 application fee and license renewal fee.

27 5.6. A volunteer license will be marked as a "volunteer"

1 license and is restricted to practicing in accordance with §30-20-13.

2 5.7. Any change in personal contact and employer/supervisor  
3 information must be submitted in writing to the board as changes  
4 occur."

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

7 "6.1. An individual possessing a temporary permit issued by  
8 the Board to practice Physical Therapy or act as a physical  
9 therapist assistant in the State of West Virginia shall practice  
10 under the on-site supervision of a Physical Therapist. All progress  
11 notes written by the Physical Therapist or physical therapist  
12 assistant with a temporary permit shall be cosigned by a Physical  
13 Therapist supervisor within twenty-four (24) hours."

14 On page six, by inserting a new subsection 7.7, to read as  
15 follows:

16 "7.7. A licensee must report to the board any discipline  
17 received in another jurisdiction within 30 days of that discipline.  
18 The board reserves the right to discipline up to and including  
19 revocation of a license until disciplinary process in the other  
20 jurisdiction is completed. If the licensee fails to report  
21 discipline in another jurisdiction, they are subject to  
22 disciplinary procedures in our jurisdiction determined by the  
23 board."

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

26 "8.2.a. When care is delivered in a hospital or other  
27 acute-care center, free-standing, outpatient, or independent  
28 practice setting, a Physical Therapist must provide on-site

1 supervision, with the exception that general supervision is  
2 permitted in a hospital or other acute-care center, free-standing,  
3 outpatient, or independent practice setting 40% of the time once  
4 the physical therapist assistant performing treatment has at least  
5 1000 hours of experience. The supervising physical therapist shall  
6 document when general supervision is utilized under this  
7 subdivision."

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

10 "8.2.b. General supervision may be utilized when care is  
11 delivered in a skilled/unskilled nursing facility, distinct part  
12 skilled/unskilled nursing unit or swing-bed unit in an acute-care  
13 hospital, home health, or school system setting, and the following  
14 requirements must be observed and documented in the patient records  
15 when general supervision is used:"

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

18 "8.2.b.1. A physical therapist must be accessible by  
19 telecommunications to the physical therapist assistant at all times  
20 that the physical therapist assistant is treating patients; and  
21 available to make a joint onsite visit with the physical therapist  
22 assistant within 24 hours as prudent practice indicates."

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

25 "8.2.b.2 The physical therapist must visit the patient at  
26 least once every 10 physical therapist assistant visits, or within  
27 30 calendar days, whichever occurs first."

28 On page seven, by striking out subparagraph 8.2.b.3 in its

1 entirety and inserting in lieu thereof the following:

2       "8.2.b.3. In the event that the supervising physical therapist  
3 changes, the new supervising physical therapist must discuss the  
4 patient's diagnosis and plan of care with the previous supervising  
5 physical therapist before the next physical therapist assistant  
6 visit is made. Either physical therapist must document such  
7 communication."

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

10       "8.5. In an emergency situation, such as serious illness or  
11 injury of the therapist or therapist's family member or death of a  
12 family member, which causes the unanticipated absence of the  
13 supervising physical therapist for not more than three consecutive  
14 days, and no more than twelve days per calender year, a licensed  
15 physical therapist assistant may continue to render services, under  
16 the supervision of another physical therapist, to only those  
17 patients for which the licensed physical therapist assistant has  
18 previously participated in the intervention for established plans  
19 of care not to exceed the regularly scheduled operational hours of  
20 the particular day or days the supervising physical therapist is  
21 absent. When this provision is utilized, the ratio in subdivision  
22 8.1.c. may be exceeded and the physical therapist shall document  
23 the dates and the emergency situation."

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

26       "8.6. In a temporary situation, which causes the absence of  
27 the supervising physical therapist up to one day, and no more than  
28 eighty hours in a calender year, a licensed physical therapist

1 assistant may continue to render services, under general  
2 supervision of the supervising physical therapist, to only those  
3 patients for which the licensed physical therapist assistant has  
4 previously participated in the intervention for established plans  
5 of care not to exceed the regularly scheduled operational hours of  
6 the particular day the supervising physical therapist is absent.  
7 When this provision is utilized, the level of supervision in  
8 subdivision 8.2.a. may be exceeded and the physical therapist shall  
9 document the hours, date and temporary situation."

