

COMMITTEE SUBSTITUTE

FOR

H. B. 2639

(BY DELEGATES BROWN, D. POLING, FLEISCHAUER, TALBOTT,
OVERINGTON AND SOBONYA)

(Originating in the Committee on the Judiciary)
[February 17, 2011]

A BILL 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 fertilizers 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 to 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.

- 1 (a) The legislative rule filed in the state register on July
- 2 29, 2010, authorized under the authority of section five,

3 article nine, chapter sixty-a of this code, relating to the Board
4 of Pharmacy (licensure and the practice of pharmacy, 15
5 CSR 1), is authorized.

6 (b) The legislative rule filed in the state register on July
7 29, 2010, authorized under the authority of section five,
8 article nine, chapter sixty-a of this code, relating to the Board
9 of Pharmacy (controlled substances monitoring, 15 CSR 8),
10 is authorized.

§64-9-2. Physical Therapy.

1 (a) The legislative rule filed in the state register on July
2 30, 2010, authorized under the authority of section six, article
3 twenty, chapter thirty, of this code, modified by the Board of
4 Physical Therapy to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the state
6 register on December 21, 2010, relating to the Board of
7 Physical Therapy (general provisions, 16 CSR 1), is
8 authorized, with the following amendments:

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

11 “2.15.a. A physical therapy aide works under the direct
12 supervision of a physical therapist; *Provided*, That a physical
13 therapist assistant may directly supervise a physical therapy

14 aide in emergency situations necessary to provide patient
15 safety.”

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

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

1 5.1. The Board reserves the right to evaluate the applicant
2 according to the testing, licensure, and procedural
3 requirements as initiated by the agency responsible for the
4 ownership and development of the National exam.

5 5.2. Licenses expiring on December 31, of each
6 particular year must be renewed by payment of applicable fee
7 along with completed renewal application.

8 5.3. A license not renewed without specific request to
9 place it in “inactive” status will automatically be placed on
10 delinquent status.

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

16 5.5. To reinstate an "inactive" license, the licensee must
17 submit an application for renewal along with a non-
18 refundable application fee and license renewal fee.

19 5.6. A volunteer license will be marked as a "volunteer"
20 license and is restricted to practicing in accordance with §30-
21 20-13.

22 5.7. Any change in personal contact and
23 employer/supervisor information must be submitted in
24 writing to the board as changes occur.”

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

27 “6.1. An individual possessing a temporary permit issued
28 by the Board to practice Physical Therapy or act as a physical
29 therapist assistant in the State of West Virginia shall practice
30 under the on-site supervision of a Physical Therapist. All
31 progress notes written by the Physical Therapist or physical
32 therapist assistant with a temporary permit shall be cosigned
33 by a Physical Therapist supervisor within twenty-four (24)
34 hours.”

35 On page six, by inserting a new subsection 7.7, to read as
36 follows:

37 “7.7. A licensee must report to the board any discipline
38 received in another jurisdiction within 30 days of that
39 discipline. The board reserves the right to discipline up to
40 and including revocation of a license until disciplinary

41 process in the other jurisdiction is completed. If the licensee
42 fails to report discipline in another jurisdiction, they are
43 subject to disciplinary procedures in our jurisdiction
44 determined by the board.”

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

47 “8.2.a. When care is delivered in a hospital or other
48 acute-care center, free-standing, outpatient, or independent
49 practice setting, a Physical Therapist must provide on-site
50 supervision, with the exception that general supervision is
51 permitted in a hospital or other acute-care center,
52 free-standing, outpatient, or independent practice setting 40%
53 of the time once the physical therapist assistant performing
54 treatment has at least 1000 hours of experience.”

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

57 “8.2.b. General supervision may be utilized when care is
58 delivered in a skilled/unskilled nursing facility, distinct part
59 skilled/unskilled nursing unit or swing-bed unit in an acute-care
60 hospital, home health, or school system setting, and the
61 following requirements must be observed and documented in the
62 patient records when general supervision is used:”

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

65 “8.2.b.1. A physical therapist must be accessible by
66 telecommunications to the physical therapist assistant at all
67 times that the physical therapist assistant is treating patients;
68 and available to make a joint onsite visit with the physical
69 therapist assistant within 24 hours as prudent practice
70 indicates.”

