SEPTEMBER

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday, September , 2001

Beginning at 9 a.m.

Senate Judiciary Committee Room, W-208

1. **Approval of Minutes - August 8, 2001.**

2. **Review of Legislative Rules:**

   a. **Office of the State Auditor**
   Transaction Fee and Rate Structure, 155CSR4

   b. **Department of Agriculture**
   State Aid for Fairs and Festivals, 61CSR3

   c. **Board of Licensed Dietitians**
   Code of Professional Ethics, 31CSR2

   d. **Board of Licensed Dietitians**
   Licensure and Renewal Requirements, 31CSR1

   e. **Governor's Committee on Crime, Delinquency and Correction**
   Protocol for Law Enforcement Response to Domestic Violence, 149CSR3

   f. **Solid Waste Management Board**
   Disbursement of Grants to Solid Waste Authorities, 54CSR5

   g. **DEP-Water Resources**
   Underground Injection Control, 47CSR13

   h. **DEP-Water Resources**
   Groundwater Protection Standards at Dominion "Generation" Steam Electric Generating Facility, Mt. Storm, West Virginia, 47CSR57B

   i. **Board of Social Work Examiners**
   Qualifications for Licensure as a Social Worker, 25CSR1

   j. **Board of Social Work Examiners**
   Fee Schedule, 25CSR3

k. **Tax Commissioner**
Payment of Taxes by Credit Card or Debit Card, 110CSR10B

l. **Tax Commissioner**
Senior Citizen Tax Credit for Property Taxes Paid, 110CSR21B

m. **Tax Commissioner**
Pollution Control Facilities, 110CSR6

n. **Tax Commissioner**
Tobacco Products Excise Tax, 110CSR17

o. **Secretary of State**
Use of Electronic Signatures by State Agencies, 153CSR30

p. **Secretary of State**
Use of Digital Signatures, State Certification Authority and State Repository, 153CSR31

q. **Secretary of State**
Registry Requirements, 153CSR32

r. **State Fire Commission**
Fire Code, 87CSR1

s. **Board of Optometry**
Rule of the West Virginia Board of Optometry, 14CSR1

t. **Board of Optometry**
Schedule of Fees, 14CSR5

u. **Board of Optometry**
Expanded Prescriptive Authority, 14CSR2

3. **Other Business**

Monday, September 17, 2001

4 p.m. to 6 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	Mahan, Chairman	
Anderson, Vice Chairman	Wills, Vice Chairman	
Minard	Cann	
Snyder	Kominar	Absent
Boley	Faircloth	
Minear	Riggs	

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

Mr. Ross stated that the rule proposed by the ***Tax Commissioner-Tobacco Products Excise Tax, 110CSR17,*** had been removed from the agenda.

The minutes of the August 8, 2001, meeting were approved.

Debra Graham, Committee Counsel, stated that the rule proposed by the ***Office of the State Auditor-Transaction Fee and Rate Structure, 155CSR4,*** had been laid over from the Committee's August meeting. She and Paul Mollohan, Senior Deputy State Auditor, responded to questions from the Committee.

Mr. Cann moved to modify subsection 3.2 of the proposed rule by changing the termination date of the fee to December 31, 2003. The motion was adopted.

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

Ms. Graham explained the rule proposed by the ***Department of Agriculture-State Aid for Fairs and Festivals, 61CSR3,*** had been laid

over from the Committee's August meeting. She and Steve Hannah, Deputy Commissioner, responded to questions from the Committee.

Mr. Minard 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 Licensed Dietitians-Code of Professional Ethics, 31CSR2,*** and state that the Board has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the ***Board of Licensed Dietitians-Licensure and Renewal Requirements, 31CSR1,*** and stated that the Board has agreed to technical modifications.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the ***Governor's Committee on Crime, Delinquency and Correction-Protocol for Law Enforcement Response to Domestic Violence, 149CSR3,*** and stated that the Committee has agreed to technical modifications.

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

Joseph Altizer, Associate Counsel, explained the rule proposed by the ***Solid Waste Management Board-Disbursement of Grants to Solid Wasted Authorities, 54CSR5,*** and stated that the Board has agreed to technical modifications. He and Charlie Jordan, Executive Director of the Board, responded to questions from the Committee.

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

Mr. Atlizer reviewed his abstract on the rule proposed by the ***DEP-Office of Water Resources-Underground Injection Control, 47CSR13,*** and stated that the Agency has agreed to technical modifications. He and Dave Watkins, Manager of the Groundwater Protection Program, responded to questions from the Committee.

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

Mr. Altizer explained the rule proposed by the ***DEP-Office of Water Resources-Groundwater Protection Standards at Dominion "Generation" Steam Electric Generating Facility, Mt. Storm, West Virginia, 47CSR57B,*** and stated that the agency has agreed to technical modifications.

Ms. Mahan 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 Social Work Examiners-Qualifications for Licensure as a Social Worker, 25CSR1,*** and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the ***Board of Social Work Examiners-Fee Schedule, 25CSR3.*** Judy Williams, Executive Director, and Rita Brown, Board President, responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the ***Tax Commissioner-Payment of Taxes by Credit Card or Debit Card, 110CSR10B,*** and stated that the Commissioner has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the ***Tax Commissioner-Senior Citizen Tax Credit for Property Taxes Paid, 110CSR21B,*** and stated that the Commissioner has agreed to technical modifications.

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

Ms. Graham reviewed her abstract on the rule proposed by the ***Tax Commissioner-Pollution Control Facilities, 110CSR6,*** and stated that the Commissioner has agreed to technical modifications. Jerry Knight, Director of the Property Tax Division, responded to questions from the Committee.