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

11 **§16-1-10. Continuing Education.**

12 10.1. A "unit" is one clock hour spent in a continuing  
13 education activity unless otherwise defined in this section.

14 10.2. All licensees desiring to remain "active" and in good  
15 standing must complete 24 units of board approved continuing  
16 education within the two year licensing period. If the licensee  
17 does not complete the 24 units of board approved continuing  
18 education within the license period, that licensee will be placed  
19 on delinquent status and will be subject to all fees associated  
20 with delinquent status.

21 10.2.a. For those applicants reinstating their license for a  
22 period of 6 months or less, only 6 units are required for that  
23 year.

24 10.2.b. Volunteer licensees need only to complete twenty (20)  
25 units of board approved continuing education activities within a  
26 two year renewal cycle.

27 10.2.c. Accumulated CEU's may not be carried over from one  
28 renewal period to another.

1           10.2.d. A new graduate does not need continuing education  
2 hours for the current year of graduation.

3           10.3. Completion of examinations, residencies, fellowships,  
4 tools, and courses for continuing education credit.

5           10.3.a. A maximum of 8 units per license period can be  
6 obtained from any combination of clinical instruction or competency  
7 tools.

8           10.3.b. Passing the following specialty examinations will  
9 qualify for twenty-four contact hours of continuing education in  
10 the year the examination is taken:

11           10.3.b.1   Specialty examinations and recertification  
12 administered by the American board of physical therapy specialties  
13 (ABPTS).

14           10.3.b.2. The hand therapy certification commission (HTCC)  
15 certification examination.

16           10.3.b.3. Continuing education course instructors can receive  
17 1 unit per hour of class instruction time will be awarded for board  
18 approved continuing education courses in the year the course given.  
19 Credit awarded to the instructor for said course will be granted  
20 only one time.

21           10.3.c. The successful completion of an American physical  
22 therapy association credentialed residency or fellowship program  
23 will qualify for twenty-four contact hours of continuing education  
24 in the year the residency or fellowship is completed.

25           10.3.d. The successful completion of a practice review tool of  
26 the federation of state boards of physical therapy pertaining to  
27 continued competence will qualify for continuing education.

28           10.3.d.1. Eight contact hours of continuing education will be

1 awarded for completion of a practice review tool.

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

5 10.3.e. Clinical instruction.

6 10.3.e.1. Providing clinical instruction to PT or PTA  
7 student(s) enrolled in a CAPTE approved physical therapist or  
8 physical therapist assistant program can qualify for up to a  
9 maximum 8 units per year.

10 10.3.e.2. Four weeks of clinical instruction is equal to 1  
11 unit of continuing education.

12 10.3.f. Continuing education courses are subject to board  
13 approval.

14 10.3.f.1 One unit per hour of class instruction time will be  
15 awarded for board approved continuing education courses in the year  
16 the course is taken.

17 10.3.g. One unit per hour of class instruction time shall be  
18 awarded and automatically approved for CAPTE College/University,  
19 American Physical Therapy Association or West Virginia Physical  
20 Therapy Association sponsored continuing education courses in the  
21 year the course is taken.

22 10.3.h. One unit per hour of class instructions for CAPTE  
23 college or university physical therapy or doctorate physical  
24 therapy programs.

25 10.4. The board may grant a waiver of the continuing education  
26 requirements in the case of illness, disability or undue hardship.

27 10.4.a. A request for waiver form must be completed in full.  
28 In the case of illness or disability, a physician's statement is

1 required.

2       10.4.b. All completed forms must be received by the Board for  
3 consideration no later than the first day of October of the year  
4 preceding the renewal date.

5       10.4.c. A waiver may be granted for any period of time not to  
6 exceed one renewal cycle.

7       10.4.d. In the event that the illness, disability or hardship  
8 continues to the next renewal cycle, then a new waiver request is  
9 required.

10       10.4.e. Should a waiver be granted due to disability or  
11 illness, the section may require the individual to provide  
12 appropriate documentation from a physician or another qualified and  
13 appropriate practitioner to verify the individual's competency and  
14 ability to practice physical therapy in the state of West Virginia  
15 prior to the return to active practice of physical therapy in West  
16 Virginia.”.

