

Special Meeting

11/5/97

Wednesday, November 5, 1997

9:30 a.m. to 4:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Boley
Bowman (Absent)
Buckalew
Manaughtan (Absent)

Hunt, Chairman
Linch, Vice Chairman
Compton (Absent)
Faircloth
Jenkins
Riggs

The meeting was called to order by Mr. Ross, Co-Chairman.

The minutes of the September 14, 1997, and September 15, 1997, meetings were approved.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the **State Fire Commission - State Fire Code** and stated that the Commission has agreed to technical modifications. She and Walter Smittle, State Fire Marshal, responded to questions from the Committee.

Mr. Hunt moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the **Department of Agriculture - Fish Processing Rules**, and stated that the agency has agreed to technical modifications. John Liggett, Assistant Director of Regulatory Protection, answered questions from the Committee.

Senator Buckalew moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **Board of Examiners of Psychologists - Fees**, and stated that the agency has agreed to technical modifications. She and Dr. Jeffrey Harlow, President of the Board, responded to questions from the Committee.

Mr. Anderson moved that subsections 2.3 and 2.7 of the proposed rule be modified to reduce both the license renewal fee for psychologists and the oral examination fee from \$250 to \$175.

The motion was adopted.

Mr. Ross asked Dr. Harlow if the Board would be willing to accept the proposed modifications. Dr. Harlow stated that the Board could not accept the proposed modification.

Mr. Ross moved that subsections 2.3 and 2.7 of the proposed rule be amended to reduce both the license renewal fee for psychologists and the oral examination fee from \$250 to \$175.

The motion was adopted.

Mr. Ross moved that the proposed rule be approved as modified and amended. The motion was adopted.

Ms. Graham stated that the rule proposed by the **Department of Natural Resources - Special Boating Rule for Jennings Randolph Lake**, had been laid over at the Committee's previous meeting to allow counsel to review the Division's authority to prohibit persons from operating a vessel on the lake who have a blood-alcohol concentration of .700 of 1 percent, when state law refers to a blood-alcohol concentration of 1.0 percent. She and Col. W. B. Daniel, Director of Law Enforcement for the DNR, responded to questions from the Committee.

Mr. Faircloth moved that the proposed rule be approved as modified. After further discussion, Mr. Faircloth asked unanimous consent to withdraw his motion. There being no objection, the motion was withdrawn.

Mr. Ross moved that the proposed rule be placed at the foot of the agenda. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **WV Board of Architects - Rules of the Board**, and stated that the Board has agreed to technical modifications.

Mr. Buckalew moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the **Division of Health - Breast & Cervical Cancer Diagnostic & Treatment Fund**, and stated that the agency has agreed to technical modifications.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **Board of Dental Examiners - Formation and Approval of Professional Limited Liability Companies**, and stated that the Board has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the **Human Rights Commission - Definition of Employer Under the West Virginia Human Rights Act**, and stated that the Commission has agreed to technical modifications. She and Mary Kay Buckmelter, Assistant Attorney General representing the Human Rights Commission, responded to questions from the Committee.

Mr. Ross moved that the rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstracts on the rules proposed by the **Board of Examiners in Counseling - Advanced Practice and Licensing Rule**, and stated that the Board has agreed to technical modifications. Mr. William Mullett, Chairman of the Board, responded to questions from the Committee and distributed information relating to the Board's budget. Rae Anne Uttermohlen, of the WV Licensed Professional Counselors Board, addressed the Committee and requested that the Committee delay consideration of the proposed rules to allow the Board time to further consider the comments it received regarding the proposed rules.

Ms. Boley moved that the proposed rules lie over until the Committee's next meeting. The motion was adopted.

Rita Pauley, Associate Counsel, explained the rule proposed by the **Insurance Commissioner - AIDS**, and stated that the Commissioner has agreed to technical modifications. She and Keith Huffman, General Counsel to the Office of Insurance Commissioner, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **Insurance Commissioner - Individual and Employer Group Minimum Benefits Accident and Sickness Insurance Policies**.

Mr. Ross moved that the proposed rule be approved. The motion was adopted.

Mr. Lynch moved that the Committee reconsider its action whereby it approved as modified, the rule proposed by the **Insurance Commissioner - AIDS**. The motion was adopted.

Mr. Huffman responded to further questions regarding the proposed rule.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley explained the rule proposed by the **Insurance Commissioner - Group Accident and Sickness Insurance Issuance, Portability and Marketing Requirements**, and stated that the Commissioner has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the **Insurance Commissioner -**

Individual Accident and Sickness Insurance Minimum Standards, and stated that the Commissioner has agreed to technical modifications. She responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Pauley explained the rule proposed by the **Insurance Commission - Group Accident and Sickness Insurance Minimum Policy Coverage Standards**, and stated that the Commissioner has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the **Board of Medicine - Licensing, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants**, and stated that the Board has agreed to technical modifications. She and Deborah Rodecker, Counsel for the Board, responded to questions from the Committee.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **Secretary of State - Matters Relating to Corporation and Other Business Entity Filing**, and stated that the Secretary of State has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the **Board of Occupational Therapy - Administrative Rules**, and stated that the Board has agreed to technical modifications. She explained that the proposed rule sets a range of fees and distributed a copy of specific fees proposed by the Board.

Mr. Buckalew moved that the proposed rule lie over until the Committee's next meeting. The motion was rejected.

Mr. Buckalew moved that the proposed rule be amended by adding a new section relating to fees, to specifically contain the following fees:

Initial License Fee/OTR	\$190.00
Renewal Fee/OTR	\$ 60.00
Initial License Fee/COTA	\$140.00
Renewal Fee/COTA	\$ 50.00
Limited Permit/OT	\$140.00
Limited Permit/OTA	\$ 90.00
Late Renewal Fee	\$ 50.00
Application Packet Fee	\$ 15.00
Verification of Licensure	\$ 20.00

The motion was adopted.

Mr. Ross moved that the proposed rule be approved as modified and amended. The motion was adopted.

Mr. Faircloth moved that the rule proposed by the **Division of Personnel - Administrative Rule**, lie over until the Committee's December meeting. The motion was adopted.

Ms. Graham told the Committee that it is her opinion that the rules proposed by the **Board of Acupuncture-Electrodiagnosis & Electroacupuncture; Homeopathy Within the Scope of Oriental Medicine; Point Puncture Therapy; and Venipuncture and Diagnostic Testing**, all exceed the scope of the Board's authority and, in her opinion, the Committee should recommend that the proposed rules be withdrawn.

Mr. Ross moved that the Committee request that the Board withdraw the four proposed rules. The motion was adopted.

Ms. Graham explained the rule proposed by the **Board of Optometry - Expanded Prescriptive Authority**, and stated that the Board has agreed to technical modifications. Dr. B. J. Nybert, representing the Board, and Mr. Thomas Stevens, President of Government Relations Specialists, addressed the Committee and responded to questions from the Committee.

Mr. Hunt moved that the proposed rule lie over until the next Committee meeting. The motion was adopted.

Ms. Graham reviewed her abstract on the proposed rule by the **Division of Motor Vehicles - Denial, Suspension, Revocation or Nonrenewal of Driving Privileges**, and stated that the Division has agreed to technical modifications. She answered questions from the Committee. Messrs. Joseph Miller, Commissioner; Mike Adkins, Manager of Driver Improvement, and Steve Dale, Assistant to the Commissioner, addressed the Committee and responded to questions.

Mr. Hunt moved that the Committee modify the proposed rule to provide that the Division may not take a senior citizen's driver's license based merely upon the request of a family member, but that the Division must re-test the licensee or have an affidavit from a doctor stating that the licensee is no longer competent to drive prior to suspending or revoking the license. The motion was adopted.

Mr. Hunt moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Wed., Nov. 5, 1997

TIME: 9:30 A.M.

NAME Present Absent Yeas Nays

HOUSE

Kiss, Robert, Speaker	_____	_____	_____	_____
Hunt, Mark, Co-Chair	✓	_____	_____	_____
Linch, Larry, Vice-Chair	✓	_____	_____	_____
Compton, Mary Pearl	_____	X	_____	_____
Faircloth, Larry V.	✓	_____	_____	_____
Jenkins, Evan	✓	_____	_____	_____
Riggs, Dale	✓	_____	_____	_____

(Left early due to personal illness.)

SENATE

Temblin, Earl Ray, President	_____	_____	_____	_____
Ross, Michael, Co-Chair	✓	_____	_____	_____
Anderson, Leonard, Vice-Chair	✓	_____	_____	_____
Boley, Donna	✓	_____	_____	_____
Bowman, Edwin	_____	X	_____	_____
Buckalew, Jack	✓	_____	_____	_____
Macnaughtan, Don	_____	X	_____	_____

TOTAL 9

RE: _____

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: Wed, Nov. 5, 1997

TIME: 1:00 p.m.

NAME Present Absent Yeas Nays

HOUSE

Kiss, Robert, Speaker	_____	_____	_____	_____
Hunt, Mark, Co-Chair	✓	_____	_____	_____
Linch, Larry, Vice-Chair	✓	_____	_____	_____
Compton, Mary Pearl	_____	X	_____	_____
Faircloth, Larry V.	✓	_____	_____	_____
Jenkins, Evan	_____	X	_____	_____
Riggs, Dale	✓	_____	_____	_____

SENATE

Femblin, Earl Ray, President	_____	_____	_____	_____
Ross, Michael, Co-Chair	✓	_____	_____	_____
Anderson, Leonard, Vice-Chair	✓	_____	_____	_____
Boley, Donna	✓	_____	_____	_____
Bowman, Edwin	_____	X	_____	_____
Buckalew, Jack	✓	_____	_____	_____
Macnaughtan, Don	_____	X	_____	_____

TOTAL 8

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Committee Date Wed; November 5, 1997
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
James G. Anderson III	P.O. Drawer 1459 Bedford, WV 25902-1459	5 Mc Spc W.D. Bd. of Dental Exams	
Walter Smith III	1207 Garrison St. Charleston, WV 25301	State Job Commission	
Robin Sabury	1411 Virginia Street East Charleston WV	BRCSF	
George Rider	Charleston	WUSMA	
KAY HOWARD	Charleston	WV DHR	IF NEEDED
MARY KAY BUCKMELTNER	Charleston	WV Human Rights Com	IF NEEDED
Rae Anne Uttermohlen	Rt 1 Box 7 Pullman, WV	WV Licensed Professional Counselors	IF NEEDED - hand outs of statement given to sec
John Liggett	1900 Kanawha Blvd E. Ches.	WV Dept. of Agriculture	IF NEEDED
Bill DANIEL	CHARLESTON	WV DNR	IF NEEDED
Lari McClintock Course	Charleston	WV Div. of Personnel	IF NEEDED

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: *Legislative Rule-Making Review Committee*
Please print or write plainly.

Date *11/5/97*

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
<i>Dr. Jeff Hale</i>	<i>PO Box 3146 Martinsburg WV 25311</i>	<i>WV Board of Examiners of Registered</i>	<input checked="" type="checkbox"/>

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Committee Date 11/5/97
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
DARRELL SAMPLES Dr. Darrell Samples	Huntington WV	Acupuncture Board	
Dr. William M. Miller	1330 ^{Chowan} Zoung Dr	WV Bd Exam Counselor	<input checked="" type="checkbox"/>

November 5, 1997

Ross	Hunt
Anderson	Biggs
Biley	Linch
Buckalew	Faircloth

Ross called meeting to order.

State Fire Commission - State Fire Code

Hunt
Adopted. Smittle & I responded to questions
Approve as mod.

Agriculture - Fish Processing

Buckalew
Adopted. Liggett responded to questions
Approve as mod.

Approve minutes

Bd of Examiners of Psychologists

I responded to questions
Dr. Harlow responded to questions
Moved down

DNR - Jennings Randolph

Faircloth
Ross
adopted. I & Col Daniel responded to questions from the C
Approve as mod - w/drew
Foot of agenda

Boles adopted

Counseling - Adv. Practice; Licensing Rule
Bill Miller, Chair. RL responded to
Rayanne Keffbaum
Ray both over until Nov Intern

Gross adopted

Human Resources Commission
Mary Kay Buchmelter
Approve as mod.

Dental Exam
Approve as mod.

Folala adopted

Health - Breast
Approve as mod -

Buckalew adopted

Architects
Approve as mod.

Anderson adopted

Modified & amended

Gross adopted

More amend
Dr. Harlow Respectfully declined

Anderson adopted

Psychologists
Reduce new fees in half (half of increase) - agreed to
\$175 both places

Insurance - AIDS

Rita explained & ans'd questions
Keith Huffman responded to questions

Ross
adopted

Approve as mod

Insurance - Indiv & Eler Group

Ross
adopted

Approve

Rich

Ins - Aids

adopted

Reconsider action whereby approved as modified.
Huffman mod. p.
Appr as mod

Ross
adopted

Insurance - Group Acc, Portability

Ross
adopted

Approved as mod

Insurance - Indiv Acc

Ross

Rita ans'd question
Approve as mod

Ins C - Group, Min Policy

Ross
adopted

Approve as modified

Bd of Medicine

Deborah Roedecker responded to a (one too)

Fieloth
adopted

Approve as mod

SOS

Ross
adopted

Approve as mod

Bd. of Occupational Therapy

Buckalew ^{r moves} lay over til next meeting
~~adopted~~ specify ~~current fees in~~
rejected

Buckalew
adopted Amend to add fees w/o increases

Ross
adopted Approve as mod & amend.

Div Personnel

Faircloth
adopted Lay over until the Dec meeting

Acupuncture

Rec all to be withdrawn

Optometry

Hunt
adopted B.J.
Thom Stephens } addressed the Q
Lay over until Nov meeting

DMV - Denial

Asked questions

Joe Miller - Commissioner DMV

Mgr - Driver Improv.

Mike Atkins & Steve Dale

Hunt
adopted Move to modify - cannot take senior citizen's
license based only upon a relatives request - doctor
or test

Hunt Lay over til next meeting.

L.R.M.R.C. - 11/5/97

Special Mtg.

Called to order by Senator Ross - 9:40 A.M.

① Item C: State Fire Commission
Walter Smittle - State Fire Marshal
spoke to S; responded to questions.
Aunt moved rule
Technical modifications agreed to
Approved as modified

② Item F: Dept. of Agriculture
Technical modifications by Counsel
John Liggett - WV Dept. of Agriculture
Buckalew moved rule
Approved as modified

Anderson moved that ^{minutes of} S be approved. 9/14-15 meeting

③ Item a: Board of Psychologists
Technical modifications by counsel
Fees need to be clarified - 2 yr. fee to
3 yr. renewal.

Mr. Jeff Harlow -
responded to questions

~~Moved item on agenda~~

~~Come to~~ Return later to this item on the agenda.

Item 6: Dept. of N.R. - Spec. Boating J.R. Lake
Col. ^{Bill} Daniel responded to questions
on rule -

Faircloth moved that rule be moved and
~~keep a watch on rule~~ with technical
modifications.

Senator Ross ^{motioned to} ~~suggested~~ ~~moving~~ moving to foot of agenda
withdrew motion by Faircloth to move
the rule to Tech. mods.

Returned to Board of Psychology rule

Jeff Harlow responded to questions re the
Fees.

Anderson ^{motion} proposed mod to cut the fee ^{increase} in
request in half.

Ross had questions on motion.

Lynch ~~had~~ spoke against the motion.

Ross spoke in favor of amendment (rule)

Faircloth

Requests that Anderson amends his motion on amount of fee \$175 rather than \$187.⁵

Motion to modify rule passed

Agency declined the amendment

Ross moved to amend the rule

Motion to move rule as amended and modified.