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

Ms. Graham explained the rule proposed by the ***Secretary of State-Use of Electronic Signatures by State Agencies, 153CSR30,*** and stated that the Secretary of State has agreed to technical modifications.

Mr. Snyder 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-Use of Digital Signatures, State Certification Authority and State Repository, 153CSR31.***

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

Ms. Graham explained the rule proposed by the ***Secretary of State-Registry Requirements, 153CSR32,*** and stated that the Secretary of State has agreed to technical modifications.

Ms. Mahan moved that the proposed rule be laid over until the Committee's next meeting. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the ***State Fire Commission, 87CSR1,*** and stated that the Commission has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the ***Board of Optometry-Rule of the West Virginia Board of Optometry, 14CSR1,*** and stated that the Board has agreed to technical modifications. Dr. Clifton Hyre, President of the Board, responded to questions from the Committee.

Ms. Mahan moved that the proposed rule be laid over until the Committee's next meeting. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the ***Board of Optometry-Schedule of Fees, 14CSR5,*** and stated that the Board has agreed to technical modifications.

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

Ms. Graham explained the rule proposed by the ***Board of Optometry-Expanded Prescriptive Authority, 14CSR2,*** and stated that the Board has agreed to technical modifications.

The following persons spoke in favor of the proposed rule:

Dr. Jack Terry, Board member; and
Dr. Clifton Hyre, Board President.

The following persons spoke against the proposed rule:

Nancy Tonkin, WV Academy of Ophthalmology;
Thom Stevens, WV Academy of Family Physicians;
Steve Powell, WV Academy of Ophthalmology; and
Michele Grinberg, WV State Medical Association.

Mr. Minard moved that the proposed rule be laid over until the Committee's next meeting. The motion was adopted.

The meeting was adjourned.

Questions for the Rule-Making Review Committee to consider on the proposed amendment to Rule 14-2

1. **Are optometrists qualified to use the drugs requested?**
   NO!
   Why?
   Optometrists are not medical doctors and have not had a medical education. They have a doctorate in optometry – four years of education in a school of optometry. They have had only minimal exposure to these drugs in their training, do not write for these drugs in their training and have never managed patients on these drugs in their training. It is important to make a systemic diagnosis of the diseases treated with these drugs to prescribe them and follow the response. Optometrists are trained to examine the eye, not the whole body, as is required for appropriate use of these drugs.

2. **Is there a need for optometrists to have access to prescribe such potentially dangerous drugs?**
   NO!
   There is rarely a medical indication for the use of these medications beyond what has been agreed to. Removing patient protection time limits and adding the requested drugs to the list would put patients at risk. In fact, it is **imperative that optometrists not be allowed to prescribe the requested medications** and that all use of such medications be performed by a physician. Physicians can evaluate the potential risks and side effects when combined with other medications and disease processes affecting organs other than the eye.

3. **Do ophthalmologists (doctors of medicine and doctors of osteopathy) use these medications?**
   Unlike Doctors of Optometry, ophthalmologists are physicians. Ophthalmologists do have a medical education and are trained in the use of topical and systemic medications (by mouth, intravenous, intramuscular, etc.). It is rare for an ophthalmologist to use the drugs on the list requested in the rule (except for systemic steroids and rarely narcotics). If physicians trained to diagnose and treat diseases of the eye rarely require the use of these medications, then why would optometrists? It does not make sense to request these new medications and delete the patient protections currently in place for steroids and Schedule III narcotics.

4. **Is there a benefit to the West Virginia public for optometrists to use these systemic (by mouth) drugs?**
   NO!
   Why?
   If a member of the public needs these types of drugs for treating a disease state, then a physician with medical training needs to prescribe and follow the patient for potential complications of the medications. The West Virginia public is not calling for an expansion of the rule to allow optometrists access to such powerful medicines. In fact a significant portion of the public is already confused as to the

difference between doctors of optometry and physicians (doctors of osteopathy and doctors of medicine).

5. **Hasn't this issue been addressed in the legislature before?**
   YES!
   For 4 years in the legislature (1995 thru 1998) this issue has been exhaustively studied and debated. Nearly ten different bills were considered. An interim committee met, but no agreement was made. After further debate, committee hearings and public hearings, a bill had been passed. Rule 14-2 was addressed, and under direction from the Rule-Making Committee Chairperson, discussions occurred between 5 medical organizations and two optometry organizations. A signed agreement was reached to end the controversy on rule 14-2. The five medical organizations included 1) The Academy of Family Practice 2) The Osteopathic Medical Society 3) The State Medical Association 4) The WV University Department of Ophthalmology and 5) The West Virginia Academy of Ophthalmology. The two optometry organizations were the 1) WV Board of Examiners in Optometry and 2) The WV Optometric Association. It should be noted that the Board of Medicine was not notified in time by the Board of Optometry for comments and did not participate. The president of the Board at that time communicated that the Board of Medicine was opposed to optometrists using any medications outside of drops to the eye, and objected to the compromise on the rule.

   In fact in the legislative session in 2001, the Board of Optometry asked to "clean up" the language in their bill and rule. The Board reassured the legislature (Government Organization Committee in the House; Health Committee in the Senate), and the medical community that they were not trying to expand their therapeutic base and scope of practice. Based on this assurance, the medical community did not oppose the language submitted to the House and eventually to the Senate.

6. **Was there an agreement reached by the participating parties regarding Rule 14-2?**
   YES!
   The signed agreement stated that in addition to the medications listed in the bill, optometrists agreed to patient protection clauses in rule 14-2 including the following:
   a. **Schedule III narcotics would be limited to three (3) days**
   b. **Anxiolytics (Valium and related drugs) would not be permitted to be used**
   c. **The use of corticosteroids would be limited to a duration of six (6) days**

7. **Has anything changed in the education of optometrists in the last three (3) years that would qualify them to use these systemic (by mouth) drugs?**
   NO!