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

73 “8.2.b.2 The physical therapist must visit the patient at
74 least once every 10 physical therapist assistant visits, or
75 within 30 calendar days, whichever occurs first.”

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

78 “8.2.b.3. In the event that the supervising physical
79 therapist changes, the new supervising physical therapist
80 assistant must discuss the patient's diagnosis and plan of care
81 with the previous supervising physical therapist before the
82 next physical therapist visit is made. Either physical therapist
83 must document such communication.”

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

86 “8.5. In an emergency situation, such as serious illness of
87 the therapist or therapist's family member or death of a
88 family member, which causes the unanticipated absence of
89 the supervising physical therapist for not more than 3
90 consecutive days, a licensed physical therapist assistant may
91 continue to render services, under the supervision of another
92 physical therapist, to only those patients for which the
93 licensed physical therapist assistant has previously
94 participated in the intervention for established plans of care
95 not to exceed the regularly scheduled operational hours of the
96 particular day or days the supervising physical therapist is
97 absent.”

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

100 “8.6. In a temporary situation which causes the
101 unanticipated absence of the supervising physical therapist
102 up to 1 day, a licensed physical therapist assistant may
103 continue to render services, under the supervision of another
104 physical therapist, to only those patients for which the
105 licensed physical therapist assistant has previously

106 participated in the intervention for established plans of care
107 not to exceed the regularly scheduled operational hours of the
108 particular day or days the supervising physical therapist is
109 absent.”

110 On page 9, by inserting a new section 10 to read as
111 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
7 approved continuing education within the license period, that
8 licensee will be placed on delinquent status and will be
9 subject to all fees associated with delinquent status.

10 10.2.a. For those applicants reinstating their license for a
11 period of 6 months or less, only 6 units are required for that
12 year.

13 10.2.b. Volunteer licensees need only to complete twenty
14 (20) units of board approved continuing education activities
15 within a two year renewal cycle.

16 10.2.c. Accumulated CEU's may not be carried over from
17 one renewal period to another.

18 10.2.d. A new graduate does not need continuing
19 education hours for the current year of graduation.

20 10.3. Completion of examinations, residencies,
21 fellowships, tools, and courses for continuing education
22 credit.

23 10.3.a. A maximum of 8 units per license period can be
24 obtained from any combination of clinical instruction or
25 competency tools.

26 10.3.b. Passing the following specialty examinations will
27 qualify for twenty-four contact hours of continuing education
28 in the year the examination is taken:

29 10.3.b.1 Specialty examinations and recertification
30 administered by the American Board of Physical Therapy
31 Specialties (ABPTS).

32 10.3.b.2. The Hand Therapy Certification Commission
33 (HTCC) certification examination.

34 10.3.b.3. Continuing education course instructors can
35 receive 1 unit per hour of class instruction time will be
36 awarded for board approved continuing education courses in
37 the year the course given. Credit awarded to the instructor
38 for said course will be granted only one time.

39 10.3.c. The successful completion of an American
40 Physical Therapy Association credentialed residency or
41 fellowship program will qualify for twenty-four contact
42 hours of continuing education in the year the residency or
43 fellowship is completed.

44 10.3.d. The successful completion of a practice review
45 tool of the federation of state boards of physical therapy
46 pertaining to continued competence will qualify for
47 continuing education.

48 10.3.d.1. Eight contact hours of continuing education will
49 be awarded for completion of a practice review tool.

50 10.3.d.2. Licensees may use a practice review tool
51 identified in paragraph 3.d.1 of this section no more than
52 every other renewal period.

53 10.3.e. Clinical instruction.

54 10.3.e.1. Providing clinical instruction to PT or PTA
55 student(s) enrolled in a CAPTE approved physical therapist
56 or physical therapist assistant program can qualify for up to
57 a maximum 8 units per year.

58 10.3.e.2. Four weeks of clinical instruction is equal to 1
59 unit of continuing education.