Motion passed to ~~approve~~ ^{approve} rule as amended and modified

Item d: WV Board of Architects

Technical modifications agreed to by agency

Buckalew moved the rule as modified

Motion passed to approve rule as modified

Item e: Health - Breast & Cervical Cancer

Agency has agreed to technical modifications

Faircloth - approve rule as modified

Motion passed.

Item g: Dental Examiners

approved
Move rule as modified

Item h: Human Rights

Define "employer"

Technical modifications to the rule

Questions to Counsel - Linch

Mary Kay Bucknetter responded to questions
(Chief of Counsel for HR) from the ~~mb~~.

Ross moves rule be approved with
technical modifications

Motion passed.

Recess until 1:00 p.m.

Re-convened at 1:05 p.m.

Item i: ^{and j} Board of Examiners in Counseling
Bill Mullett - Chairman of the Board
responded to questions from the ~~mb~~.

Ray Ann Uttermolen - opposition to the
Counseling ^{Advanced} Practice rules

Boley ~~motioned~~ ^{motioned} to move rules to November
interim. Approved to lay over to Nov.

Item k: Ins. Com - AIDS Insurance

~~Roller~~

Approve ~~motion~~ ^{Ross} rule as modified
Keith Huffman responded to questions from
the Committee.

Item l: Insur. Comm.

Ross moved to approve the rule ~~without~~
~~amend~~

Linch moved to bring ^{the} rule - Ins. rule
on AIDS Regulation.

Ross moved rule as modified. Motion approved

Item m: Ins. Comm.

Ross moved rule as modified. Motion approved

Item n: Insur. Commission

Ross moved rule with technical modifications.
Motion approved

Item o: Ins. Commission

Technical mods agreed to by the agency

Item o: (cont'd)

Ross moved rule as modified. Motion passed.

Item p: Board of Medicine

Agency agreed to technical modifications.

Faircloth moved to approve the rule as modified. Motion carried.

Delorah Bodecker responded to questions from the Committee.

Item q: Secretary of State

Technical modifications and

Ross moved rule be approved as modified.

Item r: Occupational Therapy

Technical modifications and changes in fees were suggested.

Buckalew to approve rule without any

Ross amends amendment to provide for no additional

fee increases

Lay over until ^{Buckalew} May 18 interim

Motion rejected

Buckalew motioned to place fees into the rule without increases.

Motion approved.

Item t:

Personnel

Fairly ^{motion} lay over to December interim

Items u, v, w, x Acupuncture Rules

Counsel recommends that all 4 rules be withdrawn.

Dr. Darrell Samples answered questions from the SD.

~~Item t~~

~~Loss~~ ~~to~~ motion to be moved that all 4 rules be withdrawn. motion carried.

Rules will be withdrawn

Item y: Board of Optometry

Dr. Hyre and Mr. Hyre

Dr. B. f. Rybert - Board of Optometry Agency agreed with technical comments.

Tom Stevens - opposition to the rule.

Hunt Requests delay until ~~December~~ November interims.

Items: DMV

Technical modifications have been agreed to by the agency.

Joe Miller - new Comm. for DMV

Mike Adkins } Manager of Driver Improvement

~~Steve Bacht~~

Modification offered by Hunt:

Provide P - v Seniors' Drivers license, be suspended ~~and~~ just on the authority of family request without first having a re-test by a SP office or a qualified medical examiners.

Agency agreed to ^{approve} modification.

~~Buck Kahan moved rule~~

Hunt asked P rule (D) 1 & 2 in November

Handwritten notes and stamps at the bottom of the page, including a date stamp: MAY 12 1975.

Handout 11/5/97

West Virginia Licensed Professional Counselors Association

Cindy Collins, MA, LPC, President

Richard Goldmar, DDS, MA, LPC, Government Relations Chair

Rae Anne Uttermohlen, MA, LPC, former pres., current board member, lobbyist

November 5, 1997

Dear Members of the WV Legislative Rule Making Review Committee,

Thank you for this opportunity to discuss with you our concerns regarding The West Virginia Board of Examiners in Counseling's (WVBEC) proposed "Advance Practice" Endorsement (Title 27, Series 2).

The West Virginia Licensed Professional Counselors Association stands opposed to the "Advance Practice" designation, suggested by WVBEC. We would strongly prefer the designation of Licensed Professional Clinical Counselor (LPCC), much like the designation recently adopted by the Social Workers (Licensed Independent *Clinical* Social Worker - LICSW). "Clinical" is a designation already recognized in the mental health community. We will be discussing this issue further with our membership at our annual membership meeting Friday, November 7 and through out the WV Counseling Association conference (of which we are a division) from Wednesday November 5 to Saturday, November 8.

WVLPCA and a number of individual members have already written in opposition to this rule and have received no feedback or response from WVBEC as to our concerns regarding the AP designation. The WVLPCA members views the Advance Practice, "AP" designation as "meaningless" and confusing. We believe the general public does not know what an "AP" means. Most HMOs and insurance companies will not recognize an "AP", being as unaware of its meaning as the general public.

Ohio has created a Licensed Professional Clinical Counselor (LPCC) designation to denote further education and skills required, a move copied by numerous states across the country. HMOs and insurance companies understand the education, skills and professional expectations of an LPCC. We as the board of the WVLPCA, believe that an LPCC designation would be far more useful to assuring public recognition and protection than would be the creation of an Advance Practice designation. We request that this rule be sent back to WVBEC for further exploration and discussion with those who will be most effected by its implementation and that a more effective alternative be devised.

Handout for 11/5/97 Meeting



STATE OF WEST VIRGINIA
BOARD OF EXAMINERS OF PSYCHOLOGISTS

October 27, 1997

Jeffrey Harlow, Ph.D.
President
WV Board of Examiners
of Psychologists

Dear Dr. Harlow,

The following are the facts and figures which you requested regarding the general status, and in particular, the financial status of the Board.

I. As you are aware, the purpose of the Board that "... it is in the public interest persons should not engage in the practice of psychology in this State without the requisite experience and training and without adequate regulation and control..." (WV Code 30-21-1).

The requested fee increases are intended to improve the regulation and control of Psychology. The fee increase include the following:

1. Monies to establish a professional office setting and staff. The current part-time setup in a residence is no longer functional. The demands of psychologists, the consumer, and business have grown enormously in the past five years and full time services are needed.

2. The public would be served by establishing an "800" number for free telephone access to the Board. Applicants for licensure would be able to freely access the body which regulates their proposed professional career.

3. A computer upgrade would enable the Board to go online and provide forms and information in the computer age. The benefits of online services are obvious in psychology as in any business and service profession.

4. The monies would be used to improve the forms and material utilized by the Board. Several forms have been re-copied so many times that the are quite poor in quality.

All of the above are service improvements to the consuming public and the providers of psychology. Improvements which will directly and immediately lift the level of service to the heights demanded by the consumers and providers.

Jeffrey Harlow, Ph.D.
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II. The current monthly budget is attached with expenditures to date. The anticipated expenditures for the remaining months is also attached.

The data show that the Board would be able to continue "status quo". However, no monies are available for improvements or emergencies, i.e. ethic hearings or equipment breakdowns.

The new fees are proposed to be borne by current licensees (renewals) and candidates for the oral examination (oral examination fee). This makes sense because those groups require the burden of the attention of the Board, and in the case of the oral examination candidates, they are the reason the Board is generally meeting.

Candidates for licensure who are least likely to be able to afford fees, new graduates or new candidates for licensure, are NOT assessed any increases.

III. In the process of initiating the fee increase through the Legislature, the Board sent every licensees (685) and every candidate for licensure (235) a card noting the proposed increases and informing them of the date and time of the public hearing on the matter.

The Board received 1 (one) written comment and NO ONE showed at the public hearing !!!

IV. The West Virginia Board is not a small Board. According to the Association of State and Provincial Psychology Boards (ASPPB), West Virginia is a moderate size Board.

The surrounding states have the following makeup:

<u>State</u>	<u># Staff</u>	<u># of licensees</u>	<u>Renewal period/Cost</u>	<u>Increase ?</u>
OH	7	3888	2 yr./\$200.00	yes
KY	Dept.	1050	2 yr./\$200.00	yes
PA	Dept.	8000	2 yr./\$150.00	yes
VA	4	2085	2 yr./\$125.00	yes

As you can see, proportionally West Virginia is quite similar to other states in our region. We are also not alone in proposing fee increases, every surrounding state is moving to increase fees. Our concern is that we have a smaller number of licensees to burden the cost.

Jeffrey Harlow, Ph.D.
page-3-

V. During the past year we have the following:

<u># of Standard Licensees</u>	<u># of orals</u>
520 (238 renewed in 1997)	32

The above brought in:

Renewals:	\$23,800.00
Orals:	\$ 4,000.00
Total:	\$27,800.00

With the new fees and assuming that the numbers stay constant:

1998 Renewals (282):	\$70,500.00
1998 Orals (32):	\$ 8,000.00
Total:	\$78,500.00

An increase in revenues of: \$50,700.00 over 1997.

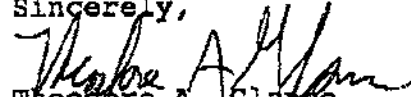
The monies would be allocated in this manner:

State payroll Full time secretary with benefits:	\$27,500.00	
Computer upgrade:.....	\$ 3,500.00	
Online and informational services:.....	\$ 5,000.00	
800 number:.....		\$12,000.00
Total:.....	\$48,000.00	

With a few dollars, \$2,700.00 to spare for unanticipated costs.

In summary, as you can see, the Board request is modest and justified. The fees will be earmarked for specific and needed services. The Board can exist on the current monies but cannot make the transition to the era which psychology, health care and consumer protection have progressed.

Sincerely,


Theodore A. Glance
Executive Director

attachments: financial reports and projections

Fiscal Report for September, 1997

STARTING BALANCE AS OF 07-01-97.....	\$ 14,133.08
FY 1998 Deposit # 1	1,945.00
Deposit # 2	2,275.00
Deposit # 3 (9-15-97 Corrected)....	14,917.00
Total Deposits.....	19,037.00
Plus Starting Balance.....	14,133.08
Current Assets.....	33,270.08

REVIEW OF PAID EXPENSES FOR FISCAL, 1998 to Date

Linda Kraus, Public Hearing transcription..	\$ 100.00
Board Travel Per Diem	975.00
Board Travel	372.00
Glance 1997 Travel 2 @ 350.00; 4 @ 75.00....	925.00
Executive Director, June, 1997.....	2,750.00
Executive Director, July, 1997.....	2,065.00
Postmaster.....	500.00
EPPP Spring, 1997.....	7,015.00
Telephone.....	97.58
State Auditor Grand Total.....	\$ 14,799.58

SUMMARY

Total Income.....	\$ 33,270.08
Total Expenses.....	14,799.58
Audited Current Balance.....	\$ 18,470.50

Bills being Processed/Needs To Be Paid

Executive Director, August, 1997.....	2,750.00
Executive Director, September, 1997.....	2,750.00
Telephone.....	1,619.00
Total.....	\$ 7,119.00

Audited Current Balance.....	\$ 18,470.50
Minus Outstanding Expenses.....	7,119.00
Unaudited Current Balance.....	\$ 11,351.00

THE NEXT NINE MONTHS FOR BOARD FINANCES

Income

Balance Brought Forward.....	\$	11,351.08
Supervision Fee renewals: 171 @ \$ 50.00..	\$	8,550.00
January 01, 1998 renewals: 31 @ \$100.00.		3,100.00
April 01, 1998 renewals: 65 @ \$100.00.		6,500.00
July 01, 1998 renewals: 43 @ \$100.00.		4,300.00
July 01, 1998 school renew 95 @ \$ 50.00.		4,800.00
Applications: 25 @ \$125.00.		3,125.00
Orals: 30 @ \$125.00.		3,750.00
EPPP Spring, 1998 40 @ \$290.00.		11,600.00
Total.....	\$	45,825.00

Expenses

Board Travel.....	\$	2,000.00
Executive Director 9 months.....		24,750.00
Postage.....		1,000.00
Printing.....		1,000.00
Insurance.....		1,000.00
Telephone.....		500.00
Copies.....		500.00
EPPP Fall, 1997: 24 @ \$250.00.		6,000.00
EPPP Spring, 1998: 40 @ \$250.00.		10,000.00
1998 ASPPB Membership Dues.....		2,036.00
Total.....	\$	48,786.00

Summary

Balance Brought Forward.....	\$	11,351.08
Plus anticipated income.....		45,725.00
Total.....		57,076.08
Minus anticipated expenses.....		48,786.00
Anticipated Balance on July 01, 1998....	\$	8,290.08

*Handout 11/5/97**copy for
each board
member*TERESA S. PAINE, PH. D.
Licensed Professional CounselorRoom 304
RCB
129 Main St.
Beckley, WV 25801
(304) 353-0791324 North St.
Bluefield, WV 24701
(304) 327-8382Bill Mullett, Ph. D.
WVBEA
100 Angus E. Peyton Dr.
South Charleston, WV
25303

July 27, 1997

Dear Dr. Mullett,

I am a board member and president-elect of WVLPAC. I heard about the proposed legislative rules changes at the WVLPAC board meeting last week-end. I was able to obtain a copy of these proposals 3 days ago. I have some concerns about these rules changes. I realize that you are making an effort to increase the standards for clinicians providing psychotherapy in West Virginia and I believe this to be an important goal. However, I don't believe that having an additional level of Advanced Practiced is the best way to achieve this goal.

I believe that one problem that exists in West Virginia is that the counseling profession is not a well recognized discipline. I have a private practice both in Bluefield and Beckley, West Virginia. I have found that many potential referral sources such as physicians and attorneys do not have a clear idea of who counselors are and what we do. This is also true of the public, and has been true of third party payers. Those who do know we exist often believe that we are not up to par with licensed psychologists and social workers. I think that having an additional level of LPC suggests that the Licensed Professional Counselor designation is not adequate, a message we would be ill-advised to convey. I also feel that this additional level would simply add to the confusion which already exists. We need to have a clear-cut, straight-forward licensing process which raises the standards of licensing for LPCs without adding another level of licensing. I am currently licensed in Virginia as well as West Virginia. In Virginia licensing of LPCs is quite stringent. Because of this LPCs in Virginia are widely recognized as excellent providers of clinical services, and this has enhanced the ability of LPCs to obtain jobs on par with both psychologists and social workers as well as allowing them to have an excellent negotiating position with third party entities. The public is also well aware of LPCs as high caliber providers of mental health services.

Another problem that LPCs face in West Virginia is that we do not have a clearly spelled out ability to assess, diagnose and treat clients with psychiatric diagnoses. As an independent provider of mental health services I feel that this is an extremely important issue which is not spelled out in the law. I believe that any changes in the law must address this critically important issue.

I believe that the rules changes as currently written provide difficulties which are particularly problematic for clinicians who have been in practice for a long period of time. I will use myself as an example. I obtained my Masters degree from WVU in counseling in 1978. I began my professional career as a counselor 19 years ago. I completed my doctorate in Marriage and Family Counseling in 1984. Each of these degrees was obtained in fully accredited programs; however, many of the courses which you have listed as requirements for advanced practice, such as clinical psychopathology or supervision were simply not available, much less required at the time I obtained either of these degrees.

As the field has evolved these courses have become an important part of the body of knowledge with which a clinician must be familiar. Those of us who have been in practice for many years have had to learn these things on the job. I do not believe that I need to take classes in these areas to be considered an "advanced practitioner." I believe that it would be a complete waste of my time and money for me to have to take 4 or 5 classes in areas in which I am already competent. Another way in which these changes penalize the clinician who has been in practice for a long period of time is that you require the NBCC exam to have been taken within the past 5 years. I took and passed this exam in 1986. Since then I have been required to take 100 hours of continuing education credits every 5 years. I have far surpassed this requirement ever since I became certified. NBCC considers me to be qualified enough to be certified without ever retaking the exam. Why doesn't the WVBECC?