There have been no changes in the education of optometrists in the last three years. Optometrists are not required to do any additional training after optometry school, unlike physicians who have another 4 to 6 years of training. Optometrists are not allowed to write and sign prescriptions during their training for any kind of medication. Optometrists do not train in the diagnosis and treatment of systemic (whole body) diseases.

8. **Are the proposed legislative rule changes reasonable?**
ABSOLUTELY NOT!
Optometrists have never used these medications before! The Board wants to "assume responsibility" for the competency and certification of optometrists to use these drugs. However, the Board members have never used these medications before! The only way to become competent to use these medications would be to go to four (4) years of medical school, one (1) year of internship and three to five (3 – 5) years of residency/fellowship training. There is nothing prohibiting optometrists from doing this. Furthermore, the proposed rule is contrary to all of the good faith effort made by the legislature, the Rule-Making Committee and the Medical organizations that donated significant time and effort to address this issue before. This proposed **amendment would remove patient protections that the medical organizations have insisted on. IT WOULD PUT THE WEST VIRGINIA PUBLIC AT RISK!**

State of West Virginia
West Virginia Board of Medicine
101 Dee Drive
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084

To: Legislative Rule-Making Review Committee

From: West Virginia Board of Medicine

Re: Rule 14-2, Chapter 30, Article 8 of the Optometry Practice Act

Dear Committee Members:

The letter dated July 18, 2001 that was sent by our Executive Director (as he was instructed) to Dr. Hyre represents an administrative action based on the opinion of a Doctor of Pharmacy. The list of medications requested for Expanded Prescriptive Authority by the WV Board of Optometry was not reviewed by the members of the WV Board of Medicine and most of the members were not aware that the Board of Medicine was requested to provide an opinion on this matter.

This should not be an issue of what Optometrists want or what Ophthalmologists want but rather is this a safe change in practice parameters for the citizens of West Virginia.

My initial reaction and that of others on the Board that I have consulted this week is that there are medications requested that have significant affects on organ systems and diseases that are quite remote from the eye. Medical students take Pharmacology and Physiology courses usually in their first year of medical school and learn about medications and the function of organ systems. They are not, however, at this point in their rigorous education prepared to write prescriptions nor would any reasonable person consider allowing them to do so.

It is only after they become experienced in managing diseases throughout the body and how to diagnose not only the diseases that they treat with medications but also the sometimes subtle affects this treatment has on other organs and diseases that they complete their medical education and are allowed to write prescriptions.

If the Legislative Rule-Making Review Committee desires an opinion from the Board of Medicine on this matter, we will accumulate information and present it to the entire Board at our next meeting in November.

Sincerely,

Sarjit Singh, M.D.
President WV Board of Medicine

cc: Nancy Tonkin
Executive Director of WV
Academy of Ophthalmologists

Educational Comparisons between Eye MDs and Optometrists

Perhaps the most important issue relating to Rule 14-2 is the education and training of individuals who wish to use whole body medications to treat eye diseases. The difference in training between Eye MDs (ophthalmologists) and optometrists is very significant.

Consider the following comparisons:

1. **What are the educational comparisons between optometry students and medical students who plan to practice ophthalmology?**

   Eye MDs (ophthalmologists) go through medical school (4 years of training in the entire human body) after receiving a college degree. During medical school, these students are exposed to diseases and medications that effect every organ system in the body. Medical students are allowed to observe the diagnosis and treatment of the full range of diseases management problems of the body. Medical students take extensive and comprehensive medical pharmacology classes. Medical students are not allowed to write and sign prescriptions.

   Optometrists go through 4 years of optometry school training (retail, refractions, diagnosis of eye disease) after completing at least 3 years of undergraduate courses. Optometry students have limited exposure to eye diseases until their 4th year in optometry school. Optometry students are allowed to observe the diagnosis the treatment of eye diseases. Optometry students take optometry pharmacology classes. Optometry students are not allowed to write and sign prescriptions.

2. **What is the requirement for internship?**

   Eye MDs complete a mandatory intensive 1 year internship in order to gain clinical experience in the use of whole body medications. Interns are allowed to write for, and sign and treat the public with medications. These interns are closely monitored for the entire year by faculty (physicians) who review and approve all of their actions.

   Optometrists are not required or allowed to do a medical internship and receive no further supervision and training after optometry school.

3. **What is the requirement for a 3-year residency?**

   Eye MDs complete a mandatory intensive 3 year residency following internship to gain experience (supervised by physicians) in providing medical and surgical care of the eye. Residents are closely supervised as they gain clinical experience in the treatment of diseases and prescribing of medications.

   Optometrists do not have any further training beyond optometry school, and do not receive further supervision.

4. **Why is the educational process so much longer for Eye MDs than for optometrists?**

   Eye MDs practice medicine and surgery of the eye, only after completing such an intensive educational program, in order to afford the most protection possible to the public. Systemic (whole body) medications can cause serious side effects and even death. Only by completing a comprehensive 8 year training program can individuals gain the experience (through supervision) necessary to treat patients with powerful systemic medications. Cutting short the educational process by eliminating clinical exposure and supervision places the public at risk.

5. **What is the importance of rejecting the proposed changes to rule 14-2 by the Board of Optometry?**

   The issue is one of patient protection! The medications requested are very powerful and potentially harmful. Eye MDs rarely use these medications to treat eye disease, and they have the extensive clinical training to understand the complexities of using them. If there is very little need for these medications, and the risk of the medications is significant, then approving the amended Rule 14-2 would put the public at risk.

