

NOVEMBER 12

k. **Division of Health**
Reportable Diseases, Events and Conditions, 64CSR7

l. **Division of Health**
Alzheimer/Dementia Special Care Units and Programs, 64CSR85

m. **Division of Health**
Recreational Water Facilities, 64CSR16

3. **Other Business**

Legislation regarding procedural rules

Monday, November 12, 2001

Noon to 2 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
Minard
Snyder
Boley
Minear

Mahan, Chairman
Wills, Vice Chairman Absent
Cann
Kominar
Faircloth
Riggs Absent

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

The minutes of the October 22, 2001, meeting were approved.

Debra Graham, Committee Counsel, stated that the rule proposed by the *Tax Commissioner-Tobacco Products Excise Tax, 110CSR17*, had been removed from the agenda of Committee's October meeting. Ms. Graham, John Hodges, representing the West Virginia Wholesaler's Association, and John Montgomery, Director of the Tax Department Legal Division, responded to questions from the Committee.

Mr. Anderson moved to modify subdivision 4.6.1 of the proposed rule by striking out the words "removed from inventory" and inserting the words "sold in West Virginia". The motion was adopted.

Mr. Anderson moved to amend the proposed rule by striking out all of subdivision 4.7.4 and inserting in lieu thereof a new subdivision 4.7.4 to read, "Every taxpayer that pays excise tax on tobacco products shall be allowed a discount of 4% on all tax due". The motion was adopted.

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

Joe Altizer, Associate Counsel, explained the rule proposed by the *DEP-Division of Waste Management-Hazardous Waste Management Rule, 33CSR20*, and stated that the Department has agreed to technical modifications.

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

Mr. Altizer reviewed his abstract on the rule proposed by the *DEP-Division of Air Quality-NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides, 45CSR1*, and stated that the Department has agreed to technical modifications.

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

Mr. Altizer explained the rule proposed by the *DEP-Division of Air Quality-NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units, 45CSR26*, and stated that the Department has agreed to technical modifications. Mr. Altizer and John Benedict, Deputy Director of the Division of Air Quality, responded to questions from the Committee.

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

Mr. Altizer reviewed his abstract on the rule proposed by the *DEP-Division of Air Quality-To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities, 45CSR25*.

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

Mr. Altizer explained the rule proposed by the *DEP-Division of Air Quality-Acid Rain Provisions and Permits, 45CSR33*.

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

Ms. Graham reviewed her abstract on the rule proposed by the *Division of Health-Public Water Systems, 64CSR3*, and stated that the Division has agreed to technical modifications. Mike McNulty, Vice

Director of the West Virginia Rural Water Association, 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 *Division of Health-Public Water Systems Operator Regulations, 64CSR4*, and stated that the Division 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 *Division of Health-Reportable Diseases, Events and Conditions, 64CSR7*, and stated that the Division 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 *Division of Health-Alzheimer/Dementia Special Care Units and Programs, 64CSR85*, responded to questions from the Committee and stated that the Division has agreed to technical modifications. John Wilkinson, Director of the Office of Health Facility Licensure and Certification, addressed the Committee and responded to questions.

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 *Division of Health-Recreational Water Facilities, 64CSR16*, and stated that the Division has agreed to technical modifications. Ms. Graham and Ron Forren, Director of the Public Health Sanitation 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 that the rule proposed by the *Board of Optometry-Expanded Prescriptive Authority, 14CSR2*, had been moved to the foot of the agenda at the October 22 meeting. Dr. John

Lackey and Dr. Heath Lemley, members of the West Virginia Academy of Ophthalmology, and Nancy Tonkin, Executive Director of the West Virginia Academy of Ophthalmology, addressed the Committee and responded to questions. Clifton Hyre, President of the West Virginia Board of Optometry, addressed the Committee and responded to questions.

Ms. Mahan moved that the rule proposed by the *Division of Labor-West Virginia Manufactured Housing Construction and Safety Standards Board, 42CSR19*, be moved to the foot of the agenda. The motion was adopted.

The meeting was adjourned.

NOVEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
November 11, 12 and 13, 2001

Monday, November 12, 2001

12:00 - 2:00 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

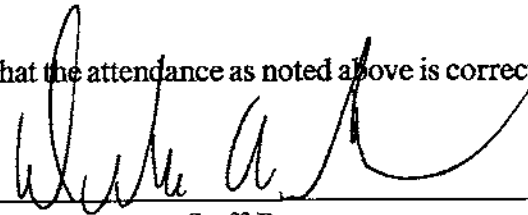
Senate

Ross, Chair ✓
Anderson, Vice Chair ✓
Minard ✓
Snyder ✓
Boley ✓
Minear ✓

House

Mahan, Chair ✓
Wills, Vice Chair ✓
Cann ✓
Kominar ✓
Faircloth ✓
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 11/12/01

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
E. Clinton Hyne	1500 Harrison	Elkins - Elkins Board of Opt.	<input checked="" type="checkbox"/>
Blades			
CRAIG HYNE	1500 Harrison	Elkins - WVOA	<input checked="" type="checkbox"/>
RONALD FRANK	416 DIVISION PKY WV	Optometry	<input checked="" type="checkbox"/>
Chris Hill	122 Capital St Char WV	TSG Consulting	
JOHN MONTGOMERY		TAX DEPT.	IF NECESSARY
Scott Icard		AEP	
Tim Mallan		AEP	

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: _____

Date _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Sam Minardi		Allegheny Power	
David Flannery		WV Chamber	
CHARLES FRANCIS	1410 Sweetbrier WV Chas, WV	WV ACADEMY OF OPHTHALMOLOGY	✓
Nancy Tonkin	Chas.	" "	
John Lackey, MD	Summersville	" "	

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, November 12, 2001
Noon to 2 p.m.
Senate Finance Committee Room, M-451

1. **Approval of Minutes - October 22, 2001**
2. **Review of Legislative Rules:**
 - a. **Board of Optometry**
Expanded Prescriptive Authority, 14CSR2
 - b. **Division of Labor**
West Virginia Manufactured Housing Construction and Safety Standards Board, 42CSR19
 - c. **Tax Commissioner**
Tobacco Products Excise Tax, 110CSR17
 - d. **DEP-Waste Management**
Hazardous Waste Management Rule, 33CSR20
 - e. **DEP-Division of Air Quality**
NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides, 45CSR1
 - f. **DEP-Division of Air Quality**
No_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides From Electric Generating Units, 45CSR26
 - g. **DEP-Office of Air Quality**
To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities, 45CSR25
 - h. **DEP-Office of Air Quality**
Acid Rain Provisions and Permits, 45CSR33
 - i. **Division of Health**
Public Water Systems, 64CSR3
 - j. **Division of Health**
Public Water Systems Operator Regulations, 64CSR4

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, November 12, 2001
Noon to 2 p.m.
Senate Finance Committee Room, M-451

1. Approval of Minutes - October 22, 2001

2. Review of Legislative Rules:

a. Board of Optometry

Expanded Prescriptive Authority, 14CSR2

- Foot of Agenda October 22
- Laid Over September 17
- Technical Modifications

Division of Labor

West Virginia Manufactured Housing Construction and Safety Standards Board, 42CSR19

- Laid Over October 22
- Technical Modifications

Tax Commissioner -

Tobacco Products Excise Tax, 110CSR17

- Removed From Agenda October 22
- Removed From Agenda September 17
- Technical Modifications

DEP-Waste Management -

Hazardous Waste Management Rule, 33CSR20

- Meeting Adjourned October 22
- Technical Modifications

DEP-Division of Air Quality -

NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides, 45CSR1

- Meeting Adjourned October 22
- NO Technical Modifications

Foot of ~~Agenda~~
agenda

Approved ~~as~~
as modified
& amended

Approved ~~as~~
modified

Approved ~~as~~
as modified

Approved *as modified*

DEP-Division of Air Quality

No_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides From Electric Generating Units, 45CSR26