I could not support the current rules proposals as they stand. In fact, if this were presented to the legislature I would do everything possible to see that it was defeated. I think that many other counselors would do the same. I believe that as LPCs we need to present a united front to the state legislature when issues concerning us come up. I suggest that the WVBECC form a study group composed of representatives of each branch of the WVCA to put together a law which all counselors in the state could support.

I do appreciate your efforts and urge you to consider these suggestions.

Sincerely,

Teresa S. Paine Ph.D.

Teresa S. Paine, Ph. D.

West Virginia Licensed Professional Counselors Association

Cindy Collins, M.S., L.P.C., N.C.C.
President, 1997-98
1090 Brookings Drive
Martinsburg, WV 26105

Phone (Home) 304-296-2029
FAX 304-296-4029
e-mail: ccoll14944@aol.com

July 27, 1997
Bill Mullett
attn.: JeanAnn Brewer
WVBEC
100 Angus E. Peyton Drive.
South Charleston, WV 25303

re: Proposed licensing changes for LPC's

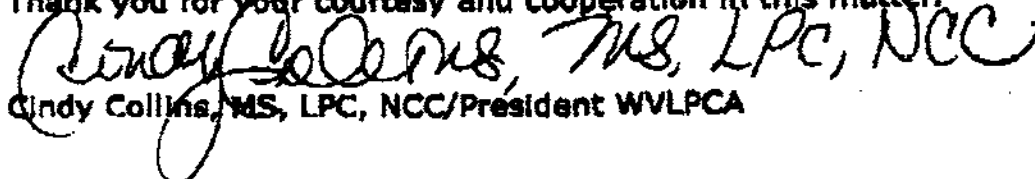
Dear Bill,

Please allow me to formally introduce myself. I'm Cindy Collins, M.S., L.P.C., N.C.C., and current President of WVLPACA. As the current president, I have been informed of the proposed changes to WV law regarding LPC's. I first saw a draft 8 days ago when Rich Goldman gave a copy to me (through Priscilla Leavitt) at our annual WVLPACA Board retreat. I must admit, the shortness of time to review such an important document is a bit stressful, but I wish to share the feedback that I have received.

Our WVLPACA Board's primary problem is the EXTREME lack of time for us to review and compile a list of specific problems we believe need to be addressed. Among the difficulties that I've been told from our WVLPACA Board members is a problem with a lack of clarity in the way certain sections are worded. Another problem is that several of our Board members are 100% opposed to any part of this legislation the way it is written and have vowed to fight against this proposal. As you can tell, there is a great deal of range even among our own Board members. I firmly believe that more time for review and discussion of the proposals is *essential*. I believe that if we, as LPC's, can't even agree to support this proposal, how will it fare in legislation!

Please give me notice of open discussion times with WVBEC so that we can voice our concerns and pose any questions. I know many of our WVLPACA Board members will attend such an open forum, as will I.

Thank you for your courtesy and cooperation in this matter.


Cindy Collins, MS, LPC, NCC/President WVLPACA

ONE DOGWOOD LANE ST. GEORGE, WV 26290
(304) 478-4842 FAX: 478-4906 DRGOLDMAN@AOL.COM

July 28, 1997

Dr. William E. Mullett, Chair
WV Board of Examiners in Counseling
100 Angus E. Peyton Drive
South Charleston, WV 25303-1600

RE: Title 27, Series 1, Licensing Rule

Dear Dr. Mullett,

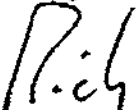
I am writing on behalf of the West Virginia Licensed Professional Counselors Association (WVLPCA) in response to the invitation for comments on the Title 27, Series 1 proposed legislative rule changes for Licensing Rules.

WVLPCA stands in general support of the proposed changes in the Licensing Rules as currently understood. But the limited time available for study and discussion of the proposed changes, especially about those regarding supervision, requires us to ask to reserve the right to further comment at a later time in the process.

Again, as in our preference about Advanced Practice certification, we would perhaps lend greater support to adopting a national standard regarding certification of supervisors, rather than creating our own unique wheel. As we understand it, the NBCC is working on those standards needed to certify supervisors at this time. We have not had the time to gather the information necessary to formulate a final opinion for ourselves.

WVLPCA appreciates the efforts made by the WVBEC in protecting the public and being responsive to the profession.

Sincerely,



Richard M. Goldman, DDS, MA, LPC, NCC.
Chairman, Government Relations Committee

ONE DOGWOOD LANE ST. GEORGE, WV 26190
(304) 478-4842 FAX: 478-4906 DRGOLDMAN@AOL.COM

July 23, 1997

Dr. William E. Mullett, Chair
WV Board of Examiners in Counseling
100 Angus E. Peyton Drive
South Charleston, WV 25303-1600

Dear Dr. Mullett,

I am writing on behalf of the West Virginia Licensed Professional Counselors Association (WVLPAC) in response to the invitation for comments on the Title 27, Series 2 proposed legislative rule changes for Advanced Practice. The WVLPAC Board of Directors appreciates the WV Board of Examiners in Counseling for its efforts in advancing the standards of the profession and feels that the WVBECC serves the public and the profession well.

The WVLPAC Board of Directors has reviewed the proposal and expressed numerous concerns about it. Some of those concerns are as follows:

27.2.1 General

1.1 The designation of Licensed Professional Counselor *Advanced Practice*. There is resistance to this terminology as not being meaningful in counseling, clinical, and third-party circles, and that it may perhaps add to the public's confusion. It is felt that Licensed Professional *Clinical Counselor* is much more widely accepted and understood among both professionals and the public.

27.1.2 (sic. 27.2.2) Definitions

2.5 "completion of prescribed courses". There is great concern that those highly qualified veteran clinicians/practitioners, perhaps holding a doctoral degree in counseling and who have taken their degree training years ago - before these specific courses were offered - would have to go back to "school" despite clinically acquired knowledge in these areas that may exceed that of the instructors. We believe that further discussion and clarification on this issue is needed.

2.6 "*Counseling Experience*". We strongly support this definition.

27.1.3 (sic. 27.2.3) Classification of Applicants

3.2 See above 27.1.2.5 "completion of prescribed courses".

27-1-4 (sic. 27-2-4) Qualifications of Applicants

1.4 Education: Same concerns as above in "completion of prescribed courses".

4.1.3 Perhaps could include *psychological disorders and disability determination*.

4.1.4 Perhaps could include *trauma* at end.

There is also substantial support for linking our licensure and credentialing requirements to national (NBCC) standards, rather than creating a wheel of our own. We believe that counselors would prefer to move toward a national uniformity of standards, rather than away from them, so as to facilitate a recognition of equity and reciprocity. Ideally, "*A Licensed Professional Clinical Counselor is a Licensed Professional Clinical Counselor*", no matter where you are, as is the case with *Clinical Psychologists*.

The WVLPAC Board of Directors would like to support the Board of Examiners in the establishment of this Proposed Legislative Rule, but feels at this time that much discussion, clarification, and modification is required and would welcome a forum in which to do so. Please feel free to contact me at any time regarding this matter.

Sincerely,

Richard M. Goldman, DDS, MA, LPC, NCC.
Chairman, Government Relations Committee

CINDY

~~Collins~~ Collins

C call 4444 @

304-296-6029

From: Bill Pearl, MHC, LLC

304-242-4339

Following are problems, which I have in the

Amended Licensing Rule:

1) The proposed Series 2 Advanced Practice grants another "sticker" Advanced Practice

means nothing to the public & probably less to

insurance companies & managed care companies. Why

not use "Licensed Professional Clinical Counselors?"

Ohio does this & our State's own Social Worker

Board does this as well (LICSW)

2) Ohio "grandfathered" MH counselors in

3 or more supervised years in in no problem.

If a licensed Prof. Counselor working in the clinical

area has not performed ALL the tasks

purportedly earned by the "Education" requirements, their Supervisors have not been doing their jobs

3. The education requirements say ~~two~~ ^{five} things very clearly:

- A. "We're not good enough" to perform our clinical jobs. now
- B. The public will only be "safe" if "professionally endorsed" counselors.
- C. Insurance & Managed Care Companies; "We're not qualified for your reimbursement now, but we will be some day."
- D. This is a great manpower for our state's Graduate Programs, who apparently have not been properly preparing their graduates to work in the clinical practice.
- E. Master's level Social Workers received a clinical endorsement by taking a test which they could fail, yet still qualify for the endorsement (clinical) by graduating from an accredited MSW program and having 2 yrs experience. MSW programs have prepared their graduates for clinical counseling. Are those programs better than Counseling & Rehabilitation programs?

F. The Education requirement clearly states that the Advanced Practice endorsements are each met by a ^{minimum} 3 hr graduate course from an accredited program.

While my contemporaries across the river in Ohio received a Licensed Professional Clinical Counselor endorsement through grandfathering, my fate is to spend the next 4 yrs taking courses which, after 16 yrs of therapy given in clinical settings, I could teach. In fact, I supervise an LPCC from Ohio.

More than anything, this amendment tells me to hold onto my LCSW license. It also tells me to blame myself for not being on top of this by attending Executive Board meetings. Now, I won't have the time anyway, as I'll be using my free time to lobby legislators and the Governor to defeat this bill, which says loudly and clearly: "LPL's."

working in clinical settings are not "good enough." We need more training and someone looking over our shoulders (called Experiences in the proposal) to be good enough to do a job. I've been doing for 16 yrs.

William J. Hunt, MRC, LPL, LESW
CLINICAL SUPERVISOR, Therapist
HEALTHWAYS, INC
LPL No. WV 179
LESW No WV CP00455139

Dianne Byrer, Secretary
West Virginia Licensed Professional Counselor Association
H.C. 68 Box 14
West Union, West Virginia 26456
(304) 873 1253

July 30, 1997

WV Board of Examiners In Counseling
100 Angus Peyton Drive
So. Charleston, WV 25303-1600

Board Members,

The WVLPCA has several concerns regarding the Advanced Practice Proposal.

Summary Use lower case in the statement: to earn endorsements for the professional counselor licensure

27.2.1 General

1.1 Scope Concern there are no CEUs required for the Advanced Practice. The WVLPCA want to make sure there are at least 20-CEU hours.

27.1.3 Classification of Applicants

3.2 will graduate credits be used or CEUs or both? This does not seem to be clear.

4.1.3. **Under diagnosis of mental and emotional disorders:**
addition of Psychological.

Under Studies of Behaviors:
addition of disability determination.

4.1.4 **Under Intervention strategies:**
addition of trauma

Thank You

Dianne Byrer

Handout 11/5/97

Fee Comparison of WV and Surrounding States

State	Application fee	2 year renewal fee
<u>WV</u>	<u>\$ 50.00</u>	<u>\$ 25.00</u>
<u>VA</u>	<u>\$100.00</u>	<u>\$ 75.00</u>
<u>IL</u>	<u>\$150.00/\$200.00</u>	<u>\$120.00</u>
<u>MD</u>	<u>\$ 75.00</u>	<u>\$150.00</u>
<u>OH</u>	<u>\$ 60.00/\$ 75.00</u>	<u>\$ 60.00</u>

Handout 11/5/97

Monies needed for Board Meetings from November 1997 through July 1999.

1997 -2 meetings

1998 -6 meetings

1999 -4 meetings

12 meetings

7 members

\$50.00 per diem $7 \times 50.00 = 350.00$

\$85.00 for a one day meeting $7 \times 85.00 = 595.00$

Based on 12 meetings (with 2 meetings running 2 days = 14)

Per diem \$4900.00 14×350.00

Travel \$85.00 \$8330.00 14×595.00

2day travel \$ 1400.00 $14 \times \$100.00$

\$14630.00

Travel for Program Specialist Average \$80.00 x 12 = \$960.00

\$14630.00

\$ 960.00

\$15590.00 needed for Board meetings

Handout 11/5/97

West Virginia Board of Examiners in Counseling

Proposed Estimated renewal fee of \$75.00 bi-annually

Bi-annual renewal fees	\$59,325.00
Other income received (24 months)	\$31,104.00
Total income 24 months	<u>\$90,429.00</u>

Minimum Operating Expenses for two years

Program Specialist	25 hr x 14.00 x 24 months	\$36,400.00
Phone		\$ 5,000.00
Risk Mgt.		\$ 4,000.00
Board Meetings	See attached sheet	\$ 15990.00
Office Supplies		\$ 2,000.00
Postage		\$ 5,000.00
		<u>\$68,390.00</u>

Funds needed for two year operation	\$68,390.00
All income received in a two year period	\$90,429.00
Surplus	<u>\$22,039.00</u>

Surplus funds can be used to upgrade office equipment and computer hardware and software, salary for extra help during the renewal cycle, booths at conventions, better communicating with the LPC's and the public, etc.

Handout 11-5-97

West Virginia Board of Examiners in Counseling

Based on Current renewal fee of \$25.00 bi-annually

Bi-annual renewal fees collected for period 97-99	\$19,775.00
Other income collected for period 97-99	\$31,104.00
Total income received for period 97-99	<u>\$50,879.00</u>

Minimum operating expenses needed for two years

Program Specialist	25 hr x 14.00 x 24 months	\$36,400.00
Phone		\$ 5,000.00
Risk Mgt.		\$ 4,000.00
Board Meetings	See attached sheet	\$15,990.00
Office Supplies		\$ 2,000.00
Postage		\$ 5,000.00
		<u>\$68,390.00</u>

Funds needed for two year operation	\$68,390.00
All income received in a two year period	\$50,879.00
Deficient	<u>\$17,511.00</u>

The expenses listed above are cut to the bare minimum. This does not include extra mailings to our counselors, public service and convention booths, legal expenses for hearings, computer upgrades, etc.

Handout 11/5/97

STATE OF WEST VIRGINIA
PRELIMINARY PERFORMANCE
REVIEW

OF THE

BOARD OF EXAMINERS IN
COUNSELING

INEFFECTIVE AND INAPPROPRIATE
OPERATING PRACTICES

OFFICE OF LEGISLATIVE AUDITOR
PERFORMANCE EVALUATION AND RESEARCH DIVISION
CAPITOL BUILDING
CHARLESTON, WEST VIRGINIA

ISSUE AREA 1: The BOEC's staffing arrangement is ineffective in carrying out the mission and mandates of the board.

The West Virginia Board of Examiners in Counseling is responsible for regulating and licensing the counseling profession in West Virginia. The Board's mandates are within WVC §30-31. The state also has general provisions for all professional licensing boards in WVC §30-1 with which the BOEC must comply. In addition, the BOEC must follow general provisions for appropriations, expenditures and deductions for state entities [WVC §12-3].

Currently, the Board's responsibilities are carried out by Board members and a volunteer Board administrator. The BOEC does not have permanent staff. The amount of time required of members to carry out Board responsibilities is significant. Moreover, all but one Board member and the Board administrator hold full-time employment, which requires Board work to be conducted during off-work hours or on weekends. Although the Performance Evaluation and Research Division (PERD) commends Board members for their service to the BOEC, the evidence suggests that there is more work than Board members and a volunteer board administrator are able to manage and be effective.

In order for the Board to effectively regulate the profession of counseling, it must carry out the following functions:

- Be accessible to the public and counselors;
- Maintain a thorough licensing review process; and,
- Keep accurate records of:
 - budgetary matters,
 - Board proceedings,
 - annual reports,
 - licensees, and,
 - complaints

Some of the Board's work is not being done in a timely manner, and some work is not being done at all. With Board work divided among members and the administrator, there is a lack of centralization of important information. Therefore, PERD recommends that the Board hire a part-time or full-time employee who could centralize Board information, assist members, and carry out Board duties which are not currently being completed. The Board has accumulated a surplus of approximately \$27,000 which could be used to hire permanent staff. Some current expenditures would also be reduced with permanent staff.