The educational comparisons between optometrists and physicians practicing ophthalmology regarding the use of by mouth medications (systemic medications) that can affect the whole body

Summary Table

Educational training	Optometrists	Eye MDs (Ophthalmologists)
Professional School	**4 years of optometry school, no prescriptive authority, pharmacology classes and observation of treatment of eye disease**	**4 years of medical school, no prescriptive authority, pharmacology classes and observation of treatment of diseases of all organ systems**
Internship	**0**	**1 year of intensive supervised training with full prescriptive authority**
Residency	**0**	**3 years of intensive supervised training with full prescriptive authority**
Fellowship	**0**	***Elective* 1-2 year subspecialty training**

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September 17, 2001

Honorable Mike Ross, Co-chair
Honorable Virginia Mahan, Co-chair

Legislative Rule Making Review Committee
Capitol Building
Charleston, WV 25305

Dear Members of the Committee;

The West Virginia American Academy of Family Physicians (WVAAFP) has a membership of more than 900 family doctors in this state. These are the health care professionals who are on the front line in providing primary care to people of West Virginia. Our physicians serve in rural and urban areas, are in private practice and group practice, teach at our three medical schools, provide prevention and wellness programs, and are the physicians most likely to provide primary care medical services.

The WVAAFP respectfully requests that you do not adopt the proposed amendments to Rule 14-2 submitted by the WV Board of Optometry.

We hope that you will carefully consider our request. Since optometrists are not physicians, we are providing you with reasons not to adopt the proposed rule because of the possible negative impact on patient care. The proposed rule suggests serious changes to the limited prescriptive authority granted by the legislature to optometrists. The proposed rule contains an expansion of the use of drugs which are medically unnecessary and best diagnosed and treated by physicians only if there is a need. These proposed drugs should not be administered by non-medical professionals - only by physicians.

It is important to remember that the legislature did enact a compromise bill allowing optometrists to use a very limited number of oral drugs. This legislative enactment of several years ago was a compromise with the optometric community and physicians after many years of negotiations which included our organization. There is no compromise on these proposed rule changes being submitted to you by the Board of Optometry.

The current law allows only for a limited drug list for optometrists. These include oral antibiotics, oral carbonic and anhydrase inhibitors, and non-steroidal anti-inflammatory drugs.

Problems with the Proposed Optometry Board Rules

♦ The rule changes proposed by the Board of Optometry removes the 3-day limit for **Narcotic Analgesics.** This removes the patient protection provided in the current rules.

♦ The proposed rule would add **Antifibrinolytics**, which are drugs currently used by physicians before, during or after surgery. Optometrists are expressly prohibited by law from performing surgeries. Amicar, is the only drug in this class that is used orally (or intravenously), to treat blinding eye trauma, and this drug is rarely used by Eye MDs who treat such patients. It has a very high rate of complications and death, therefore, non-physicians should not use this medication.

♦ The proposed rule would add **Anxiotytics**, which are currently used by physicians to aid in anesthesia for surgical procedures. Optometrists do not perform surgeries. They also specifically have agreed in writing to not pursue this class of drug in the original compromise.

♦ The proposed rule would expand the legislative authorization of **Oral Corticosteroids** beyond 6 days. However medical indications for extended use should only be diagnosed and treated by a physician because of possible severe complications to organs of the body. Optometrists are prohibited from diagnosing or treating any part of the human body other than the eye.

♦ The proposed rule would add **Hyperosmotics**. The medical community recognizes that these drugs must be very carefully used because of the potential for congestive heart failure and extreme complications in patients with diabetes. Optometrists are not allowed by law to treat these conditions.

♦ The proposed rule would include **Immunosuppressants**. Physicians must be very cautious in the use of these drugs because they affect the entire body immune system. Optometrists may not treat the human body except for limited applications to the eye and these drugs should only be used by qualified physicians because of the serious impact on the whole body.

♦ The proposed rule would include Nutritional Supplements, which are not provided for in the current law. In addition, these products are available at supermarkets and health food stores.

It is important to know that physicians receive a very thorough medical education while in medical school, residency and internship. Optometrists do not receive any comparable training. And, prescription drugs are one of the most highly complex uses of medical treatment. **The types and categorical use of the drugs proposed by the Optometry Board should not be approved for non-physicians, and the West Virginia public should not be placed at risk.**

For further information, please fell free to contact me or the West Virginia Academy of Family Physicians

Sincerely,

Harry D. Fortner, MD

Harry Fortner, MD, President
West Virginia Academy of Family Physicians

Urgent Notice Regarding Rule 14-2, Chapter 30, Article 8 of the Optometry Practice Act

The proposed rules for ***clarification*** of the Expanded Prescriptive Authority for the practice of optometry

- **IS A MASSIVE EXPANSION ON THE SCOPE OF PRACTICE !**
- **Has not been agreed to by the legislature !**
- **Has not been agreed to the medical community!**
- **Is far beyond the compromise language that was agreed to and signed between 5 Medical Organizations and agreed to and signed by the Board of Optometry!**
- **Circumvents legislative review of the scope of practice!**
- **Is contrary to the 2001 legislative agreements in the Senate Health Committee and the House Government Organization Committee that passed the "clean-up bill"!**
- **Goes far beyond the extent of training of optometrists, creating exposure of the public to very potent medications. Non-physician providers who have not had formal medical training in the use of such potent medications, or the complications that occur from the use of these medications, should not be allowed to use them!**
- **Removes patient protection guidelines regarding the use of steroids and narcotic analgesics that are in current law and rules!**
- **UNNECESSARILY PLACES THE WEST VIRGINIA PUBLIC AT RISK WITH NO POTENTIAL BENEFIT!**

Specifically, the new language adds the following categories of drugs that have never been approved by the legislature:

- 7.1.a. Analgesics – removes patient protection language allowing optometrists to use more than the agreed upon 3 days which has the potential to expose patients to addicting drugs.
- 7.1.c. Antifibrinolytics – This has never been agreed to and would place patients at great risk to the use of clot busting and scar inhibiting drugs by non-physicians.
- 7.1.e. Anxiolytics – This was specifically discussed and as part of the agreed upon and signed compromise and was eliminated in order to protect the public from addicting drugs such as valium.
- 7.1.g. Oral Corticosteroids – The medical profession agreed to allow only six days use of these medications due to the severe adverse reactions that can involve many of the organ systems of the body if used for extended periods of time. Removing these patient protection clauses exposes the public to high risk of complications from steroids.
- 7.1.h. Hyperosmotics – This group of drugs was never agreed to because of the potential for congestive heart failure and severe diabetic reactions. A medical education with internship and residency is the only way to adequately protect the public from this class of medications.
- 7.1.i. Immunosuppressants – This group of drugs is a class of medications that result in suppression of the immune system. It is inconceivable that optometrists would want access to such potent and potentially life threatening drugs.
- 7.1.k. Nutritional supplements – This group of medications have never been discussed in the scope of practice of optometry. These are over the counter supplements.

We urge rejection of the above components in the optometry proposed rule in order to insure adequate patient protections from potentially harmful medications, and to honor the signed agreement and the six (6) years of legislative effort that had resolved these issues.

9-16-2001

To: Legislative Rule-Making Review Committee
From: The West Virginia State Medical Association; The West Virginia Academy of Ophthalmology; The West Virginia Academy of Family Physicians
Re: Factual information relating to Chapter 30, Article 8 Legislative Rule 14-2 proposal

The West Virginia State Medical Association, West Virginia Academy of Ophthalmology and the West Virginia Academy of Family Physicians are providing this information regarding the proposed rule amendment on 14-2 of the Optometry Rule.

The information is meant to be factual and based on a number of documents and agreements that have been reviewed regarding the "Expanded Prescriptive Authority" section in the Proposed Optometry Rule.

Includted in a format that is consistent with the current rule, **there have been agreements over the last 6 years to the following ONLY:**

§ 14-2-7. Drug Formulary

7.1 The categories of oral drugs to be considered rational to the diagnosis and treatment of the human eye and its appendages shall include;

7.1.a Analgesics: provided, that no oral narcotic analgesic (Schedule III only) shall be prescribed for a duration of more than three (3) days; and for the purpose of treatment of visual defects or abnormal conditions of the human eye and its appendages.

7.1.b. Antibiotics

7.1.c Antihistamines

7.1.d. Carbonic Anhydrase Inhibitors

7.1.e Oral Corticosteroids for a duration of no more than six (6)days; and for the purpose of treatment of visual defects or abnormal conditions of the human eye and its appendages.

7.1.f Non-steroidal anti-inflammatory agents

- **Any attempt to add additional drugs to this list is a violation of all previous agreements and understandings.**
- **It is also contrary to the information given to the Senate Health Committee and the House Government Organization Committee in the 2001 session. Every reassurance had been given to all parties (including legislators) that the legislation in 2001 by the Board of Optometry was to "clean up" the language.**
- **The additional drug categories in the proposed rule change is a deliberate attempt to mislead involved parties and places the West Virginia public at risk.**
- **The individual Board members who have drafted this outrageous and dangerous rule change should be held accountable!**

What is the potential harm from the drugs listed in the proposed amendment for rule 14-2?

- 7.1.a. **Analgesics – removes patient protection language** that was agreed to by optometrists to use for no more than 3 days.
    1. Potential to expose patients to **addicting drugs.**
    2. Potential for **"failure to refer"** when a patient has sustained eye pain for more than 3 days and requires a medical evaluation.
    3. **Complications can occur if a patient has:**
        a) Hypothyroidism
        b) Addison's disease
        c) Anemia
        d) Dehydraion
        e) Asthma
        f) Emphysema
        g) Increased intracranial pressure
        h) Liver disease
        i) Abdominal pain
    4. **Adverse effects** can occur including
        a) Sedation
        b) Severe nausea and vomiting
        c) Respiratory depression
        d) Possible circulatory collapse
        e) Dizziness
        f) Biliary tract spasm (bile duct)
        g) Constipation with severe complications
        h) Urinary retention, bladder outlet obstruction
        i) Allergic reactions

There is no good argument that optometrists need access to more than three (3) days of this class (Schedule III narcotic analgesics) of medicines. Limiting a patient's exposure to potential risks are minimized by keeping the 3 day restriction.

7.1.c. **Antifibrinolytics** – This has never been agreed to and would place patients at great risk to the use of clot busting and scar-inhibiting drugs by non-physicians. When used by ophthalmologists, these drugs are used during surgery, as injections into the eye after surgery, or not used at all.

1. **Antineoplastic** agents
    a) 5-fluuorouracil (used in glaucoma surgery)
    b) Mitomycin C (used in glaucoma surgery)
2. **Clot altering agents** (blood thinners)
    a) Coumadin (blood thinner)
    b) Aminocaproic acid (was used at one time to treat bleeding/clot retraction in the eye, but is not used now due to bleeding/clotting in the brain and death) It's use is very controversial in the medical field.
3. There are multiple **drug interactions** with the antifibrinolytics that can affect the therapeutic levels of drugs in the blood and put patients at risk including:
    a) Allopurinol (gout medicine)
    b) Anabolic steroids (muscle building)
    c) Chloral hydrate (sedative)
    d) Chloramphenicol (antibiotic)
    e) Cimetidine (ulcer medication)
    f) Clofibrate (high blood fat medicine)
    g) Disulfiram
    h) Indomethacin (arthritis)
    i) Metronidazole (infectious diseases by parasites)
    j) Oral hypoglycemic agents (Diabetes)
    k) Phenothiazines (antipsychotic and anti-nausea medicines)
    l) Propylthiouracil (hyperthyroidism)
    m) Quinidine (heart arrythmias)
    n) Salicylates (anti-inflammatory medications)
    o) Tricyclic antidepressants (Depression)
    p) Trimethoprim-sulfamethoxazole (antibiotics)
    q) Barbiturates (Sedatives)
    r) Cholestyramine (Blood fat)
    s) Oral contraceptives
    t) Rifampin (Tuberculosis)
4. **Side effects** include:
    a) Bleeding, including severe life threatening
    b) Abnormal clotting reactions, including intravascular thrombosis
    c) Decreased urination
    d) Decreased blood pressure
    e) Headache
    f) Muscle weakness and fatigue

There is no good argument that optometrists need access to this class of medications.