17       (b) The legislative rule filed in the state register on July  
18 30, 2010, authorized under the authority of section six, article  
19 twenty, chapter thirty, of this code, relating to the Board of  
20 Physical Therapy (fees for physical therapists and physical  
21 therapist assistants, 16 CSR 4), is authorized.

22       (c) The legislative rule filed in the state register on July  
23 30, 2010, authorized under the authority of section four, article  
24 twenty-a, chapter thirty, of this code, modified by the Board of  
25 Physical Therapy to meet the objections of the Legislative Rule-  
26 Making Review Committee and refiled in the state register on  
27 September 20, 2010, relating to the Board of Physical Therapy

1 (general provisions for athletic trainers, 16 CSR 5), is  
2 authorized.

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

10 **§64-9-3. Sanitarians.**

11 (a) The legislative rule filed in the state register on July  
12 29, 2010, authorized under the authority of section six, article  
13 seventeen, chapter thirty, of this code, relating to the of Board  
14 of Sanitarians (interim fee schedule, 20 CSR 3), is authorized.

15 (b) The legislative rule filed in the state register on July  
16 29, 2010, authorized under the authority of section six, article  
17 seventeen, chapter thirty, of this code, relating to the Board of  
18 Sanitarians (practice of public health sanitation, 20 CSR 4), is  
19 authorized, with the following amendments:

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

22 "4.1.d. Has not previously failed an examination for licensure  
23 in this state;"

24 And,

25 By re-designating the remaining subdivisions accordingly.

26 **§64-9-4. Secretary of State.**

27 The legislative rule filed in the state register on November  
28 12, 2010, authorized under the authority of section twelve, article

1 two, chapter three, of this code, relating to the Secretary of  
2 State (combined voter registration and driver licensing fund, 153  
3 CSR 25), is authorized with the following amendments:

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

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

10 On page three, subsection 4.3, following the words "collection  
11 and transmission of the completed forms:", by striking out the  
12 proviso in its entirety, and inserting in lieu thereof the  
13 following proviso "Provided, That the total reimbursement shall not  
14 exceed sixty (60) percent of the total annual revenue of the Fund.  
15 In any year in which the revenue is insufficient to pay the  
16 reimbursement rate of \$1.00 per completed registration as provided  
17 in this subsection, the amount per registration application shall  
18 be reduced proportionally.";

19 And,

20 On page four, by striking out subsection 4.4 and subdivisions  
21 4.4.1, 4.4.2, 4.4.3 and 4.4.4 in their entirety and renumbering the  
22 remaining sections of the rule.

23 **§64-9-5. Board of Barbers and Cosmetologists.**

24 (a) The legislative rule filed in the state register on July  
25 30, 2010, authorized under the authority of section six, article  
26 twenty-seven, chapter thirty, of this code, modified by the Board  
27 of Barbers and Cosmetologists to meet the objections of the  
28 Legislative Rule-Making Review Committee and refiled in the state

1 register on October 18, 2010, relating to the Board of Barbers and  
2 Cosmetologists (procedures, criteria and curricula for examinations  
3 and licensure of barbers, cosmetologists, manicurists and  
4 aestheticians, 3 CSR 1), is authorized with the following  
5 amendments:

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

8 And,

9 On page three, subsection 4.2, after the word "obtain" by  
10 inserting the word "a".

11 (b) The legislative rule filed in the state register on July  
12 30, 2010, authorized under the authority of section six, article  
13 twenty-seven, chapter thirty, of this code, modified by the Board  
14 of Barbers and Cosmetologists to meet the objections of the  
15 Legislative Rule-Making Review Committee and refiled in the state  
16 register on October 18, 2010, relating to the Board of Barbers and  
17 Cosmetologists (qualifications, training, examination of licensure  
18 of instructors, 3 CSR 2), is authorized, with the following  
19 amendments:

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

22 "2.1.1 Have been licensed 5 years with 5 years of salon/shop  
23 experience.";

24 On page one, subdivision 2.1.6 by striking out the percentage  
25 amount "70%" and inserting in lieu thereof the percentage amount  
26 "80%";

27 And,

1 On page one, by striking out all of subdivisions 2.1.7. and  
2 2.1.8. and inserting in lieu new subdivisions 2.1.7. and 2.1.8. to  
3 read as follows:

4 "2.1.7. Submit an application to the board;

5 2.1.8. Pay applicable certification, examination and  
6 registration fees."