In addition, PERD recommends that the BOEC find a state board with which to share office space or merge administrative functions. This would give the Board the accessibility it currently does not have. The BOEC must share either office space or staff since the current fee structure may not adequately meet the cost of staff and office space.

The information which follows highlights in detail areas of ineffectiveness that could be improved with permanent staff. Emphasized first are those areas weakening the BOEC's ability to meet its mission and second are those mandates which have not been completed by the BOEC.

Areas Weakening the BOEC's Ability to Meet its Mission

Lack of Accessibility

State Legislators have received various complaints from citizens claiming that they have difficulty getting in contact with the Board. There are three components which create the lack of accessibility. These components include no full-time or part-time staff, no public office, and a potential lack of consumer awareness.

No Permanent Staff

Four Board members and a volunteer Board administrator take care of a majority of the operations, with the members reimbursed for their work.¹ The Board contends that because the Board's office is located in the home of the administrator and the Chairman keeps records considered archival, the arrangement "does not lend itself to part-time or full-time staff." Also, the Board asserts that the present fee schedule is not sufficient to budget for a business office with permanent staff.²

However, as of May 1995, the Board has accumulated over several fiscal years a budget surplus of approximately \$27,000. In addition, during fiscal year 1994, the Board spent \$1,143.20 to reimburse a board member for days (per diem) of work and travel not related to attending a board meeting. These costs would be reduced with permanent staff who would perform some of these tasks.

No Office

Another factor to the lack of accessibility is that there is no established public office from which the Board operates. The Board considers the home of the administrator as the Board's

¹When first created, the Board's secretary (the current volunteer administrator) used staff from his private business for general operations. As fees were collected, the Board contracted temporary staff to do this work. According to the BOEC, expenses for handling business such as hearings for complaints increased and took precedence over contractual staff work. Currently, the board secretary and a volunteer administrator are responsible for carrying out the general operations of the Board.

²The Board explained that they have requested the Legislature to change the licensing and renewal fees, but such legislation has not passed.

office, since he is responsible for much of the day-to-day operations of the Board. Because there is no office, the public has little or no physical access to the Board.

The Board explained that the Legislature recommended they look into sharing expenses with another professional licensing board. They contended that they had made an effort, but that these efforts had "proved unsuccessful." The Board's minutes reflect limited discussions with other licensing boards and an interest by at least one licensing board. Had the BOEC been more diligent in collaboration efforts, office space and resources might have been possible, thus, allowing the Board to operate more effectively. It is important that the Board share office space and/or administrative functions since the current fee structure may not be able to provide an individual office and part-time or full-time staff.

Delayed Response to Public Inquiries

The Board uses an answering service to answer telephone calls instead of hiring a staff person. Requests are relayed from the answering service to the Board. These calls are returned by either the Board administrator or the Board secretary. The PERD was told that the Board receives 20 to 40 calls per day. Calls are not returned promptly since the administrator and Board secretary do not return the calls until the evening or on weekends. It is obviously difficult for members to respond to these many requests during their personal time. A staff person, however, would be able to respond immediately to questions or requests for information.

Consumer Awareness

A lack of consumer awareness also contributes to the lack of accessibility to the BOEC. Even though the BOEC has an answering service, there is no listing under its name in any West Virginia telephone directory or with the telephone company. Instead, the number used by the Board is listed under *Recovery and Rehabilitation Services*, a business formerly owned by the Board secretary.³ Also, the Board is not listed in the *West Virginia Blue Book*.⁴

The PERD was unable to find any marketing techniques used by the Board to educate the public about ethical and legal standards to which counselors must adhere, about consumer's rights

³The Board's secretary pays for the answering service known as *Sincerely Yours Services*, based in Charleston. She indicated that she and Mr. Fritz Maine, the Board administrator, had originally hired the answering service for a private business, known as *Recovery and Rehabilitation Services*, in which they were partners. The business still exists but has not provided services since 1990. Because the phone number was also being used for Board business, the secretary kept the service and had the service answer for the Board of Examiners in Counseling. The Board's secretary still uses the service for her personal business as a consultant. She pays the base rate of the service (\$38 per month) and the Board pays \$53 a month for the calls received. Currently, the Board owes her \$600 for reimbursement for the use of the answering service.

⁴Karl C. Lilly, Assistant Clerk of the Senate and Associate Editor of the *West Virginia Blue Book*, explained to PERD that some boards may be unintentionally overlooked.

concerning reporting abuse, nor about what disciplinary actions can be taken by the Board. The BOEC explained that public access to the Board is through requests to Legislative or Government offices. The Board also contends that the public has access to the Board through the display of the Statement of Professional Disclosure for Licensed Professional Counselors at the counselor's business, which only provides the Board's address. However, even though counselors are required to display this statement, there is no guarantee counselors are meeting this requirement or that consumers are able to recognize the statements.

The Board has made several attempts to create informational materials including a newsletter similar to that of the WV Board of Examiners in Nursing. However, the newsletter was never created. The Board did hire the current Board administrator to create a brochure and the Board submits articles to the West Virginia Counseling Association's newsletter. However, the newsletter and brochure are targeted toward members of the counseling profession rather than members of the public.

It is interesting to note that the only oversight the Board has regarding a licensee and his/her adherence to the code of ethics or other legislative rules outlining unacceptable behavior is through a formal complaint by the public or another counselor. This process is conceivably hindered due to a lack of visibility and accessibility to the BOEC.

License Processing

There are strict guidelines established through statute and legislative rules which specify the conditions under which an applicant may be licensed. These include the appropriate training, education, and experience; meeting the requirement of a passing score on a National Counseling Examination approved by the Board; and proof that the individual is of good character through three personal and three professional reference letters. For the renewal of a license, a person must provide documentation of the required forty hours of professional counseling continuing education. The Board averages around 52 new applicants each year and must renew licenses for approximately 800 licensees every two years.

The Board has two members who review new applications to determine eligibility. They are designated as the credentials committee and make recommendations on licensure. Permanent staff could assist these two members in this process.

In addition, minutes from 1991 indicate that the renewal process was extended 60 days because the Board could not process the licenses in time to meet the license expiration date. This has not reoccurred since then. Nevertheless, this occurrence illustrates that reviewing approximately 800 licenses every two years is time consuming, and can be improved through employing staff.

Handout 11/5/97



**WEST VIRGINIA BOARD OF
OCCUPATIONAL THERAPY**
119 South Price St.
Kingwood, West Virginia 26537
(304) 329-0480

West Virginia Board of Occupational Therapy List of Fees

Initial License Fee/OTR	\$190.00	
Renewal Fee/OTR	\$60.00	<i>↑ to 75</i>
Initial License Fee/Cota	\$140.00	
Renewal Fee/COTA	\$50.00	<i>↑ to 60</i>
Limited Permit/OT	\$140.00	
Limited Permit/OTA	\$90.00	
Late Renewal Fee	\$50.00	
Application Packet Fee	\$15.00	<i>↑ to 20</i>
Verification of Licensure	\$20.00	
Replacement Certificate/Wall Cards	\$15.00	<i>not in rules</i>
Name & Address List Request/on Paper	\$80.00	
Name & Address List Request/on Labels	\$90.00	
Sample Application Packet	\$15.00	

ALL FEES MUST BE PAID BY CHECK OR MONEY ORDER MADE PAYABLE TO THE WEST VIRGINIA BOARD OF OCCUPATIONAL THERAPY. NO FOREIGN CHECKS ACCEPTED. RETURNED CHECK FEE IS \$20.

NOVEMBER

Tuesday, November 18, 1997

5:00 p.m. to 7:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman (Absent)
Boley
Bowman
Buckalew
Manaughtan

Hunt, Chairman
Linch, Vice Chairman
Compton
Faircloth (Absent)
Jenkins (Absent)
Riggs

The meeting was called to order by Mr. Ross, Co-Chairman.

Joe Altizer, Associate Counsel reviewed his abstract on the rule proposed by the **Office of Miner Training, Education and Certification - *Safety Training Program for Prospective Surface Coal Miners in West Virginia (48CSR3)***, and stated that the office has agreed to technical modifications. Ron Harris, Director of the Miner's Office of Health and Training, responded to questions from the Committee.

Mr. Riggs moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the **Division of Environmental Protection - Office of Air Quality - *Acid Rain Provisions and Permits (45CSR33)***. John Johnston, Chief of the Office of Air Quality, responded to questions from the Committee.

Mr. Hunt moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Division of Environmental Protection - Office of Air Quality - *To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities (45CSR25)***, and stated that the Division has agreed to technical modifications.

Mr. Hunt moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the **Division of Environmental Protection - Office of Air Quality - *To Prevent and Control Emissions From Municipal Solid Waste***

Landfills (45CSR23), and stated that the Division has agreed to technical modifications. Mr. Johnston responded to questions from the Committee. Nelson Robinson, representing the West Virginia Municipal League, addressed the Committee and requested that the Committee lay over the proposed rule to allow him to discuss the proposed rule with the League.

Ms. Boley moved that the rule lie over until the December meeting. The motion was adopted.

Mr. Altizer reviewed his abstract of the rule proposed by the **Division of Environmental Protection - Office of Air Quality - Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR part 63 (45CSR34)**.

Mr. Hunt moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer explained the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - Abandoned Wells Rules (35CSR6)**, and stated that the Division has agreed to technical modifications. He and Mike Lewis, representing the Office of Oil & Gas, responded to questions from the Committee.

Mr. Hunt moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - Coalbed Methane Wells Rules (35CSR3)**, and stated that the Division has agreed to technical modifications.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - Miscellaneous Water Pollution Control Rules (35CSR1)**, and stated that the Division has agreed to technical modifications.

Mr. Hunt moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - Oil & Gas Operations - Solid Waste Rule (35CSR2)**, and stated that the Division has agreed to technical modifications.

Ms. Boley moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - Oil & Gas Wells and Other Wells Rules (35CSR4)**, and stated that the Division has agreed to technical modifications.

Mr. Hunt moved that the proposed rule be moved the bottom of the agenda. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - *Dam Control (38CSR14)***.

Mr. Hunt moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer explained the rule proposed by the **Division of Environmental Protection - Office of Oil & Gas - *Designation of Future Use and Inactive Status for Oil & Gas Rule (35CSR5)***, and stated that the Division has agreed to technical modifications.

Mr. Hunt moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Division of Environmental Protection - Office of Waste Management - *Hazardous Waste Management (33CSR20)***.

Mr. Hunt moved that the proposed rule be approved. The motion was adopted.

Ms. Graham explained the rule proposed by the **Division of Labor - *Occupational Safety and Health Act (42CSR15)***, and stated that the Division has agreed to technical modifications. She and Andy Brown, Assistant to the Labor Commissioner, responded to questions from the Committee.

Mr. Lynch moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the **Division of Health - *Asbestos Abatement Licensing Rule (64CSR63)***, and stated that the Division has agreed to technical modifications. Randy Curtis, Director of the Radiation, Toxics and Indoor Air Division of Environmental Health Services; and Paul Gallagher, Chief of the Asbestos Compliance Program of the RTIA Division, responded to questions from the Committee.

Mr. Hunt moved that the proposed rule be approved as modified. The motion was adopted.

Kay Howard, Director of Regulatory Development for Division of Health, requested that the Committee ask that the Secretary of State approve the emergency rule filed by the **Division of Health - *Drinking Water Treatment Revolving Fund (64CSR49)***. She and Russell Rader, Director of Environmental Health Services, responded to questions from the Committee.

Mr. Hunt moved that staff be directed to draft a letter from the Committee to the Secretary of State requesting that the Secretary of State approve the proposed emergency rule. The motion was adopted.

Ms. Pauley explained the rule proposed by the **Insurance Commissioner - *Quality***

Assurance (114CSR53) and distributed copies of proposed modifications to the proposed rule. Donna Quesenberry, General Counsel for the Insurance Commission; Mr. Robinson, and Randy Cox, representing the HMO Association, responded to questions from the Committee.

Mr. Hunt moved that the rule lie over until the December meeting. The motion was adopted.

The meeting was adjourned.

Tuesday, November 18, 1997

5:00 - 7:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Senate Finance Room

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

✓ Ross, Chair
✓ Anderson, Vice Chair
✓ Bowman
✓ Macnaughtan
✓ Boley
✓ Buckalew

House

✓ Hunt, Chair
✓ Linch, Vice Chair
✓ Compton
Jenkins
Fajreloth
✓ Riggs

Ross
Boley
Buckelaw
MacNaughtan
Bowman

Hunt
Compton
Lincoln
Riggs

5-7

Miner Training

Ron Harris, Director responded to questions
Approve as mod
Riggs adapted

DEP - Acid Rain

Joe explained
John Johnston asked questions from the C
Approve rule
Hunt adapted

DEP - To Prevent & Control - Haz Waste

Joe explained
Approve as mod
Hunt adapted

DEP - Landfills

Joe explained
Johnston responded to questions
Robinson - wants to lay over so can talk to Mun. League
Lay over Dec
Boley adapted

DEP - Emission Stds

Joe explained
Approve
Hunt

~~Insurance Commission - Quality Assurance~~

DEP - Abroad Cells
Mike Lewis, Off Oil & Gas and questions.
Hunt Adopted

DEP - Cooked
App. as mod
Bailey

DEP - Misc
Approve as mod
Hunt adopted

DEP - OEG, SLD, Cook
Approve as mod
Bailey adopted

DEP - O.I.E Gas & other
Move to bottom of agenda
Hunt

DEP - Dam
Approve
~~Approve~~

DEP - Designation
Approve as mod
Hunt

DEP - Haz Waste
Approve
Hunt

Labor - Occupational
Andy Brown and questions from Q
Approve as mod
Hunt

Health - Hsbrths

Joe explained ~~enst~~ ~~questio~~

Randy Curtis responded to q from the C
" " " " " "
Paul Gallagher

Approve as mod

Hunt

Jay Howard - dist'd letter on Dr of Health - Drinking

Water rule filed for hearing & emerg rule;

Wants C support for the emerg rule.

Kass — responded to q's

Draft a letter to SAS to support the emerg

rule

Hunt
adapted

Ins Commissioner - Quality Assurance

Stik explained & explained proposed mod & amends

5:3

p 10

~~Assic~~ Counsel responded to q

Nelson Robinson responded to questions

Randy Cox, HMO Assn addressed the C

lay over till December

Hunt
adapted

NOVEMBER INTERIM SCHEDULE

**Legislative Interim Meetings
November 16, 17, and 18, 1997**

Tuesday, November 18, 1997

5:00 - 7:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair ✓
Anderson, Vice Chair
Bowman ✓
Macnaughtan ✓
Boley ✓
Buckalew ✓

Hunt, Chair ✓
Linch, Vice Chair ✓
Compton ✓
Jenkins
Faircloth
Riggs ✓

I certify that the attendance as noted above
is correct.

Audrey B. Ross
Staff Person

Audrey

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: November 18, 1997
 TIME: 5:00-7:00 p.m.