60 10.3.f. Continuing education courses are subject to board
61 approval.

62 10.3.f.1 One unit per hour of class instruction time will
63 be awarded for board approved continuing education courses
64 in the year the course is taken.

65 10.3.g. One unit per hour of class instruction time shall
66 be awarded and automatically approved for CAPTE
67 College/University, American Physical Therapy Association
68 or West Virginia Physical Therapy Association sponsored
69 continuing education courses in the year the course is taken.

70 10.3.h. One unit per hour of class instructions for CAPTE
71 college or university physical therapy or doctorate physical
72 therapy programs.

73 10.4. The board may grant a waiver of the continuing
74 education requirements in the case of illness, disability or
75 undue hardship.

76 10.4.a. A request for waiver form must be completed in
77 full. In the case of illness or disability, a physician's
78 statement is required.

79 10.4.b. All completed forms must be received by the
80 Board for consideration no later than the first day of October
81 of the year preceding the renewal date.

82 10.4.c. A waiver may be granted for any period of time
83 not to exceed one renewal cycle.

84 10.4.d. In the event that the illness, disability or hardship
85 continues to the next renewal cycle, then a new waiver
86 request is required.

87 10.4.e. Should a waiver be granted due to disability or
88 illness, the section may require the individual to provide
89 appropriate documentation from a physician or another
90 qualified and appropriate practitioner to verify the
91 individual's competency and ability to practice physical
92 therapy in the state of West Virginia prior to the return to
93 active practice of physical therapy in West Virginia.”

94 (b) The legislative rule filed in the state register on July
95 30, 2010, authorized under the authority of section six, article
96 twenty, chapter thirty, of this code, relating to the Board of
97 Physical Therapy (fees for physical therapists and physical
98 therapist assistants, 16 CSR 4), is authorized.

99 (c) The legislative rule filed in the state register on July
100 30, 2010, authorized under the authority of section four,
101 article twenty-a, chapter thirty, of this code, modified by the
102 Board of Physical Therapy to meet the objections of the
103 Legislative Rule-Making Review Committee and refiled in

104 the state register on September 20, 2010, relating to the
105 Board of Physical Therapy (general provisions for athletic
106 trainers, 16 CSR 5), is authorized.

107 (d) The legislative rule filed in the state register on July
108 30, 2010, authorized under the authority of section four,
109 article twenty-a, chapter thirty, of this code, modified by the
110 Board of Physical Therapy to meet the objections of the
111 Legislative Rule-Making Review Committee and refiled in
112 the state register on September 20, 2010, relating to the
113 Board of Physical Therapy (fees for athletic trainers, 16 CSR
114 6), is authorized.

§64-9-3. Sanitarians.

1 (a) The legislative rule filed in the state register on July
2 29, 2010, authorized under the authority of section six, article
3 seventeen, chapter thirty, of this code, relating to the of
4 Board of Sanitarians (interim fee schedule, 20 CSR 3), is
5 authorized.

6 (b) The legislative rule filed in the state register on July
7 29, 2010, authorized under the authority of section six, article
8 seventeen, chapter thirty, of this code, relating to the Board
9 of Sanitarians (practice of public health sanitation, 20 CSR
10 4), is authorized, with the following amendments:

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

13 “4.1.d. Has not previously failed an examination for
14 licensure in this state;”;

15 And,

16 By re-designating the remaining subdivisions
17 accordingly.

§64-9-4. Secretary of State.

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

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

11 On page three, subdivision 4.2.2 following the words
12 “under this subsection on a”, by striking out the word
13 “quarterly” and inserting in lieu thereof the word “annual”;

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

24 And,

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

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

1 (a) The legislative rule filed in the state register on July
2 30, 2010, authorized under the authority of section six, article
3 twenty-seven, chapter thirty, of this code, modified by the
4 Board of Barbers and Cosmetologists to meet the objections
5 of the Legislative Rule-Making Review Committee and
6 refiled in the state register on October 18, 2010, relating to
7 the Board of Barbers and Cosmetologists (procedures,

8 criteria and curricula for examinations and licensure of
9 barbers, cosmetologists, manicurists and aestheticians, 3 CSR
10 1), is authorized.