7 (c) The legislative rule filed in the state register on July  
8 30, 2010, authorized under the authority of section six, article  
9 twenty-seven, chapter thirty, of this code, modified by the Board  
10 of Barbers and Cosmetologists to meet the objections of the  
11 Legislative Rule-Making Review Committee and refiled in the state  
12 register on October 18, 2010, relating to the Board of Barbers and  
13 Cosmetologists (operational standards for schools of barbering and  
14 beauty culture, 3 CSR 4), is authorized with the following  
15 amendments:

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

19 "\$3-4-5. Enrollment";

20 And,

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

24 "\$3-4-8 Teaching Staff".

25 (d) The legislative rule filed in the state register on June  
26 18, 2010, authorized under the authority of section six, article  
27 twenty-seven, chapter thirty, of this code, relating to the Board

1 of Barbers and Cosmetologists (schedule of fees, 3 CSR 6), is  
2 authorized with the following amendment:

3 On page one, subsection 2.1, by striking out the words  
4 "\$99.00" and inserting in lieu thereof the words "Based on the  
5 National Interstate Council Index with a cap of \$107.00".

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

7 (a) The legislative rule filed in the state register on July  
8 26, 2010, authorized under the authority of section four, article  
9 thirteen, chapter nineteen, of this code, modified by the  
10 Commissioner of Agriculture to meet the objections of the  
11 Legislative Rule-Making Review Committee and refiled in the state  
12 register on September 21, 2010, relating to the Commissioner of  
13 Agriculture (West Virginia Apiary Rule, 61 CSR 2), is authorized.

14 (b) The legislative rule filed in the state register on July  
15 12, 2010, authorized under the authority of section five-c, article  
16 twelve, chapter twenty-two, of this code, relating to the  
17 Commissioner of Agriculture (general groundwater protection rules  
18 for fertilizers and manures, 61 CSR 6C), is authorized.

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

24 **§64-9-7. Board of Veterinary Medicine.**

25 The legislative rule filed in the state register on July 27,  
26 2010, authorized under the authority of section six, article ten,  
27 chapter thirty, of this code, modified by the West Virginia, 1931,  
28 as amended, relating to authorizing the Board of Veterinary

1 Medicine to meet the objections of the Legislative Rule-Making  
2 Review Committee and refiled in the state register on November 24,  
3 2010, relating to the West Virginia, 1931, as amended, relating to  
4 the Board of Veterinary Medicine (organization and operation and  
5 licensing of veterinarians, 26 CSR 1), is authorized with the  
6 following amendments:

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

9       On page twelve, subsection 8.1, by striking out the words "the  
10 supervision of a West Virginia licensed veterinarian" and inserting  
11 in lieu thereof the words "the indirect or general supervision of  
12 a West Virginia licensed supervising veterinarian. During the  
13 period of supervision of a temporary permittee, the supervising  
14 veterinarian must remain within one hour's physical access to the  
15 location where the temporary permittee is rendering veterinary  
16 care."

17       And,

18       On page twelve, subsection 8.2, in the last sentence of the  
19 subsection, by striking out the word "supervisory" and inserting in  
20 lieu thereof the word "supervising".

21       (b) The legislative rule filed in the state register on July  
22 27, 2010, authorized under the authority of section six, article  
23 ten, chapter thirty of this code, modified by the Board of  
24 Veterinary Medicine to meet the objections of the Legislative Rule-  
25 Making Review Committee and refiled in the state register on  
26 November 24, 2010, relating to the Board of Veterinary Medicine  
27 (registration of veterinary technicians, 26 CSR 3), is authorized.

1 (c) 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 (standards of practice, 26 CSR 4), is authorized, with the  
8 following amendments:

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

12 (d) The legislative rule filed in the state register on July  
13 27, 2010, authorized under the authority of section six, article  
14 ten, chapter thirty of this code, modified by the Board of  
15 Veterinary Medicine to meet the objections of the Legislative Rule-  
16 Making Review Committee and refiled in the state register on  
17 November 24, 2010, relating to the Board of Veterinary Medicine  
18 (certified animal euthanasia technicians, 26 CSR 5), is authorized,  
19 with the following amendment:

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

22 (e) The legislative rule filed in the state register on July  
23 27, 2010, authorized under the authority of section six, article  
24 ten, chapter thirty of this code, modified by the Board of  
25 Veterinary Medicine to meet the objections of the Legislative Rule-  
26 Making Review Committee and refiled in the state register on  
27 November 24, 2010, relating to the Board of Veterinary Medicine  
28 (schedule of fees, 26 CSR 6), is authorized.