NAME Present Absent Yeas Nays

HOUSE

Kiss, Robert, Speaker	_____	_____	_____	_____
Hunt, Mark, Co-Chair	✓	_____	_____	_____
Linch, Larry, Vice-Chair	✓	_____	_____	_____
Compton, Mary Pearl	✓	_____	_____	_____
Faircloth, Larry V.	_____	_____	_____	_____
Jenkins, Evan	_____	_____	_____	_____
Riggs, Dale	✓	_____	_____	_____

SENATE

Tomblin, Earl Ray, President	_____	_____	_____	_____
Ross, Michael, Co-Chair	✓	_____	_____	_____
Anderson, Leonard, Vice-Chair	_____	_____	_____	_____
Boley, Donna	✓	_____	_____	_____
Bowman, Edwin	✓	_____	_____	_____
Buckalew, Jack	✓	_____	_____	_____
Macnaughtan, Don	✓	_____	_____	_____

TOTAL _____

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

5:00 - 7:00 p.m

Committee: Legislative Rule-Making Review Committee Date November 18, 1997
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
<i>Russ Rader</i>	<i>DHHR- OEHHS</i>		
<i>JOHN JOHNSON</i>	<i>CMAA</i>	<i>WV DEP OAG</i>	<i>1/2 X</i>
<i>Andy Bran</i>	<i>Char</i>	<i>WV DOL</i>	

Tuesday, November 18, 1997

10:00 a.m. to 12 Noon

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Boley
Bowman
Buckalew
Manaughtan

Hunt, Chairman
Linch, Vice Chairman
Compton
Faircloth
Jenkins
Riggs

The meeting was called to order by Mr. Ross, Co-Chairman.

The minutes of the November 5, 1997, meeting were approved.

Debra Graham, Committee Counsel, stated that the rule proposed by the **Board of Optometry - Expanded Prescriptive Authority (114CSR2)** had been laid over from the Committee's previous meeting. She explained the proposed rule and stated that the Board has agreed to technical modifications. She, Dr. Clifton Hyre, President of the Board; Dr. Jack E. Terry, representing the Board; Dr. B. J. Nybert, formerly with the Board; Dr. Stephen Perkins, Family Practitioner representing the West Virginia Board of Medicine; and Dr. Steven Powell, representing the State Medical Association, Academy of Ophthalmology, responded to questions from the Committee. Dr. Hyre told members of the Committee that the modifications to the proposed rule suggested by Counsel would include reference to a specific fee of \$200 for certification and re-certification.

Senator Billy Wayne Bailey addressed the Committee regarding the proposed rule and distributed information regarding the passage of the rule's authorizing statute.

Mr. Anderson moved that the proposed rule be approved as modified. The motion was adopted.

Joe Altizer, Associate Counsel, explained that the rule proposed by the **Soil Conservation Commission - Regulations (63CSR1)**, and approved as modified by the Committee at its September meeting, needs further modification to eliminate language regarding write-in candidacies. Glenn Dowdy, representing the Soil Conservation Commission, responded to questions from the Committee.

Mr. Anderson moved that the Committee reconsider its action whereby it approved the proposed rule as modified. The motion was adopted.

Mr. Anderson moved that Section 2.1.3.8 of the proposed rule be modified to delete language permitting write-in candidates. The motion was adopted.

Mr. Anderson moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the **Division of Natural Resources - Special Boating Rule for Jennings Randolph Lake**, was laid over from the Committee's last meeting because of an unresolved issue regarding the legal limit of intoxication for a person operating a boat on the lake.

Mr. Buckalew moved that the proposed rule be approved as modified. The motion was adopted.

Dr. William Mullett, Chairman of the West Virginia **Board of Examiners in Counseling**, informed the Committee that the Board intends to withdraw its proposed rule entitled *Advanced Practice (27CSR2)*.

Ms. Graham stated that the rule proposed by the **Board of Examiners in Counseling - Licensing Rule (27CSR1)**, had been laid over at the Committee's last meeting. She briefly reviewed the proposed rule and stated that the Board has agreed to technical modifications.

Mr. Linch moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the **Department of Motor Vehicles - Denial, Suspension, Revocation or Nonrenewal of Driving Privileges (91CSR5)**, had been laid over at the Committee's previous meeting to allow the Committee to review the specific language of several proposed modifications. Mike Adkins, Manager of Driver Improvement for the Division, reviewed the proposed modifications and responded to questions from the Committee.

Mr. Buckalew moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **Board of West Virginia Social Work Examiners - Qualifications for Licensure as a Social Worker (25CSR1)**, and stated that she had not been contacted by the Board regarding her technical modifications. Sam Hickman, a member of the Board, responded to questions from the Committee.

Mr. Linch moved that the proposed rule lie over until the December meeting to allow the Board to meet with Counsel regarding her technical modifications. The motion was adopted.

Ms. Pauley explained the rule proposed by the **Governor's Committee on Crime, Delinquency and Correction - Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards (149CSR2)** and stated that the agency has agreed to technical modifications. Donald "Mac" Davidson, representative of the Committee, responded to questions from the LRMRC.

Mr. Ross moved that the rule lie over until the December meeting and that the Committee staff be directed to invite a representative from the Sheriff's Association to comment on section 15 of the proposed rule regarding recertification requirements for persons who have been employed as a law enforcement officer after an absence of 24 months. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the **Department of Tax and Revenue - Tax Credit for New Value-Added Wood Manufacturing Operations (110CSR13M)**, and stated that the Department has agreed to technical modifications. She and Keith Larson, representing the Tax Division, responded to questions from the Committee.

Mr. Ross moved that Section 2.3 of the proposed rule defining the term "consumer-ready wood products" be modified to include split rail fences, posts and gates. The motion was adopted.

Mr. Linch moved that the proposed rule lie over until the December meeting. The motion was rejected.

Mr. Ross, having voted on the prevailing side, moved that the Committee reconsider its action whereby it rejected Mr. Linch's motion to lay the proposed rule over until the December meeting. The motion was adopted.

Upon reconsideration, Mr. Linch's motion was adopted.

The meeting was adjourned.

Tuesday, November 18, 1997

10:00 - 12:00 Noon

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Senate Finance Room

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

House

- ✓ Ross, Chair
- ✓ Anderson, Vice Chair
- ✓ Bowman
- ✓ Macnaughtan
- ✓ Boley
- ✓ Buckalew

- ✓ Hunt, Chair
- ✓ Lynch, Vice Chair
- ✓ Compton
- ✓ Jenkins
- ✓ Faircloth
- ✓ Riggs

Minutes 11/5/97 approved.

Bd. of Optometry - Expanded Prescriptive Authority
Dr. Clifton Higher addressed the C; Certification
& Recertification fee of \$200.00; responded to
questions.

Dr. Jack Thiery, Bd consultant responded to
questions from the C.

BT Nybert responded to q's

Dr Steven Perkins rep Bd of Medicine ans'd questions

Steve Powell - Ophthalmologists responded to questions

Sen. Bailey addressed the C

Approve as mod

Compton "No"

Anderson
& debated

Soil Conservation

Joe explained; drafted bill on write-in candidacy
wants to remove proposed.

Anderson motion to reconsider

Anderson Delete language permitting write-in votes.
adopted

DNR - Special Bowing
Buckelew Approve as mod
adopted

Counseling - Adv Pract
Agree to w/draw

Counseling - Licensing
Lynch Approve as mod
ad

DMV - Denial
mike
Buckelew Approve as mod
adopted

Social Work Examiners
Sam Hickman, Bd member responded to questions
Lynch Lay over til Dec
adopted

Gov's Comm - ~~Partners~~ Basic Training
Rita explained

Davidson, Govs C responded to q
Lay over til Dec; invite Sheriff's Assoc
Ross
adopted

Tax - Value Added

Counsel explained & responded to questions

Keith Larson - responded to questions

Modification - split rail, fences, posts & gates

Agency accept mod

Lay over til Dec - better def of what is covered

Reconsider Lynch mtg

Lynch's motion was

Ross
adopted

Lynch
rejected

Ross
adopted

Board of Optometry | (a)

DAG, Committee Counsel explained the rule proposed by the Board of Optometry of Expanded Prescriptive Authority (14CSR2) and responded to questions of

Senator Bailey

Dr. Clifton Hure - WV Board of Optometry

Mr. Jack E. Terry - WV Board of Optometry

Dr. B.J. Nybert - formerly of the Board

Dr. Steven Perkins - Family Practitioner

^{notice from Board of Optometry} Representing the Board of Med.

received late Friday before Bd meeting

Dr. Steve Powell - rep. State Medical Association - Academy of Ophthalmology

Senator Anderson moved that the rule be approved as modified.

~~Senator Anderson made motion that the rule be amended~~

~~Senator Anderson~~

by:

Audrey
Boss

② Soil Conservation - (Other Business-Item c)

Anderson motioned that we
reconsider this rule.

Anderson moved we accept mod to
delete line "write in votes are permissible"

Glenn Dowdy - Soil Conservation
responded to questions from r8.

Motion Anderson - ~~move~~ as approved
as modified

③ Dept. of Agriculture
Jennings Randolph Lake

Buckalew: moves the rule as
modified

④ Counseling Board of Examiners
Advanced Practice - withdrawal by agency

⑤ Counseling - Licensing Rule
Linch: move rule as modified M.A.

⑥ Division of Motor Vehicles

Steve Mike Adkins - Manager of Driver Improvement addressed the r/s and responded to questions from the r/s
Buckalew: approve rule as modified.

⑦ Social Work Examiners

Sam Hickman - representing Board of Social Work

Linch: lie rule over until the December 6.

⑧ Gov'n r/s on CD and C: (149 CSR²)

Base Trgn. Academy Annual s/s Service...

over until December

⑨ Tax and Revenue (110 CSR 13M)

Technical mods agreed to.

Keith Larson - Tax Division responded to questions from the r/s.

Rose wants ^{modified} rule fence, ^{split} posts and fences

~~Motion by Linch to lie over~~

Modification accepted.

Dec: Lunch

Moved P O rule be laid over until Dec.

6: - Motion

Ross wants to reconsider the motion
to move the rule / modified

Ross → P we lay over 9 Dec
6: - }

Ross moved to continue to 5:00pm



5-7 p.m.

Board of Miner's Training | (1)

● Ron Harris - Director of Miner's
● Office of Health & Training

DEP-OAQ - Acid Rain (45CSR33) | (2)

John Johnston - responded to questions
✱

Hunt moved to approve rule without mods. (no is)
Motion adopted.

DEP-OAQ Air Pollution from Haz. Waste | (3)
45CSR25

● Technical mods

● Hunt moved to approve rule as modified.

~~DEP-OAQ Emissions Standards - Haz Air Pollutants
Pursuant to 40 CFR Part 63~~

DEP-OAQ - Prevent & Control Emissions 45CSR23 | (4)

J. Johnston responded to questions from the
r/s.

Boley moves to lay over to December 6.
Motion approved

DEP-OAQ - (45 CSR 34)

Hunt moved rule be approved as is.

~~Insurance Commission~~
~~Quality Assurance~~

DEP-O^{il} Gas

Mike Lewis responded to questions from
the sub - (35CSR6)

Hunt moved rule approved as modified
(35CSR3)

Boley moved rule approved as modified
(35CSR1)

Hunt m " " " "
(35CSR2)

Boley " " " "
(35CSR4)

Moved to the bottom of agenda
(38CSR14)

Hunt moved to repeal the rule.

(35 CSR 5)

Hunt moved ^{rule} to tech mode.
Approved.

DEP- Office of Waste Management
33 CSR 20

No modifications

Hunt moved rule be approved. ✓

Division of Labor

(42 CSR 15)

Andy Brown - Assistant to Labor Commission
responded to questions from the sub.

Hunt move rule approved as modified

Division of Health

Asbestos Abatement
Technical modifications

Randy Curtis

Paul Gallagher

Hunt move rule as modified

P.E. Director of Radiation & Toxics and Indoor Air Div. of Env. Health Services

responded to ? from the sub.

Emergency rule ^{approval} request:

- Drinking Water Treatment
- Revolving Fund Rule

Key
Howard
Director

C. Russel Rader (??) spoke to rd. Responded to ?
Regulatory Dept. H&HR
Director of Env. Health Service

Hunt moves P we support Emergency rule
by drafting a letter to the S/St
Motion approved.

Insurance Commissioner.

Quality Assurance

Keith Huffman - General Counsel for
Insurance Comm.

2 pages of proposed

modifications were handed out to the rd.

Council explained the proposed modifications.

Donna Quisenberry from the Ins. Comm and

Nelson Robinson - WV Chiropractic Assoc.
responded to questions from the rd.

Randy Cox - repres. HMO Association

Hunt motioned that

lie over until December meeting

Senator Bowman adjourned.

NOVEMBER INTERIM SCHEDULE
Legislative Interim Meetings
November 16, 17, and 18, 1997

Tuesday, November 18, 1997

10:00 - 12:00 Noon

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

House

Ross, Chair	<u>✓</u>
Anderson, Vice Chair	<u>✓</u>
Bowman	<u>✓</u>
Macnaughtan	<u>✓</u>
Boley	<u>✓</u>
Buckalew	<u>✓</u>

Hunt, Chair	<u>✓</u>
Linch, Vice Chair	<u>✓</u>
Compton	<u>✓</u>
Jenkins	<u>✓</u>
Faircloth	<u>✓</u>
Riggs	<u>✓</u>

I certify that the attendance as noted above
is correct.



Staff Person

Audrey

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: November 18, 1997

TIME: 10:00 AM to Noon

NAME Present Absent Yeas Nays

HOUSE

Kiss, Robert, Speaker	_____	_____	_____	_____
Hunt, Mark, Co-Chair	✓	_____	_____	_____
Linch, Larry, Vice-Chair	✓	_____	_____	_____
Compton, Mary Pearl	✓	_____	_____	_____
Faircloth, Larry V.	✓	_____	_____	_____
Jenkins, Evan	✓	_____	_____	_____
Riggs, Dale	✓	_____	_____	_____

SENATE

Tomblin, Earl Ray, President	_____	_____	_____	_____
Ross, Michael, Co-Chair	✓	_____	_____	_____
Anderson, Leonard, Vice-Chair	✓	_____	_____	_____
Boley, Donna	✓	_____	_____	_____
Bowman, Edwin	✓	_____	_____	_____
Buckalew, Jack	✓	_____	_____	_____
Macnaughtan, Don	✓	_____	_____	_____

TOTAL _____

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

10-Noon

Committee: Legislative Rule-Making Review Committee

Date November 18, 1997

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
DR RON FRANK	416 DIVISION PKB9	Optometry	-
Paul E. Terry, O.D.	#Huntington	Optometry	X
Clifton Hyre, O.D.	Elkins	Optometry	X
Bill DANIEL	CHARLESTON	DNR	IF NEEDED
NEILA MARSHALL, O.D.	NEW MARTINSVILLE	OPTOMETRY	
HARRY W Baggis O.D.	KEYSA WV	OPTOMETRY	
Jim HERMAN O.D.	SCOTT DEPOT WV	OPTOMETRY	
J. J. Nibert O.D.	Charleston	Optometry	X
CRIMA HYRE	Bevely, WV	Optometry	
Dr. Montgomery Wilkins, O.D.	ST. Albans, WV	Optometry	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

10:00 A.M. - Noon

Committee: Legislative Rule-Making Review Committee

Date November 18, 1997

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Gary Ball	Peytona, WV	WV. MHST	
Ron Harris	Charleston	WV. MHST	if needed
SAM HICKMAN	Charleston	WV Bd of Social Work Exam	if questions
Judy Williams	"	"	"
Susan Sobkowick	"	WV-National Assoc. of Soc. Workers	
GLENN DOWDY	CHARLESTON	WVSCA	IF NEEDED
Roger K. Price	Charleston	WV Optometric Assn	
Steven Odekirk	Dunbar	WV OA	
Nancy Stewart Odekirk	Dunbar	WV OA	
David H. Holliday	Beckley	WV OA	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Committee Date November 18, 1997
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
JOHN MONTGOMERY	CHARLESTON	TAX & REVENUE	As NECESSARY
BOB HOFFMAN	CHAS	TAX COMMISSION	
TIM WAGGONER	CHAS.	TAX & REVENUE	
KEITH LARSON	CHAS	TAX & REVENUE	As necessary
George Rider	Charleston	WV SUEA	
Steve Powell	Morgantown	WVA Ophthalmology	yes
Thom Stevens	Charleston	WV Academy of Ophthalmology	YES-
Stephen Perkins	CHARLESTON	WV ACADEMY OF FAMILY PRACTICE	yes
Gerry Stover	Charleston	WV Academy of Family Practice	As NECESSARY
Donald M. Davidson	Charleston	GCCPC	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Committee