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
14 Board of Barbers and Cosmetologists to meet the objections
15 of the Legislative Rule-Making Review Committee and
16 refiled in the state register on October 18, 2010, relating to
17 the Board of Barbers and Cosmetologists (qualifications,
18 training, examination of licensure of instructors, 3 CSR 2), is
19 authorized, with the following amendments:

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

24 And,

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

28 And,

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

32 “2.1.7 Submit an application to the board;

33 2.1.8 Pay applicable certification, examination and
34 registration fees.” .

35 (c) The legislative rule filed in the state register on July
36 30, 2010, authorized under the authority of section six, article
37 twenty-seven, chapter thirty, of this code, modified by the
38 Board of Barbers and Cosmetologists to meet the objections
39 of the Legislative Rule-Making Review Committee and
40 refiled in the state register on October 18, 2010, relating to
41 the Board of Barbers and Cosmetologists (operational
42 standards for schools of barbering and beauty culture, 3 CSR
43 4), is authorized.

44 (d) The legislative rule filed in the state register on June
45 18, 2010, authorized under the authority of section six, article
46 twenty-seven, chapter thirty, of this code, relating to the
47 Board of Barbers and Cosmetologists (schedule of fees, 3
48 CSR 6), is authorized.

§64-9-6. Commissioner of Agriculture.

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

9 (b) The legislative rule filed in the state register on July
10 12, 2010, authorized under the authority of section five-c,
11 article twelve, chapter twenty-two, of this code, relating to
12 the Commissioner of Agriculture (general groundwater
13 protection rules for fertilizers and manures, 61 CSR 6C), is
14 authorized.

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

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

1 The legislative rule filed in the state register on July 27,
2 2010, authorized under the authority of section six, article

3 ten, chapter thirty, of this code, modified by the West
4 Virginia, 1931, as amended, relating to authorizing the Board
5 of Veterinary Medicine to meet the objections of the
6 Legislative Rule-Making Review Committee and refiled in
7 the state register on November 24, 2010, relating to the Code
8 of West Virginia, 1931, as amended, relating to the Board of
9 Veterinary Medicine (organization and operation and
10 licensing of veterinarians, 26 CSR 1), is authorized, with the
11 following amendments:

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

14 On page twelve, subsection 8.1, by striking out the words
15 “the supervision of a West Virginia licensed veterinarian”
16 and inserting in lieu thereof the words “the indirect or general
17 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 And,

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

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

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

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

45 (d) The legislative rule filed in the state register on July
46 27, 2010, authorized under the authority of section six, article
47 ten, chapter thirty of this code, modified by the Board of

48 Veterinary Medicine to meet the objections of the Legislative
49 Rule-Making Review Committee and refiled in the state
50 register on November 24, 2010, relating to the Board of
51 Veterinary Medicine (certified animal euthanasia technicians,
52 26 CSR 5), is authorized, with the following amendment:

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

56 (e) The legislative rule filed in the state register on July
57 27, 2010, authorized under the authority of section six, article
58 ten, chapter thirty of this code, modified by the Board of
59 Veterinary Medicine to meet the objections of the Legislative
60 Rule-Making Review Committee and refiled in the state
61 register on November 24, 2010, relating to the Board of
62 Veterinary Medicine (schedule of fees, 26 CSR 6), is
63 authorized.

§64-9-8. Board of Optometry.

1 (a) The legislative rule filed in the state register on July
2 30, 2010, authorized under the authority of section six, article
3 eight, chapter thirty, of this code, modified by the Board of
4 Optometry to meet the objections of the Legislative Rule-
5 Making Review Committee and refiled in the state register

6 on November 24, 2010, relating to the Board of Optometry
7 (rules of the West Virginia Board of Optometry, 14 CSR 1),
8 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-
13 Making Review Committee and refiled in the state register
14 on January 3, 2011, relating to the Board of Optometry (oral
15 pharmaceutical prescriptive authority, 14 CSR 2), is
16 authorized.