- **7.1.g. Anxiolytics** – This was specifically discussed and as part of the agreed upon and signed compromise and was eliminated in order to protect the public from addicting drugs such as valium. These drugs are used to aid in anesthesia during surgery, treat acute epilepsy attacks, and treat anxiety disorders such as panic attacks (medically diagnosed). It is not necessary to prescribe this class of drug to treat eye diseases outside of the surgical setting. In fact it is dangerous.

  Benzodiazepines (Anxiolytics)

  g) Lorazepam (Ativan)
  h) Alprazolam (Xanax)
  i) Clonazepam (Klonopin)
  j) Diazepam (Valium)
  k) Medazolam (Versed) intravenous, intramuscular, intranasal

  Complications and problems arising from using these systemic drugs include:

  1) Addiction – The problems with Valium and related compounds are well known.
  2) Respiratory depression
  3) Interference with other medications
  4) Fatigue
  5) Walking problems
  6) Depression
  7) Headache
  8) Slurred speech
  9) Hallucinations
  10) Rage
  11) Sleep disturbances
  12) Liver damage
  13) Withdrawal symptoms

There is no good argument that optometrists need access to this class of medicines.

- **7.1.g. Oral Corticosteroids** – The medical profession **agreed to allow only six days** use of these medications due to the **severe adverse reactions** that can involve many of the organ systems of the body **if used for extended periods of time.** Removing these patient protection clauses **exposes the public to high risk of complications** from steroids.

  Complications from use of long term steroids includes:

  1) Musculoskeletal
     a) Myopathy
     b) Osteoporosis, compression fractures
     c) Aseptic necrosis of bone
  2) Gastrointestional
     a) Peptic ulcer
     b) Gastric hemoorhage
     c) Intestinal perforation
     d) Pancreatitis
  3) Central Nervous system
     a) Psychiatric disorders
     b) Swelling of the brain
  4) Cardiovasular and renal
     a) Hligh blood pressure
     b) Water retention
     c) Blood acid/base imbalance
  5) Metabolic
     a) Precipitation of Diabetes
     b) Hyperosmolar coma
     c) Increased blood fats
     d) Obesity
  6) Endocrine
     a) Growht failure
     b) Loss of menstration in females
     c) Suppression of the hormonal regulatory mechanisms of the brain – pituitary – adrenal system
  7) Inhibition of healing
     a) Impared wound healing
     b) Subcutaneous (under skin) tissue atrophy
  8) Suppression of the immune response
     a) Risk of bacterial, fungal and viral infections throughout the entire body

There is no good argument that optometrists need access to more than six (6) days of this class of medicine. Limiting a patient's exposure to potential risks are minimized by keeping the 6 day restriction.

- **7.1.h. Hyperosmotics** – This group of drugs was never agreed to because of the potential for congestive heart failure and severe diabetic reactions. A medical education with internship and residency is the only way to adequately protect the public from this class of medications.
  A list of hyperosmotics includes:
  1) Glycerol
  2) Isosorbide
  3) Ethanol
  4) Mannitol (intravenous)

  Potential complications using these drugs include:
  1) Mausea and vomiting
  2) Fever
  3) Chills
  4) Confusion
  5) Disorientation
  6) Severe thirst
  7) Urinary retention (inability to void)
  8) Decreased kidney function --failure
  9) Headache
  10) Vertigo
  11) Subdural hemorrhage (bleeding around the brain)
  12) Pulmonary edema (fluid in the lungs)
  13) Congestive heart failure
  14) Diabetic coma
  15) Death

There is no good argument that optometrists need access to this class of medicines. If a patient has a condition requiring the use of Hyperosmotics, then that patient must be seen by a physician to evaluate if that is the appropriate treatment, and if the patient has compounding systemic (heart, lung, brain, endocrine – diabetes, etc.) risk factors that puts him/her at risk from the use of the medicines.

- 7.1.i. **Immunosuppressants** – This group of drugs is a class of medications that result in suppression of the immune system. It is inconceivable that optometrists would want access to such potent and potentially life threatening drugs.

  A list of immunosuppressives includes but is not limited to:

  1) Long term Corticosteroids
  2) Methotrexate
  3) Azathioprine
  4) Cyclosporine
  5) Cyclophosphamide
  6) Chlorambucil
  7) Dapsone

  Complications to using these drugs include:

  1) high blood pressure
  2) kidney toxicity and failure
  3) severe fatigue
  4) muscle waisting
  5) markedly increased risk of severe infections (viral and bacterial and fungal – pneumonia, etc.)
  6) Severe anemia and decreased white blood cells
  7) Gastrointestinal to include nausea, vomiting, bleeding
  8) Liver toxicity
  9) Sterility
  10) Bleeding from the bladder
  11) Cancer
  12) Loss of hair
  13) Heart toxicity
  14) Seizures
  15) Pulmonary fibrosis (lung failure)
  16) Agitated behavior
  17) Skin necrosis
  18) Death

It is inconceivable and irresponsible that optometrists would want to use this class of medications. Based on the very high risk side effect profile, a physician must decide if such drugs are indicated. Additionally, it is highly unusual for ophthalmologists (physicians who deliver medical and surgical care of the eyes) to institute the use of these drugs (with the exception of steroids).