Date November 18, 1997

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
JOHN JOHNSTON	1538 WASHINGTON ST	INDEP. OFFICE OF AIR QUALITY	IF REQUESTED
Rae Anne Uttermohlen	RT1 Box 2 Pullman, WV 26421	WV Licensed Professional Counselors	IF requested ASSOCIATION

Tentative Agenda

1

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tuesday, November 18, 1997

10:00 a.m. to 12 Noon

Senate Finance Committee Room M-451

1. Approval of Minutes from November 5, 1997 Meeting
2. Review of Legislative Rules:
 - a. Board of Optometry
Expanded Prescriptive Authority (14CSR2)
 - b. Department of Natural Resources
Special Boating Rule for Jennings Randolph Lake (58CSR29)
 - c. Board of Examiners in Counseling
Advanced Practice (27CSR2) *Withdrawn*
 - d. Board of Examiners in Counseling
Licensing Rule (27CSR1)
 - e. Division of Motor Vehicles
Denial, Suspension, Revocation or Nonrenewal of Driving Privileges (91CSR5)
 - f. Board of West Virginia Social Work Examiners
Qualifications for Licensure as a Social Worker (25CSR1)
 - g. Governor's Committee on Crime, Delinquency and Correction
Protocol for Law Enforcement Response to Domestic Violence (149CSR3)
 - h. Governor's Committee on Crime, Delinquency and Correction
Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards (149CSR2)
 - i. Department of Tax and Revenue
Tax Credit for New Value-Added Wood Manufacturing Operations (110CSR13M)
 - j. Miner Training, Education and Certification
Safety Training Program for Prospective Surface Coal Miners in WV (48CSR3)
 - k. ~~Div~~ of Environmental Protection-Office of Air Quality
Acid Rain Provisions and Permits (45CSR33)

(over)

- l. **Div. of Environmental Protection-Office of Air Quality
To Prevent and Control Air Pollution from Hazardous Waste
Treatment, Storage, or Disposal Facilities (45CSR25)**
- m. **Div. of Environmental Protection-Office of Air Quality
To Prevent and Control Emissions From Municipal Solid Waste
Landfills (45CSR23)**
- n. **Div. of Environmental Protection-Office of Air Quality
Emission Standards for Hazardous Air Pollutants Pursuant
to 40 CFR Part 63 (45CSR34)**

Tentative Agenda

2

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Tuesday, November 18, 1997

5:00 p.m. to 7:00 p.m.

Senate Finance Committee Room M-451

1. Review of Legislative Rules:

- a. Div. of Environmental Protection-Office of Oil & Gas
Abandoned Wells Rules [was 38CSR22] (35CSR6)
- b. Div. of Environmental Protection-Office of Oil & Gas
Coalbed Methane Wells Rules [was 38CSR23] (35CSR3)
- c. Div. of Environmental Protection-Office of Oil & Gas
Miscellaneous Water Pollution Control Rules
[was 38CSR11] (35CSR1)
- d. Div. of Environmental Protection-Office of Oil & Gas
Oil & Gas Operations - Solid Waste Rule
[was 38CSR12] (35CSR2)
- e. Div. of Environmental Protection-Office of Oil & Gas
Oil & Gas Wells and Other Wells Rules
[was 38CSR18] (35CSR4)
- f. Div. of Environmental Protection-Office of Oil & Gas
Dam Control (38CSR14)
- g. Div. of Environmental Protection-Office of Oil & Gas
Designation of Future Use and Inactive Status for
Oil & Gas Rule [was 38CSR21] (35CSR5)
- h. Div. of Environmental Protection-Office of Waste Management
Hazardous Waste Management (33CSR20)
- i. Division of Labor
Occupational Safety and Health Act (42CSR15)
- j. Insurance Commissioner
Guaranteed Issue of Individual Accident and Sickness
Insurance (114CSR55)
- k. Insurance Commissioner
Quality Assurance (114CSR53)
- l. Division of Health
Asbestos Abatement Licensing Rule (64CSR63)

add:
38CSR16/

add:
38CSR2/

(over)

MEMORANDUM OF UNDERSTANDING

DATED 4/12/97

BY AND BETWEEN

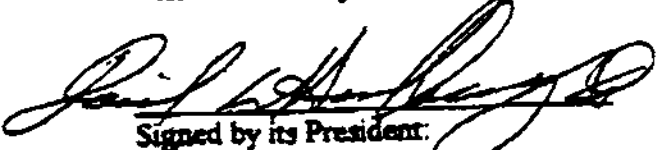
THE WEST VIRGINIA OPTOMETRIC ASSOCIATION

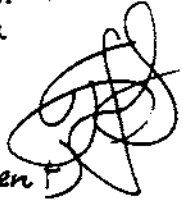
AND

THE WEST VIRGINIA ACADEMY OF OPHTHALMOLOGY

The West Virginia Optometric Association, known herein as "Association," and the West Virginia Academy of Ophthalmology, known herein as "Academy," do hereby set forth the following agreements:

1. The Association and Academy agree to the provisions of Committee Substitute for SB 524 as the best possible compromise to expand the scope of practice of prescriptive authority for optometrists in a gradual fashion with a balance of the need for protection of the quality of eye care for state residents; and
2. The Association and Academy agree that the subject matter of Committee Substitute for SB 524 is and shall remain on the enhanced prescriptive authority of oral medications and shall not involve discussions or inclusion of the subject matter of medications by injection or of any procedures by surgery; and
3. The Association and the Academy agree to support the passage of Committee Substitute for SB 524 in both the Senate and House of Delegates without seeking or endorsing any amendment to the bill; and
4. The Association and the Academy agree to oppose and to advocate the defeat of any amendments to Committee Substitute SB 524, or if amendments are adopted, then to advocate defeat of the bill; and
5. The Association and the Academy agree to distribute copies of this agreement to the appropriate legislative leaders in the Senate and the House of Delegates, and to provide oral or written testimony as necessary to effectuate the provisions of this agreement to the legislature.


Signed by its President:
WV Optometric Association


Signed by its President: (Vice President)
WV Academy of Ophthalmology

COPY

MEMORANDUM OF UNDERSTANDING

DATED 4/2/97

BY AND BETWEEN

THE WEST VIRGINIA OPTOMETRIC ASSOCIATION

AND

THE WEST VIRGINIA ACADEMY OF OPHTHALMOLOGY

THE WEST VIRGINIA OPTOMETRIC ASSOCIATION, KNOWN HEREIN AS "ASSOCIATION," AND THE WEST VIRGINIA ACADEMY OF OPHTHALMOLOGY, KNOWN AS "ACADEMY," DO HEREBY SET FORTH THE FOLLOWING AGREEMENT:

1. THE ASSOCIATION AND ACADEMY AGREE TO THE PROVISIONS OF COMMITTEE SUBSTITUTE FOR SB524 AS THE BEST POSSIBLE COMPROMISE TO EXPAND THE SCOPE OF PRACTICE OF PRESCRIPTIVE AUTHORITY FOR OPTOMETRISTS IN A GRADUAL FASHION WITH A BALANCE OF THE NEED FOR PROTECTION OF THE QUALITY OF EYE CARE FOR THE RESIDENTS; AND

2. THE ASSOCIATION AND ACADEMY AGREE THAT THE SUBJECT MATTER OF COMMITTEE SUBSTITUTE FOR SB 524 IS AND SHALL REMAIN ON THE ENHANCED PRESCRIPTIVE AUTHORITY OF ORAL MEDICATIONS AND SHALL NOT INVOLVE DISCUSSIONS OR INCLUSION OF THE SUBJECT MATTER OF MEDICATIONS BY INJECTION OR OF ANY PROCEDURE BY SURGERY; AND

3. THE ASSOCIATION AND THE ACADEMY AGREE TO SUPPORT THE PASSAGE OF COMMITTEE SUBSTITUTE FOR SB524 IN BOTH THE SENATE AND HOUSE OF DELEGATES WITHOUT SEEKING OR ENDORSING ANY AMENDMENT TO THE BILL, AND

4. THE ASSOCIATION AND THE ACADEMY AGREE TO OPPOSE AND TO ADVOCATE THE DEFEAT OF ANY AMENDMENTS TO COMMITTEE SUBSTITUTE SB 524, OR IF AMENDMENTS ARE ADOPTED, THEN TO ADVOCATE DEFEAT OF THE BILL, AND

5. THE ASSOCIATION AND THE ACADEMY AGREE TO DISTRIBUTION COPIES OF THIS AGREEMENT TO THE APPROPRIATE LEGISLATIVE LEADERS IN THE SENATE AND THE HOUSE OF DELEGATES, AND TO PROVIDE ORAL OR WRITTEN TESTIMONY AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS AGREEMENT TO THE LEGISLATURE.

SIGNED BY ITS PRESIDENT: DAVID HARSHBERGER
WV OPTOMETRIC ASSOCIATION

SIGNED BY ITS PRESIDENT. (VICE PRESIDENT) PANGJALIAN, M.D. ?
WV ACADEMY OF OPHTHALMOLOGY



The West Virginia Academy of Ophthalmology



President
John Linsley, DO
Martinsville, WV

Vice President
Rita Fungfuntan, MD
Wheeling, WV

Secretary/Treasurer
Michael P. Varley, MD
Charleston, WV

Director
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Director
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Charleston, WV

Director
Joseph LeClerc, MD
Martinsville, WV

Past President
V. K. Raja, MD
Martinsville, WV

Executive Director
Thomas J. Stevens
Charleston, WV

MEMORANDUM

**TO: WV ACADEMY OF OPHTHALMOLOGY
WV ACADEMY OF FAMILY PHYSICIANS
WV STATE MEDICAL ASSOCIATION
WV OSTEOPATHIC MEDICAL SOCIETY
WV SCHOOL OF MEDICINE
WV SCHOOL OF OSTEOPATHIC MEDICINE
MARSHALL SCHOOL OF MEDICINE**

FROM: THOM STEVENS

DATE: APRIL 2, 1997

**SUBJECT: AGREEMENT ON COMMITTEE SUBSTITUTE FOR SENATE BILL 524
EXPANDING THE PRESCRIPTIVE SCOPE OF PRACTICE FOR OPTOMETRISTS**

After nearly three years of discussions, an agreement has been reached with key legislators to support the passage of Committee Substitute for SB 524, which provides for a gradual expansion of the prescriptive scope of practice for qualified optometrists. The provisions of the bill were designed in a collaborative manner by the WV Optometric Association and the WV Academy of Ophthalmology.

The bill does not change the current law as it relates to prohibitions on surgery or prescription drugs by injections in the scope of practice for optometrists. The bill does present a positive approach for optometrists to prescribe certain oral drugs such as antibiotics, NSAIDs, and certain glaucoma drugs, and it gives the Board of Optometry the ability to develop a formulary for other oral drugs other than those listed on Schedule I or II of the Uniform Control Substances Act. For any use of oral drugs, the Board of Optometry must design individual certification standards, educational and training requirements, continuing education, and must ascertain mandatory malpractice insurance. Appropriate legislative review is provided in the bill.

An excellent forum for the eventual successful negotiations on the legislation was provided by Sen. Larry Wiedebach (D-Marshall) who serves as Chairman of the Senate Committee on Government Organization. His appointed subcommittee, which crafted the bill, was headed by Sen. Billy Wayne Bealey (D-Wyoming) and included Sen. Homer Ball (D-Mercer) and Sen. Sarah Minner (R-Tucker). Special assistance on medical issues was provided to the subcommittee by Sen. Tom Scott, MD (R-Cabell).

These legislators expended countless hours conducting research, involved themselves in education on the issues, deliberated constituent concerns, and explored all alternatives. They committed themselves to developing fair and equitable legislation, which placed as the first and foremost priority, the protection of quality health for eye care patients. Their dedication is appreciated by all of us who were given an opportunity to work with them in developing this important legislation.

P.O. Box 5006 • Charleston, WV 25361 • (304) 343-5843 • FAX (304) 344-3130

Position	Date	# of pages
Fax Note	11/3/97	1
To	B.S.	
From		

Reprint of the text of memo from Thom Stevens, dated April 2, 1997

SUBJECT: AGREEMENT ON COMMITTEE SUBSTITUTE FOR SENATE BILL 524
EXPANDING THE PRESCRIPTIVE SCOPE OF PRACTICE FOR
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Handout at 11/18/97 RMEC Meeting

November 18, 1997

To: Legislative Rule-Making Review Committee

From: The West Virginia State Medical Association (WVSMA) and the West Virginia Academy of Ophthalmology (WVAO)

RE: Title 14, Series 2, Rules for Expanded Prescriptive Authority

Dear Delegate or Senator:

The West Virginia State Medical Association (WVSMA) responded to the above-captioned rules on July 10, 1997. The Board of Optometry responded to the comments of the WVSMA, but there was no change in the final rule submitted on July 28, 1997.

The WVSMA and WVAO have specific concerns regarding the proposed drug formulary.

1. 14-2-7.1.b **Corticosteroids**

The WVSMA has expressed concerns about the use of oral corticosteroids because of the potential for serious medical complications.

- a. The **educational and testing requirements** proposed by the Board of Optometry **do not provide for supervised clinical training and patient supervision in the use of these medications.**
- b. The potential for serious side effects from corticosteroids should restrict the use of this category of drugs to individuals who have had extensive supervised patient interaction with treatment, follow-up and evaluation of systemic complications. **The rule does not require such clinical training.**
- c. The use of this class of drug often requires laboratory evaluation to determine the need for the drug and also to follow-up potential complications. Clinical experience in the ordering, interpretation, and follow-up of laboratory tests is necessary for protection of the patient. **The rule does not require such clinical training.**
- d. In a patient with **serious medical problems, there may be a specific contraindication for use of this class of drug.** The rule does not provide for clinical training to educate optometrists to recognize patients with specific medical contraindications. **Patients with diabetes are at high risk for complications from steroid use, and W.V. has the highest % of diabetics as any state in the nation.**
- e. The indications for oral corticosteroids to treat eye disease is uncommon. Optometrists already have therapeutic privileges to administer corticosteroids by eye drops. **The next most common route is to administer them by injection into the tissues around the eye.** This allows higher doses of

corticosteroids into the eye tissues and low levels throughout the body, reducing side effects. **If allowed to administer corticosteroids orally, a delay may occur in referring the patient to a physician for the most appropriate route of treatment (injection).**

- f. **Please see the *attached list of potential side effects* from the use of corticosteroids.**

2. 14-2-7.1.c **Analgesics (pain medications)**

The WVSMA has expressed concerns about the use of certain narcotic analgesics. The WVSMA would agree that analgesics limited to oral non-steroidal anti-inflammatory drugs would be appropriate, **however the rule does not restrict the use of narcotic analgesics.** The use of narcotic agents raises several concerns.

- a. **There is not any requirement for clinical supervised training in the rule for use of this drug category.**
- b. **The use of these drugs at a time of a referral (i.e. trauma) would seriously affect the ability of a physician to obtain informed consent if any surgical procedure were to be performed due to altered mental status.**

3. 14-2-7-1.d **Anxiolytics (Valium and similar drugs)**

The use of this category of oral drugs is of considerable concern also. While it is true that intravenous anxiolytics are commonly employed at the time of eye surgery, **ophthalmologists rarely, if ever, use these drugs by an oral route for anxiety.** The rule as proposed would allow the use of anxiolytics.