1     **§64-9-8. Board of Optometry.**

2           (a) The legislative rule filed in the state register on July  
3     30, 2010, authorized under the authority of section six, article  
4     eight, chapter thirty, of this code, modified by the Board of  
5     Optometry to meet the objections of the Legislative Rule-Making  
6     Review Committee and refiled in the state register on November 24,  
7     2010, relating to the Board of Optometry (rules of the West  
8     Virginia Board of Optometry, 14 CSR 1), is authorized.

9           (b) The legislative rule filed in the state register on July  
10    30, 2010, authorized under the authority of section six, article  
11    eight, chapter thirty, of this code, modified by the Board of  
12    Optometry to meet the objections of the Legislative Rule-Making  
13    Review Committee and refiled in the state register on January 3,  
14    2011, relating to the Board of Optometry (oral pharmaceutical  
15    prescriptive authority, 14 CSR 2), is authorized.

16          (c) The legislative rule filed in the state register on July  
17    30, 2010, authorized under the authority of section six, article  
18    eight, chapter thirty, of this code, modified by the Board of  
19    Optometry to meet the objections of the Legislative Rule-Making  
20    Review Committee and refiled in the state register on November 24,  
21    2010, relating to the Board of Optometry (schedule of fees, 14 CSR  
22    5), is authorized.

23          (d) The legislative rule filed in the state register on July  
24    30, 2010, authorized under the authority of section six, article  
25    eight, chapter thirty, of this code, modified by the Board of  
26    Optometry to meet the objections of the Legislative Rule-Making  
27    Review Committee and refiled in the state register on November 24,

1 2010, relating to the Board of Optometry (examination and scoring  
2 policy, 14 CSR 6), is authorized with the following amendments:

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

6 "2.1. The Board shall conduct the interview with a quorum of  
7 the Board being present.";

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

10 And,

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

14 "4.1. A Board quorum may evaluate the applicant's successful  
15 or unsuccessful completion of the interview by consensus."

16 (e) The legislative rule filed in the state register on July  
17 30, 2010, authorized under the authority of section six, article  
18 eight, chapter thirty, of this code, modified by the Board of  
19 Optometry to meet the objections of the Legislative Rule-Making  
20 Review Committee and refiled in the state register on November 24,  
21 2010, relating to the Board of Optometry (licensure by endorsement,  
22 14 CSR 8), is authorized with the following amendments:

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

25 "2.2.6. At the option of the Board, an applicant for licensure  
26 by reciprocity may be required to take the National Board  
27 Examination.;

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

3           On page two, subsection 3.7, by striking out the word "person"  
4 and inserting in lieu thereof the word "applicant";

5           On page two, subsection 3.8, after the words "Code of", by  
6 inserting the word "State";

7           And,

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

11           "3.9. The Board may require an applicant to interview with the  
12 Board."

13           (f) 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 (contact lenses that  
19 contain and deliver pharmaceutical agents certificates, 14 CSR 9),  
20 is authorized with the following amendment:

21           On page one, subsection 3.3., after the words "Code of", by  
22 inserting the word "State".

23           (g) The legislative rule filed in the state register on July  
24 30, 2010, authorized under the authority of section six, article  
25 eight, chapter thirty, of this code, modified by the Board of  
26 Optometry to meet the objections of the Legislative Rule-Making  
27 Review Committee and refiled in the state register on November 24,

1 2010, relating to the Board of Optometry (continuing education, 14  
2 CSR 10), is authorized with the following amendments:

3 On page one, subsection 2.1., after the words "Code of" by  
4 inserting the word "State";

5 On page one, subsection 3.2., after the word "hours" by  
6 inserting the words "of continuing education";

7 On page one, subsection 3.6., after the word "outlined" by  
8 inserting the word "in";

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

11 On page two, subdivision 4.1(d), by striking out the word  
12 "Postgraduate" and inserting in lieu thereof the word  
13 "postgraduate";

14 On page two, subsection 5.1., after the words "Code of" by  
15 inserting the word "State";

16 On page two, subsection 6.1., after the word "instruction" by  
17 striking out the words "by correspondence, Internet or other  
18 electronic means";