- **7.1.k. Nutritional supplements** – This group of medications have never been discussed in the scope of practice of optometry. **All by mouth nutritional supplements can be found in health food stores over the counter** and optometrists can recommend these at this time.

If the goal is to gain access to giving patients hyperalimentation (intravenous nutritional supplements for patients with severe wasting and gastrointestinal absorption problems), then this is clearly outside any conceivable scope of practice for optometry.

Textbooks. — Administrative Law in West Virginia (Neely), § 3.06.

§ 30-8-1. Evidence of qualification to practice and registration required.

Any person practicing or offering to practice optometry in this state shall be required to submit evidence that he is qualified so to practice, and shall be registered as hereinafter provided, and it shall be unlawful for any person to practice or offer to practice optometry in this state, except under the provisions of this article. (1931 Code, § 30-8-1.)

ALR references. — What constitutes practice of "Optometry", 82 ALR4th 818.

W. Va. Law Review. — For article, Farrell, "The Law of Medical Malpractice in West Virginia," see 82 W. Va. L. Rev. 251 (1979).

Cited in Vest v. Cobb, 138 W. Va. 860, 76 S.E.2d 885 (1953); Serian v. State, 171 W. Va. 114, 297 S.E.2d 889 (1982).

§ 30-8-2. Practice of optometry defined.

Any one or any combination of the following practices shall constitute the practice of optometry:

(a) The examination of the human eye, with or without the use of drugs prescribable for the human eye, which drugs may be used for diagnostic or therapeutic purposes for topical application to the anterior segment of the human eye only, and, by any method other than surgery, to diagnose, to treat or to refer for consultation or treatment any abnormal condition of the human eye or its appendages;

(b) The employment without the use of surgery of any instrument, device, method or diagnostic or therapeutic drug for topical application to the anterior segment of the human eye intended for the purpose of investigating, examining, treating, diagnosing, improving or correcting any visual defect or abnormal condition of the human eye or its appendages;

(c) The prescribing and application or the replacement or duplication of lenses, prisms, contact lenses, orthoptics, vision training, vision rehabilitation, diagnostic or therapeutic drugs for topical application to the anterior segment of the human eye, or the furnishing or providing of any prosthetic device, or any other method other than surgery necessary to correct or relieve any defects or abnormal conditions of the human eye or its appendages.

Nothing in this section shall be construed to permit an optometrist to perform surgery, use drugs by injection or to use or prescribe any drug for other than the specific purposes authorized by this section. (1909, c. 73, § 1; Code 1923, c. 150, § 29a(1); 1927, c. 35, § 29a(2); 1976, c. 102.)

In general. There is no offense defined in this section; it contains no prohibitive terms. It is § 30-8-4 that makes it unlawful to practice, or to offer to practice, optometry without a certificate of registration, and a warrant should be drafted on that section. State v. McGrail, 117 W. Va. 51, 183 S.E. 686 (1936).

Quoted in Serian v. State, 171 W. Va. 114, 297 S.E.2d 889 (1982).

§ 30-8-2a. Prescriptive authority.

Notwithstanding the provisions of section two [§ 30-8-2] of this article, the board of optometry may grant qualified optometrists prescriptive authority for oral antibiotics, oral non-steroidal anti-inflammatory drugs, and oral carbonic anhydrase inhibitors: Provided, That the board has proposed rules for legislative approval in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, defining a certification process for individual optometrists that provide standards for education, training and adequate insurance coverage determined by the board to be conditions precedent to certification authorizing the individual optometrist to prescribe drugs excluded pursuant to the provisions of section two of this article but authorized by this section, and the optometrist desiring to employ the use of these pharmaceutical agents has met the necessary qualifications as established by rule. (1997, c. 153.)

§ 30-8-2b. Expanded prescriptive authority.

Notwithstanding the provisions of section two [§ 30-8-2] of this article, on or before the thirty-first day of December, one thousand nine hundred ninety-seven, the board of optometry shall propose rules for legislative approval in accordance with the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, defining a certification process and drug formulary which is authorized by this section, except that no emergency rules may be proposed. The board shall provide a formulary classifying those categories of oral drugs rational to the diagnosis and treatment of conditions or diseases of the human eye and its appendages, which may be prescribed by optometrists from Schedules III, IV and V of the Uniform Controlled Substances Act, article two [§ 60A-2-201 et seq.], chapter sixty-a of this code. The board shall consult with other appropriate boards, including the board of pharmacy, in the development of the formulary. The rules shall further provide for individual certification of optometrists for this expanded scope of prescriptive authority. The rules shall provide standards for education and training determined by the board to be conditions precedent to individual certification authorizing an optometrist to prescribe drugs excluded pursuant to the provisions of section two of this article and included in a drug formulary to be adopted by the board; procedures for certification by the board of education and training courses; procedure standards for certification and recertification of individual optometrists for an expanded scope of practice prescriptive authority, which shall include a continuing education requirement; administrative fees necessary for the certification and recertification; procedures and standards for certification and training courses; procedures and standards for determining successful completion of education and training; and standards to ensure adequate insurance coverage, as well as compliance with the provisions of this section. (1997, c. 153.)

SEPTEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
September 16, 17 and 18, 2001

Monday, September 17, 2001

4:00 - 6:00 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	✓	Mahan, Chair	✓
Anderson, Vice Chair	✓	Wills, Vice Chair	✓
Minard	✓	Cann	✓
Snyder	✓	Kominar	
Boley	✓	Faircloth	✓
Minear	✓	Riggs	✓

I certify that the attendance as noted above is correct.