- a. **This category of drug is not required "for the purpose of treatment of visual defects or abnormal conditions of the human eye and its appendages".** The bill specifically makes this provision for any requested category of drug. An informal survey of 12 ophthalmologists revealed that **this is not a category of oral drug they use to treat eye disease.**
- b. **Drugs in this class have been the most commonly addictive class of prescription drugs to the public.**
- c. **There is no provision in the proposed rule for supervised clinical training and follow-up of patients on these medications.**
- d. **There is no provision in the proposed rule for psychological evaluation of patients, to determine the need for these drugs.**
- e. **There is no provision for the clinical training of optometrists in the field of psychiatry for use of this drug. Even psychologists do not use these drugs.**

Regarding the original response of the WVSMA, the Board of Optometry correctly identified a typographical error on page 2, "Schedule II" should have been "Schedule III" as had been correctly identified on page 1. Prescription "narcotics" are an accepted identification of medications and "downers" helps to identify anxiolytics to individuals who do not understand pharmacology terminology and who have not had medical or optometric classroom lectures. The WVSMA and the WVAO feel strongly that individuals who prescribe steroids must be able to **identify "specific contraindications", and this ability can only be obtained by supervised clinical training. The rule does not provide for this training.**

In summary, it appears that there is still disagreement on the formulary proposed by the Board of Optometry and the educational requirements proposed. **Specifically, the rule does not require adequate supervised clinical application of classroom lectures. The use of corticosteroids, narcotic analgesics, and anxiolytics require extensive supervised patient interaction, supervised writing of prescriptions, and follow-up of potential side effects. A provision for this type of education is not in the proposed rule.**

The WVSMA and the WVAO would recommend **removing from the proposed formulary** the following categories of oral drugs:

1. **corticosteroids**
2. **narcotic analgesics**
3. **anxiolytics**

The WVSMA and WVAO would agree that **in addition to the three categories of oral drugs stipulated in Senate Bill 524, the following categories of oral drugs should be included in the formulary:**

1. **analgesics, other than narcotics**
2. **antihistamines**

List of potential adverse reactions from corticosteroids

Neurological

1. Convulsions
2. Headache
3. Increased pressure in the head
4. Vertigo

Ophthalmic

1. Cataracts
2. Glaucoma

Musculoskeletal

1. Muscle weakness
2. Steroid myopathy (loss of muscle mass)
3. Osteoporosis
4. Compression fractures of the back
5. Aseptic necrosis of femoral and humeral heads
6. Fractures of the long bones

Dermatologic

1. Poor wound healing
2. Fragile skin
3. Suppressed reactions to skin tests

Gastrointestinal

1. Peptic ulcer with perforation and hemorrhage
2. Pancreatitis
3. Ulcers of the esophagus

Fluid/Electrolyte Disturbances

1. Sodium retention
2. Fluid retention
3. Congestive Heart Failure in susceptible patients
4. Loss of potassium
5. Hypertension
6. Change in the acid-base balance in the body

Metabolic

1. Loss of body protein

Endocrine

1. Marked change in blood sugars in diabetics
2. Cushingoid state (marked fat deposition on the abdomen and back)
3. Loss of function of the pituitary and adrenocortical gland with unresponsiveness at the time of stress, trauma or surgery
4. Suppression of growth in children
5. Menstrual irregularities

Handout - 11/18/97 5:00 p.m.



DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY
JOHN H. JOHNSTON, CHIEF

CECIL H. UNDERWOOD
GOVERNOR

JOHN E. CAFFREY
DIRECTOR

November 17, 1997

Joseph A. Altizer, Associate Counsel
Legislative Rule-Making Review Committee
State Capitol-Room MB-49
Charleston, West Virginia 25305

RE: 45CSR23--To Prevent and Control Emissions from Municipal Solid Waste Landfills

Dear Mr. Altizer:

As we discussed by telephone last week, the Office of Air Quality ("OAQ") recently received comments from the U.S. Environmental Protection Agency ("EPA") regarding the above-referenced rule (a copy of EPA's comments are attached for your information). EPA's comments were not received within the 30-day public comment period, and were consequently not addressed by the agency prior to its filing the agency-approved rule with the Legislative Rule-Making Review Committee.

The OAQ has reviewed EPA's comments and has agreed to certain revisions of its proposed rule in accordance with EPA's comments. The agency's proposed revisions are included herein, with underlining and strike-throughs for new language and language to be deleted.

If you have any questions regarding this matter, please contact Lucy Pontiveros or Karen Watson at (304) 558-1213.

Sincerely,

A handwritten signature in cursive script that reads "Karen G. Watson".

Karen G. Watson, Attorney

cc: Committee Members

Enclosures

45CSR23

TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

SERIES 23
TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS

§45-23-1. General.

1.1. Scope.--This rule establishes standards of performance and emission guidelines for municipal solid waste landfills pursuant to Section 111 of the federal Clean Air Act as amended in 1990 (CAA). It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

1.2. Authority.--W.Va. Code §§22-5-1 et seq.

1.3. Filing Date.--

1.4. Effective Date.--

1.5. Incorporate by Reference -- Federal Counterpart Regulation. The Director has determined that a federal counterpart rule exists, in accordance with the Director's recommendation, and with limited exception, this rule incorporates by reference, 40 CFR Part 60 Subpart WWW effective on March 12, 1996.

§45-23-2. Definitions.

2.1. Definitions of all terms used, but not defined in this subsection, shall have the meaning given them in 40 CFR Part 60 Subpart WWW, as amended. Terms not defined therein shall have the meaning given to them in the federal Clean Air Act, 40 CFR Subparts A and B, or this Rule.

2.2. "Administrator" shall mean the Administrator of the United States Environmental Protection Agency or his or her designated representative.

2.3. "Director" shall mean the Director of the West Virginia Division of Environmental Protection or his or her designated representative.

2.4. "Existing" shall mean each MSW landfill that commenced construction, reconstruction or modification before May 30, 1991 and has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition. Physical or operational changes made to an existing MSW landfill solely to comply with this rule shall not subject that landfill to the requirements of section 3.2.

2.5. "Municipal solid waste landfill" or "MSW landfill" shall mean an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (40 CFR §257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial

solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

2.6. "Municipal solid waste landfill emissions" or "MSW landfill emissions" shall mean gas generated by the decomposition of organic waste deposited in a MSW landfill or derived from the evolution of organic compounds in the waste.

2.7. "New" shall mean each MSW landfill that commenced construction, reconstruction, or modification or began accepting waste on or after May 30, 1991.

2.8. "NMOC", Non Methane Organic Compounds' shall mean nonmethane organic compounds, as measured according to the provisions of 40 CFR 60.754.

§45-23-3. Requirements.

3.1. No person may construct, reconstruct, modify, or operate, or cause to be constructed, modified, or operated a MSW landfill which results in a violation of this rule.

3.2. Each new MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW, as amended including any reference methods, performance specifications and other test methods associated with Subpart WWW, which are herein incorporated by reference with the exceptions as follows:

3.2.a. In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

3.3. Each existing MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW, as referenced in 40 CFR 60 Subpart Cc, and as amended including any reference methods, performance specifications and other test methods associated with Subpart WWW, which are herein incorporated by reference with the exceptions as follows:

3.3.a. §40-60.750

3.3.b. In lieu of 40 CFR 60.752(b)(2)(i)(B), the following provision applies: The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, record keeping or reporting provisions of 40 CFR 60.753 through 40 CFR 60.758 proposed by the owner or operator. In addition, the collection and control design plan must specify:

3.3.b.1. The date by which contracts for control system/process modifications shall be awarded, (which shall be no later than 20 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).

3.3.b.2. The date by which on-site construction or installation of the air pollution control device(s) or process changes will begin (which shall be no later

than 24 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).

3.3.b.3. The date by which the construction or installation of the air pollution control device(s) or process changes capable of meeting the emission standards established under 40 CFR 60.752(b)(2)(iii) will be complete (which shall be no later than 30 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).

3.3.b.4. The date by which the MSW landfill will achieve compliance with 40 CFR 60.753 (which shall be no later than ~~320~~ months [except where 40 CFR 60 indicates otherwise] after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year).

3.3.b.5. The date by which the MSW landfill will demonstrate compliance with applicable requirements by conducting a performance test in accordance with procedures specified by the Director (which shall be no later than 180 days after completion of construction or installation of the air pollution control device).

3.3.c. In lieu of 40 CFR 60.752(b)(2)(ii), the provisions of paragraphs 1. and 2. below shall apply.

3.3.c.1. Install a collection and control system that effectively captures the gas generated within the landfill as required by 40 CFR 60.752(b)(2)(i) within 30 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year, unless Tier 2 or Tier 3 calculations demonstrate that the NMOC emission rate is less than 50 megagrams per year, as specified in 40 CFR 60.757(c)(1) or (2).

3.3.c.2. The provisions of 40 CFR 60.752(b)(2)(ii)(A) and (B) apply as stated therein.

3.3.d. In lieu of 40 CFR 60.757(a)(1) the following provision applies: The initial design capacity report shall be submitted by the effective date of this rule plus 90 days.

3.3.e. In lieu of 40 CFR 60.757(b)(1)(i), the following provision applies: The initial NMOC emission rate report shall be submitted by the effective date of this rule plus 90 days and may be combined with the initial design capacity report required in 40 CFR 60.757(a). Subsequent NMOC emission rate reports shall be submitted annually, thereafter, except as provided for in 40 CFR 60.757(b)(1)(ii) and 40 CFR 60.757(b)(3).

3.3.f. In lieu of 40 CFR 60.758(a), the following provision applies: Each owner or operator of a MSW landfill subject to the provisions of 40 CFR 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, surface monitoring design plan, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Either paper copy or electronic format records are acceptable.

§45-23-4. Director.

4.1. Any and all references in 40 CFR Part 60 to the "Administrator" are amended to be the "Director" except in the following references which shall remain "Administrator," as follows:

4.1.a. Where the federal regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the State.

4.1.b. Where provisions occur which refer to:

4.1.b.1. alternate means of emission limitations

4.1.b.2. alternate control technologies

4.1.b.3. innovative technology waivers

4.1.b.4. alternate test methods

4.1.b.5. alternate monitoring methods

4.1.b.6. waivers/adjustments to record keeping and reporting

4.1.b.7. applicability determinations

4.1.c. where the context of the regulation clearly requires otherwise.

~~4.1.d. Part 60.752(b)(2)(i)~~

~~4.1.e. Part 60.752(b)(2)(i)(C)~~

~~4.1.f. Part 60.752(b)(2)(i)(D)~~

~~4.1.g. Part 60.757(c)~~

§45-23-5. Permits.

5.1. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way limited or inapplicable with the exception as follows:

5.1.a. A control system installed at a MSW landfill solely to comply with this rule and 40 CFR 60.752(b)(2)(iii), shall not be defined as a stationary source under §45-13-2.25.a. for purposes of applicability of §45-13 permit requirements.

§45-23-6. Inconsistency Between Rules.

6.1. In the event of any inconsistency between this rule and any other existing rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.



Mail Code 34T22

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

RECEIVED

Mr. John H. Johnston, Chief
Division of Environmental Protection
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599

NOV 03 1997

Dear Mr. Johnston:

We have completed our review of the proposed West Virginia Office of Air Quality (OAQ) municipal solid waste (MSW) landfill 111(d) plan, including the related air quality regulation that was forwarded to us on August 14, 1997. Our review was done in the context of requirements stipulated in 40 CFR part 60, subpart B, and the promulgated emissions guidelines for MSW landfills, subpart Cc.

Our detailed comments on the proposed OAQ MSW landfill 111(d) plan and proposed regulations are enclosed. Our draft comments were discussed with Ms. Lucia S. Pontiveros of your office by phone on October 27, 1997. A draft copy of our comments was faxed to her on the same day. In summary, the OAQ needs to address the following EPA 111(d) plan concerns:

1. Documentation of EPA public participation requirements in the preparation and submittal of the OAQ MSW landfill 111(d) plan. According to our records, EPA was not provided any notice regarding the July 21, 1997, public hearing on the proposed 111(d) plan? If so, who was notified at EPA?
2. Clarification/revision of the OAQ landfill regulation compliance dates.
3. An inventory of all landfills that meet the definition of designated facility, and an OAQ commitment to implement certain source inventory and compliance reporting activities.
4. Documentation of OAQ's legal authority to implement and enforce the 111(d) plan.
5. Submittal of a OAQ process for the review and approval of site specific gas collection and control system design plans.
6. The unacceptable deletion of certain subpart Cc and subpart WWWW requirements from the proposed OAQ MSW landfill regulation relating to the review and approval of landfill control plans.

We hope our comments are useful as the OAQ prepares for the formal submittal of its MSW landfill 111(d) plan to EPA. If anyone in your office should have a question regarding the enclosed comments, please feel free to contact James Topsale of my staff at (215) 566-2190.

Sincerely,



Makeba A. Morris, Chief
Technical Assessment Section

Enclosure

cc: Lucia S. Pontiveros, OAQ w/Enclosure

6/19/97 DRAFT WEST VIRGINIA MSW LANDFILL RULE - EPA COMMENTS

40 CFR part 60, Subpart B

60.23 Adoption and submittal of State plans, public hearings

1. The submitted plan needs to include documentation to show that the requirements of 60.23(c), (d), (e), and (f) have been met. Was EPA notified of the public hearing as required by 60.23(d)(3)? If so, who at EPA was notified. According to our records, EPA was not provided any notice regarding the July 21, 1997 OAQ public hearing on the landfill rule.

60.24 Emission standards and compliance schedules

1. See the comment #2 below under 60.36c.

60.25 Source Inventories, source surveillance, reports

1. The submitted plan needs to include all the applicable requirements of 60.25.

60.26(a) Legal Authority

1. The submitted plans need to include a discussion of the state's legal authority to implement the 111(d) plan as stipulated in 40 CFR 60.26(a) and a copy of pertinent state laws or regulations as required by 60.26 (b). Also, the plan must show that the legal authorities needed to implement and enforce the plan are available to the OAQ at the time of plan submittal.

**40 CFR part 60, subparts Cc and WWW
[OAQ Landfill Rule, Title 25, Series 23]**

60.30c Scope [45-23-1]

1. No comment.

60.31c Definitions [45-23-2]

1. No comment.

60.32c Designated Facilities [45-23-2.4]

1. No comment

60.33c Emission guidelines for municipal solid waste landfill emissions [45-23-3, 45-23-4]

1. Paragraph 3.3 - This paragraph states, "Each existing MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW . . ." [Emphasis added]. It could be argued that for existing MSW landfills subpart WWW is not "applicable" and accordingly, none of its requirements. This ambiguity in rule applicability for existing landfills is a concern because neither the Series 23 rule nor the submitted supporting documents provide an affirmative statement that the OAQ is incorporating by reference subpart WWW into the rule in order to meet the requirements of subparts B and Cc, relating to the submittal and approval of state 111(d) plans. For clarity we suggest revising paragraph 3.3 to read, "Each existing MSW landfill shall comply with all of the applicable standards, requirements and provisions of 40 CFR Part 60 Subpart WWW, **as referenced in subpart Cc**, and as amended including any . . ." At a minimum, the supporting documents for the Series 23 rule must provide an affirmative statement that for existing municipal solid waste landfills the OAQ is incorporating by reference subpart WWW into the State rule in order to implement and enforce the requirements of 40 CFR Part 60, subparts B and Cc.

2. Paragraph 4.1 - Some of the noted exceptions to the "Director's" authority are not consistent with 60.33c(b) requirement for approvable 111(d) plans to include a process for State review and approval of site-specific design plans for the gas collection and control system(s). Accordingly, **Subparagraphs 4.1.d., e., f., and g must be deleted**. The submitted 111(d) plan must include a description, as required by 60.33c(b), of OAQ's process for review and approval of site specific gas collection and control system design plans. If the Director authorizes another State or local agency to implement a portion of the plan, then the submitted State legal authority must describe the other agency's legal authority to implement that portion of the plan. See 60.26(d) and (e).