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

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

28 Making Review Committee and refiled in the state register
29 on November 24, 2010, relating to the Board of Optometry
30 (examination and scoring policy, 14 CSR 6), is authorized.

31 (e) The legislative rule filed in the state register on July
32 30, 2010, authorized under the authority of section six, article
33 eight, chapter thirty, of this code, modified by the Board of
34 Optometry to meet the objections of the Legislative Rule-
35 Making Review Committee and refiled in the state register
36 on November 24, 2010, relating to the Board of Optometry
37 (licensure by endorsement, 14 CSR 8), is authorized.

38 (f) The legislative rule filed in the state register on July
39 30, 2010, authorized under the authority of section six, article
40 eight, chapter thirty, of this code, modified by the Board of
41 Optometry to meet the objections of the Legislative Rule-
42 Making Review Committee and refiled in the state register
43 on November 24, 2010, relating to the Board of Optometry
44 (contact lenses that contain and deliver pharmaceutical
45 agents certificates, 14 CSR 9), is authorized.

46 (g) The legislative rule filed in the state register on July
47 30, 2010, authorized under the authority of section six, article
48 eight, chapter thirty, of this code, modified by the Board of
49 Optometry to meet the objections of the Legislative Rule-

50 Making Review Committee and refiled in the state register
51 on November 24, 2010, relating to the Board of Optometry
52 (continuing education, 14 CSR 10), is authorized.

53 (h) The legislative rule filed in the state register on July
54 30, 2010, authorized under the authority of section fifteen,
55 article eight, chapter thirty, of this code, modified by the
56 Board of Optometry to meet the objections of the Legislative
57 Rule-Making Review Committee and refiled in the state
58 register on December 23, 2010, relating to the Board of
59 Optometry (injectable pharmaceutical agents certificate, 14
60 CSR 11), is authorized with the following amendments:

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

64 “11.1 A certificate holder may not establish a pharmacy
65 in an optometric office or sell injectable pharmaceutical
66 agents prescribed in treatment unless there is a licensed
67 pharmacist on staff or present when the prescription is filled.
68 Nothing in this rule shall prohibit the optometrist from
69 charging a usual and customary fee for performing the
70 injection.

71 11.2 Retrobulbar injections are prohibited.

72 11.3. The board shall establish a formulary of
73 pharmaceutical agents to be administered by injection.

74 11.3.1. The injection formulary shall be created from
75 those agents that certificate holders have been authorized
76 previously to administer or prescribe as topical agents or oral
77 medication categories listed in the oral formulary of the
78 Board in the W.Va. Code of State Rules, §14-2-7.2a through
79 §14-2-7.2g.

80 11.3.2. New drugs or drug indications may be added to
81 the formulary by a decision of the Board based on any of the
82 following criteria:

83 11.3.2.1. A new or existing drug has been approved by
84 the Food and Drug Administration for the treatment of the
85 eye or its appendages.

86 11.3.2.2. A new drug or new drug indication has gained
87 accepted use in the eye care field. Such acceptance may be
88 indicated by its inclusion in the curriculum of an optometry
89 school accredited by the Accreditation Council on
90 Optometric Education or its successor approved by the U.S.
91 Department of Education or approved post-graduate
92 continuing education, through peer-reviewed, evidence-based
93 research and professional journal articles, or by inclusion in

94 established standards of practice and care published by
95 professional organizations.”

§64-9-9. Board of Osteopathy.

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

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

§64-9-10. Treasurer’s Office.

1 The legislative rule filed in the state register on July 30,
2 2010, authorized under the authority of section two, article

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

§64-9-11. State Election Commission.

1 The legislative rule filed in the state register on the July
2 29, 2010, authorized under the authority of section fourteen,
3 article twelve, chapter three, of this code, modified by the
4 State Election Commission to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in
6 the state register on January 14, 2011, relating to the State
7 Election Commission (West Virginia Supreme Court of
8 Appeals Public Campaign Financing Pilot Program, 146 CSR
9 5), is authorized, with the following amendment:

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