Staff Person

Terri Anderson

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review **Date** 9/17/01

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
EDIE FLEMMING	209 BEAUREGARD ST CHARLESTON 25301	MSW STUDENT	
STEVE HANNAH	WV Dept of Agr.		
Judy Williams	PO Box 5459 Chas	Social Work Board	
Rita Brown	5106 Heather Pl. Chas.	Soc. Wk. Board	
Nancy Tonkin	Chas.	WV Acad. of Ophthalmology	✓
Thom Stevens	Chas.	WV Acad. of Family Physicians	✓
Steve Powell, MD	Morgantown	WV Acad. of Ophthalmology	✓
Michele Grinberg	Chas.	WV State Medical Assn	✓

LS-C-66-1a
Revised 1-10-97

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday, September , 2001

Beginning at 9 a.m.

Senate Judiciary Committee Room, W-208

1. Approval of Minutes - August 8, 2001.

2. Review of Legislative Rules:

Approved as modified a. **Office of the State Auditor**
Transaction Fee and Rate Structure, 155CSR4

Approved as modified b. **Department of Agriculture**
State Aid for Fairs and Festivals, 61CSR3

Approved modified c. **Board of Licensed Dietitians**
Code of Professional Ethics, 31CSR2

Approved as modified d. **Board of Licensed Dietitians**
Licensure and Renewal Requirements, 31CSR1

Approved as modified e. **Governor's Committee on Crime, Delinquency and Correction**
Protocol for Law Enforcement Response to Domestic Violence, 149CSR3

Approved as modified f. **Solid Waste Management Board**
Disbursement of Grants to Solid Waste Authorities, 54CSR5

Approved as modified g. **DEP-Water Resources**
Underground Injection Control, 47CSR13

Approved as modified h. **DEP-Water Resources**
Groundwater Protection Standards at Dominion "Generation" Steam Electric Generating Facility, Mt. Storm, West Virginia, 47CSR57B

Approved as modified i. **Board of Social Work Examiners**
Qualifications for Licensure as a Social Worker, 25CSR1

Approved j. **Board of Social Work Examiners**
Fee Schedule, 25CSR3

Approved as modified k. **Tax Commissioner**
Payment of Taxes by Credit Card or Debit Card, 110CSR10B

Approved as modified l. **Tax Commissioner**
Senior Citizen Tax Credit for Property Taxes Paid, 110CSR21B

Approved as modified m. **Tax Commissioner**
Pollution Control Facilities, 110CSR6

Removed n. **Tax Commissioner**
Tobacco Products Excise Tax, 110CSR17

Approved as modified o. **Secretary of State**
Use of Electronic Signatures by State Agencies, 153CSR30

Approved p. **Secretary of State**
Use of Digital Signatures, State Certification Authority and State Repository, 153CSR31

Lay over q. **Secretary of State**
Registry Requirements, 153CSR32

Approved as mod. Fed r. **State Fire Commission**
Fire Code, 87CSR1

Lay over s. **Board of Optometry**
Rule of the West Virginia Board of Optometry, 14CSR1

Approved as modified t. **Board of Optometry**
Schedule of Fees, 14CSR5

Laid over u. **Board of Optometry**
Expanded Prescriptive Authority, 14CSR2

3. **Other Business**

Monday, September 17, 2001

4:00 - 6:00 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	✓	Mahan, Chair	✓
Anderson, Vice Chair	✓	Wills, Vice Chair	✓
Minard	✓	Cann	✓
Snyder	✓	Kominar	
Boley	✓	Faircloth	✓
Minear	✓	Riggs	✓

Minutes approved

State Auditor - Trans. Fee

I explained & responded to q's

Cann — Subsection 3.2 mod → 2003

Adopted — Paul Mullohan - agreed to mod

Mahan adopted — Approve as mod

Agriculture - State Fairs

I explained & responded to q's

Steve Hanna resp to q's

Minard — Approve as mod.

Definitions - Code

Mahan adopted — Approve as mod

Definitions - Licensure

Mahan adopted — Approve as mod

Governors C.

Approve as mod

Mahan adopted

Solid Waste Mgt Bd

Joe explained

Charlie Jordan Ex Dir responded to q's

Approve as mod

Mahan adopted

DEP - Undergrd Inj

Joe explained & responded to q's

Dave Watkins responded to q's

Approve as mod.

Mahan adopted

DEP - Groundwater Protection

Joe explained

Approve as mod.

Mahan adopted

Bd of Social Work Examiners - Qual.f.

I explained

Approve as mod

Mahan

Bd of Social Work Examiners - Fees

I explained

Judy Williams, Exec. Dir. > responded to q's

Dirk Brown - Bd. Pres

Mahan adopted — Approve

Tax – Payment

Minard adopted — Approve as mod

Tax – Senior

Minard — Approve as mod

Tax – Pollution

I explained

Terry Knight responded to question

SOS – Electronic

Snyder adopted — Approve as mod

SOS – Voter Dis

Mahan — Approve

SOS – Registry

Mahan adopted — Lay over

State Fire

Snyder adopted — Approve as mod

Op — Rules

Mahan adopted — Lay over
Dr. Hayre responded to q's

Op - Fees

Mahan adopted — Approve as mod

Op — Prescriptive Authority

Agn
- Nancy Tonkin addressed the C on behalf of opth.
- Thom Stevens - WV Academy of Family Phys.
- Dr. Steve Powell — " " " Opthamology
- Michelle Grimberg - Counsel Med Assn

Fes
- Dr. Hayre
- Dr. Jack Terry, Bd Member

Minard — Lay over