60.34c Test methods and procedures [45-23-3.3]

1. No comment

60.35c Reporting and record keeping guidelines [45-23-3.3]

1. No comment.

60.36c Compliance times [45-23-3.3.b]

1. Paragraph 3.3.b.4 - This paragraph requires compliance ". . . no later than 32 months after the date the NMOC emission rate is first calculated to meet or exceed 50 megagrams per year." This appears to conflict with the requirements of the Emission Guidelines, subpart Cc, 40 CFR 60.36c. 60.36c(a) and (b) require the installation of a MSW landfill air emission collection and control equipment **capable** of meeting subpart Cc requirements within 30 months after either the effective date of a State emission standard for MSW landfills, or when the estimated NMOC

emissions rate first exceeds 50 megagrams per year (Mg/yr). In short compliance is required within the 30 months time frames noted. EPA has determined that the demonstration of compliance is required no later than 180 days after the compliance date. Revise paragraph 3.3.b.4 accordingly.

2. 60.24(e)(1) requires any compliance schedule, extending more than 12 months from the date required for submittal of the 111(d) plan, to include legally enforceable increments of progress leading to compliance. One of the increments, as defined at 60.21(h), requires the submittal of a final control plan for the designated facility (i.e., landfill). The OAQ landfill regulation, subparagraphs 4.1.d., e., f., and .g, effectively delete the requirement for submittal of the control plan. As noted above, these OAQ landfill rule subparagraphs must be deleted.

Permit Requirements [45-23-5].

1. Paragraph 5.1.a. - We interpret this paragraph to mean that any new or existing MSW landfill required to install a collection and control system either under subpart WWW or Cc does not trigger minor source permitting under OAQ's minor source permit rule, 45-13. If this interpretation is either incomplete or incorrect please explain. A copy of Rule 13 that was applicable during the hearing, must be included with the 111(d) plan submittal.

Handout for 11-18-p.m. mtg.



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**Cecil H. Underwood
Governor**

Office of the Secretary
State Capitol Complex, Building 3, Room 206
Charleston, West Virginia 25305
Telephone: (304) 558-0884 Fax: (304) 558-1130

**Joan E. Ohi
Secretary**

November 14, 1997

The Honorable Mike Ross, Co-Chairman
The Honorable Mark Hunt, Co-Chairman
Legislative Rule-Making Review Committee
State Capitol Complex
Building 1, Room MB-47
Charleston, West Virginia 25305

Dear Chairmen Ross and Hunt:

The proposed Drinking Water Treatment Revolving Fund Rule was recently filed for public comment and as an emergency rule. This rule is of considerable importance to the safety of the citizens of the State. The purpose of this letter is to inform the Committee of activities concerning the rule, to request special consideration of the rule by the Committee, and to request the support of the Committee for the emergency rule.

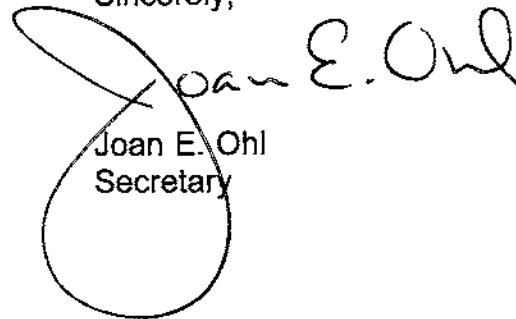
This proposed new legislative rule establishes standards and procedures for providing loans to public water systems to finance the cost of infrastructure improvements. The rule implements the provisions of House Bill 2712 which was passed by the 1997 Legislature in order to position the State to take advantage of a new federal program designed to help states in providing such financial assistance. The infrastructure improvements are needed to comply with State and federal requirements for safe drinking water and will enable small public water systems to provide safe drinking water to their customers. Approximately \$12.5 million in federal funds will be made available to West Virginia in the current fiscal year if the State receives early approval of its loan program. The Department's goal is to obtain federal approval for West Virginia's program timely in order to have loan funds available by January 1998. Additional details can be found in the documentation on file with the Committee and the Secretary of State. The Department also notes that in addition to the public comment process for this rule, the overall program is currently undergoing review and public comment as required by federal guidelines.

The Honorable Mike Ross
The Honorable Mark Hunt
Page 2
November 14, 1997

Because of the time needed to involve three separate State agencies as well as a significant number of other interested parties in the development of this proposed rule, it was not feasible to meet the deadline for mandatory review by the Legislative Rule-Making Review Committee for the 1998 Legislative Session. The rule will be filed with the Legislative Rule-Making Review Committee quickly following the close of the comment period, and the Department will request the Committee to review and report the rule to the 1998 Legislature in order to avoid having the emergency rule expire prior to a 1999 final filing date. Such a hiatus in the ability to make and administer loans under this program would be very detrimental to State citizens. The Department will, if needed, modify the emergency rule to correspond with modifications approved by the Committee as a result of public comment on the rule.

The Department appreciates your attention and cooperation in this matter.

Sincerely,



Joan E. Ohl
Secretary

JEO/sm
Enclosure

5.1.c. A medical director shall be employed by the health maintenance organization and have substantial involvement in quality improvement activities.

1. Upon application to and approval by the commissioner, a health maintenance organization may employ a medical director on a part-time basis during the first two years of the HMO's operation.

2. All health maintenance organizations are required to employ a full-time medical director no later than the first day of the third year of the HMO's operation.

3.3. A health maintenance organization that has obtained full accreditation or equal status from a nationally recognized accreditation and review organization approved by the commissioner pursuant to W. Va. Code § 33-25A-17a is deemed to be in compliance with this rule. If, at any time subsequent to the granting of full accreditation or equal status by a nationally recognized accreditation and review organization, the commissioner determines that the quality assurance program of the health maintenance organization has become deficient in any significant area, the commissioner, in addition to other remedies available, may establish a corrective action plan that the HMO must follow as a condition to the issuance or maintenance of a certificate of authority.

2.4. "Clinician" means a state-recognized provider including but not limited to physicians, psychiatrist and psychologists who specialize in clinical studies or practice.

4.5. No health maintenance organization may provide to any provider or any primary care physician an incentive or disincentive plan that includes specific payment made directly or indirectly, in any form, to the provider or primary care physician as an inducement to deny, release, limit, or delay specific, medically necessary and appropriate services provided with respect to a specific enrollee or groups of enrollees with similar medical conditions.

7.4. The health maintenance organization shall make reasonable accommodations for providing to members with disabilities the HMO's policies on members' rights and responsibilities.

~~7.47.5.~~ A health maintenance organization shall have a procedure

*w/parent
Revised to
draft*

Suggested Amendments to Quality Assurance
HMO Rules

I. [redacted] § 114-53-4 after subsection (4.6) by adding a new subsection as set forth below:

*New
p. on
p. 8*

4.7 No health maintenance organization may place a limitation or condition upon services, diagnoses or treatment by a particular type of provider for its members unless such limitations or condition applies equally to all types of providers without unfair discrimination as to the usual and customary treatment procedures of any of the providers.

*in statute
33-25A-31*

NO

II. [redacted] § 114-53-5 (5.3) by adding after the word standards "and shall be open for inspection by each member or his agent." ps 10

?

III. [redacted] § 114-53-5 (5.6) by adding after the word evidence "and that are applicable equally to all types of providers without unfair discrimination as to the usual and customary treatment procedures of any of the providers.

IV. [redacted] § 114-53-5 after subsection (5.9) by adding a new subsection as set forth below: ps 12

New

5.10 If a health maintenance organization receives ten or more complaints within a six month period that relates to the same or nearly similar subject matter the health maintenance organization shall develop specific written plan of action as to the resolution of the complaints and file a report with the commissioner on how the complaints were successfully resolved.

*submitted by
member
embro*

V. [redacted] § 114-53-6 (6.1) by adding after the word providers to provide the services mandated as "basic health care services" in § 33-25A-2(1) of the West Virginia Code and as otherwise provided for by the commissioner. ps 12

*OK
don't
need*

New Air Rules Will Hurt West Virginia and the Nation

Congress must act now to block EPA's new standards.

The U.S. Environmental Protection Agency (EPA) has issued new, more stringent National Ambient Air Quality Standards (NAAQS) for ozone and fine particles that will impose very high costs on West Virginia consumers, taxpayers and working people, as well as small businesses and large industries. According to a study by the Reason Public Policy Institute, many West Virginia workers will lose their jobs. The total cost of implementing the standards in West Virginia could be \$2.6 billion annually.¹ Yet the research EPA cites does not justify the new standards which may do little or nothing to improve public health in West Virginia, or elsewhere in the nation.

Congress should enact legislation that would put the new regulations on hold until scientifically sound research can be conducted to see if the standards are truly needed and worth the huge costs and sacrifice they will impose. Bills addressing EPA's rules have been introduced in the U.S. House of Representatives (H.R. 1984) and in the Senate (S. 1084).

Air Quality Is Improving in West Virginia and Across the U.S.

EPA's own data show that the air is getting cleaner and will continue to improve under previously adopted air quality standards. EPA says that, nationwide, emissions of the pollutants it monitors decreased by 29 percent between 1970 and 1995, including emissions that lead to ground-level ozone and particulates. Air quality in West Virginia has also been improving. For example, between 1991 and 1995, the average number of days per year that pollution concentrations exceeded federal standards declined substantially, compared with the preceding five years. In the Washington D.C. area, which includes parts of West Virginia as well as parts of Maryland and Virginia, there was a 47 percent decline.

EPA's Rules Are Not Based on Sound Science

People in West Virginia would not object to higher costs if the payoff were a healthier environment. However, the scientific basis for EPA's new regulations is so weak that despite their high costs, the health payoff is invisible. The Clean Air Scientific Advisory Committee (CASAC), the nationally recognized board of scientists who advise EPA on clean air matters, concluded that EPA's new ozone standard won't significantly improve public health. Of EPA's new standard for particulates, CASAC said that there are "many unanswered questions and uncertainties regarding the issue of causality" and that "our understanding of the health effects of

¹ "Costs, Economic Impacts, and Benefits of EPA's Ozone and Particulate Standards," Reason Public Policy Institute, June 1997.

PM (particulate matter) is far from complete." That was confirmed by Dr. Robert Phalen, director of the Air Pollution Health Effects Laboratory at the University of California, Irvine. He said: "The science upon which [EPA's] proposal is based is very incomplete. EPA would be well advised to wait and see if they have any evidence that PM2.5 [small particulates] is more hazardous than other size fractions before they make a decision to impose potentially enormous costs on the American public."

EPA's Administrator wrongly claims that the new standards are needed because air pollution is increasing the number of asthma cases. While the incidence of asthma has increased, air quality is unlikely to be the culprit because it has been improving. Recent studies by the U.S. Centers for Disease Control and Prevention, and by other scientists, have identified indoor air pollution and allergens, second-hand tobacco smoke, poor pre-natal care and the role of childhood vaccinations as the primary reasons for the increase in asthma. None of those causes would be affected by EPA's new standards.

New Standards Will Impose High Costs on West Virginia

EPA's new standards will require states and local governments to enforce more stringent controls for ozone and microscopic emissions of soot, dust and other particles. The Reason Public Policy Institute has estimated that these controls could cost as much as \$150 billion nationwide. Spending that much money on controls will mean less spending elsewhere to protect health and safety. According to the Institute, by taking money out of the pockets of American families that otherwise could be spent on better health care and an improved quality of life, some 27,000 lives could be lost. Like other states, West Virginia will bear part of this burden.

More Counties Will Have to Impose Restrictions. An analysis of EPA's new standards for ozone and small particles shows that at least 10 West Virginia counties will be out of compliance. (A list of those counties is attached.) Many other counties could be in violation once more emissions data are available. Under the previous standards, two counties were out of compliance. Now, the counties that did not meet EPA's previous standards, Brooke and Hancock, will have to impose even more stringent and more costly controls on residents and local businesses. And other counties, including Fayette, Greenbrier and Kanawha, will have to impose costly new controls.

New Restrictions Will Be Costly. The new standards will require plants, factories, refineries and utilities—as well as many restaurants, bakeries and dry cleaners—to install expensive equipment to eliminate very small amounts of emissions. The high cost of new emission control equipment will drive up the cost of electricity, home heating oil, gasoline and diesel fuel. New controls for dust could be imposed on farms, dairies and feed lots. Highway construction projects could be postponed.

Public Will Pay the Costs. The higher costs to meet EPA's standards will be paid by every West Virginia family. Higher prices for electricity will increase homeowners' utility bills as well as the cost of most goods and services they purchase. Family travel and commuting costs could increase if reformulated fuels, which cost more to make, are required. That will not only affect all motorists directly, it will add to the cost of shipping products and delivering services. New emission requirements for automobiles will drive up the cost of new cars. And stricter vehicle inspections will increase the cost of automotive maintenance. These higher costs must be met at a time when each family has suffered a loss of up to 2 percent of its inflation-adjusted after-tax

income, according to the Reason Public Policy Institute study. For many families, that translates into hundreds of dollars a year.

Families, businesses, industries and governments in West Virginia will have to spend an estimated \$2.6 billion to comply with these new standards. In addition, new state air quality implementation plans would have to be prepared and submitted, a costly and time-consuming process.

Jobs Will Be Lost. Counties in violation of the new standards are required to restrict economic growth which will discourage new businesses and the expansion of existing firms. That will hurt job creation and wage growth. In West Virginia, many jobs could be lost because of higher costs and restrictions on economic growth. Nationally, as many as 200,000 people could lose their jobs, with the retail and service sectors taking the heaviest hits. Those employed in highway construction and related industries could also face significant job losses.

Rules Could Inconvenience West Virginia Residents

In addition to the financial costs that will be imposed by EPA's new rules, regulations to implement the rules will adversely affect the daily lives of West Virginia residents. For example:

- Car pool requirements for commuters, and altered work shifts for employees could be mandated.
- Motorists could be prohibited from driving one day or more each week.
- Additional vehicle inspections could be required.
- The use of wood stoves, boats, power mowers and other outdoor power equipment could be restricted.

What Can Be Done?

Public officials across the country have expressed their concerns about the costs and the impacts that will be created by EPA's new standards. Some 250 members of Congress, 27 governors and more than 1,000 mayors and other local officials have come forward in open opposition to EPA's standards. They've been joined by thousands of others from science and business and by other private citizens who understand that the new rules are not a good idea and that there must be a better way.

Delay Is Not an Answer. EPA claims it can ease the burden of its new regulations by delaying their implementation and by using flexible tools such as emissions trading. But the Clean Air Act mandates compliance with air quality standards within a fixed time. If EPA attempts to use its discretion to allow a delay, it will be sued by environmental activists pressing for immediate enforcement. But regardless of whether delay is possible, the fact remains that the economic impact of EPA's standards will eventually be felt. People will see their costs rise and their jobs disappear. Business will decline. And low inflation and rising profits that have been the engine of growth and opportunity for much of this decade will disappear.

Legislation Is the Solution. Congress should pass a law that would put EPA's regulations on hold until additional research and air quality monitoring could determine if the new rules are

really needed. In the meantime, the previous standards, still in place, and other clean air programs that remain in force, would continue the nation's air quality improvements.

08/07/1997

WEST VIRGINIA

Counties in Nonattainment Under Existing NAAQS

Brooke
Hancock

Counties in Nonattainment Under New NAAQS

Brooke
Cabell
Fayette
Greenbrier
Hancock
Kanawha
Ohio
Putnam
Wayne
Wood