19 And,

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

23 (h) The legislative rule filed in the state register on July  
24 30, 2010, authorized under the authority of section fifteen,  
25 article eight, chapter thirty, of this code, modified by the Board  
26 of Optometry to meet the objections of the Legislative Rule-Making  
27 Review Committee and refiled in the state register on December 23,  
28 2010, relating to the Board of Optometry (injectable pharmaceutical

1 agents certificate, 14 CSR 11), is authorized with the following  
2 amendments:

3 On page five, subsection 10.1., by striking out the word  
4 'not';

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

7 "11.1 A certificate holder may not establish a pharmacy in an  
8 optometric office or sell injectable pharmaceutical agents  
9 prescribed in treatment unless there is a licensed pharmacist on  
10 staff or present when the prescription is filled. Nothing in this  
11 rule shall prohibit the optometrist from charging a usual and  
12 customary fee for performing the injection.

13 11.2 Retrobulbar and Peribulbar injections are prohibited.

14 11.3. The board shall establish a formulary of pharmaceutical  
15 agents to be administered by injection.

16 11.3.1. The injection formulary shall be created from those  
17 agents that certificate holders have been authorized previously to  
18 administer or prescribe as topical agents or oral medication  
19 categories listed in the oral formulary of the Board in the W.Va.  
20 Code of State Rules, §14-2-7.2a through §14-2-7.2g.

21 11.3.2. New drugs or drug indications may be added to the  
22 formulary by a decision of the Board based on any of the following  
23 criteria:

24 11.3.2.1. A new or existing drug has been approved by the Food  
25 and Drug Administration for the treatment of the eye or its  
26 appendages.

27 11.3.2.2. A new drug or new drug indication has gained  
28 accepted use in the eye care field. Such acceptance may be

1 indicated by its inclusion in the curriculum of an optometry school  
2 accredited by the Accreditation Council on Optometric Education or  
3 its successor approved by the U.S. Department of Education or  
4 approved post-graduate continuing education, through peer-reviewed,  
5 evidence-based research and professional journal articles, or by  
6 inclusion in established standards of practice and care published  
7 by professional organizations.

8 **§64-9-9. Board of Osteopathy.**

9 (a) The legislative rule filed in the state register on July  
10 30, 2010, authorized under the authority of section one, article  
11 fourteen-a, chapter thirty, of this code, modified by the Board of  
12 Osteopathy to meet the objections of the Legislative Rule-Making  
13 Review Committee and refiled in the state register on November 29,  
14 2010, relating to the Board of Osteopathy (osteopathic physician  
15 assistants, 24 CSR 2), is authorized with the following the  
16 following amendments:

17 On page nine, subsection 6.6., after the words "Board and  
18 the", by striking out the word "board" and inserting in lieu  
19 thereof the word "Board";

20 And,

21 On page eleven, subsection 8.6., after the words "and expire  
22 with, the", by inserting the word "osteopathic".

23 (b) The legislative rule filed in the state register on July  
24 28, 2010, authorized under the authority of section three, article  
25 fourteen-a, chapter thirty, of this code, modified by the Board of  
26 Osteopathy to meet the objections of the Legislative Rule-Making  
27 Review Committee and refiled in the state register on November 29,

1 2010, relating to the Board of Osteopathy (fees for services  
2 rendered by the Board, 24 CSR 5), is authorized.

3 **§64-9-10. Treasurer's Office.**

4 The legislative rule filed in the state register on July 30,  
5 2010, authorized under the authority of section two, article two,  
6 chapter twelve, of this code, modified by the Treasurer's Office to  
7 meet the objections of the Legislative Rule-Making Review Committee  
8 and refiled in the state register on July 30, 2010, relating to the  
9 Treasurer's Office (establishment of imprest funds, 112 CSR 3), is  
10 authorized.

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

12 The legislative rule filed in the state register on the July  
13 29, 2010, authorized under the authority of section fourteen,  
14 article twelve, chapter three, of this code, modified by the State  
15 Election Commission to meet the objections of the Legislative Rule-  
16 Making Review Committee and refiled in the state register on  
17 January 14, 2011, relating to the State Election Commission (West  
18 Virginia Supreme Court of Appeals Public Campaign Financing Pilot  
19 Program, 146 CSR 5), is authorized, with the following amendment:

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