- Meeting Adjourned October 22
- Technical Modifications

Approved

Dep-Office of Air Quality

To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities, 45CSR25

- NO Technical Modifications

Approved

DEP-Office of Air Quality

Acid Rain Provisions and Permits, 45CSR33

- NO Technical Modifications

Approved *as modified*

Division of Health

Public Water Systems, 64CSR3

- Meeting Adjourned October 22
- Technical Modifications

Approved *as modified*

Division of Health

Public Water Systems Operator Regulations, 64CSR4

- Meeting Adjourned October 22
- Technical Modifications

Approved *as modified*

Division of Health

Reportable Diseases, Events and Conditions, 64CSR7

- Meeting Adjourned October 22
- Technical Modifications

Modified

Division of Health

Alzheimer/Dementia Special Care Units and Programs, 64CSR85

- Meeting Adjourned October 22
- Technical Modifications

John Wilkinson
OFLAC

modified

(m)

Division of Health
Recreational Water Facilities, 64CSR16

- Meeting Adjourned October 22
- Technical Modifications

3. Other Business

Legislation regarding procedural rules

Monday, November 12, 2001

12:00 - 2:00 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
✓ Minard
✓ Snyder
✓ Boley
✓ Minear

House

✓ Mahan, Chair
Wills, Vice Chair
✓ Cann
✓ Kominar
Faircloth
Riggs

Minutes approved

Tax - Tobacco Products

Joe explained

John Hedger addressed the C & responded to q's

John Montgomery

Anderson 4.7.4 (got away from Anderson)
Amend adopted

Anderson 4.6.1 "removed from inventory" → sold in WV
mod amend
adopted
Check w/ John

Mahan Approve as mod & amended
adopted

DEP - Haz Waste

Joe explained

Mahan Approve as mod
adopted

Muhon
adopted

DOH - Reportable Diseases
Approve as mod

Muhon

Approve as mod

Neurology

DOH - Infectious Syphilis

Muhon
adopted

Approve

For explained

DEP - Acid Rain

DOH - Public Opn.
Approve - Approve
as mod.

Muhon
adopted

Approve

For explained

DEP - To Present

Muhon

Approve as mod

John Benedict, Deputy Dir

For explained

DEP NOX Budget 45 CSR 21

Muhon
adopted

Approve as mod

For explained

DEP - NOX Budget 45 CSR 1

Dott - Alzheimer

John Wilkinson, OFWAC

Mahan
approved

Dott - Recreational Water

Ron ? responded to q's

Mahan
Approved as mod.

Mahan

Labor - Foot of agenda

Optometry - Expanded Prescriptive Auth.

Dr. Hyre addressed the C

Nancy Tonkin → introduced

Dr. Luky addressed C & responded to q's

Dr. Heath Lemley ? "

Nancy - addressed C

Anderson - Motion to adjourn

- Have Dr. Taylor here

Delegate Mahan moves to strike all of Section 7 and inserting in lieu thereof the following:

14-2-7. Drug Formulary.

7.1 The categories of oral drugs to be considered rational to the diagnosis and treatment of visual defects or abnormal conditions of the human eye and its appendages shall include:

- 7.1.a Analgesics: provided, that no oral narcotic analgesic shall be prescribed for a duration of more than three 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 Oral Corticosteroids for a duration of no more than six days' and for the purpose of treatment of visual defects or abnormal conditions of the human eye and its appendages;
- 7.1.e Hyperosmotics: provided that hyperosmotics may only be prescribed in a single dose;
- 7.1.f Non-steroidal anti-inflammatory; and
- 7.1.g Nutritional Supplements.

Bob Wise
Governor



Tom Susman
Director

WV Toll-free: 1-888-680-PEIA • Phone: 1-304-558-7850 • Fax: 1-304-558-2516 • Internet: www.peia.state.wv.us

November 7, 2001

The Honorable Mike Ross, Co-Chair
Legislative Rule-Making Review Committee
West Virginia Senate
Post Office Box 219
Coalton, West Virginia 26257

Legislative Rule Making

NOV 03 2001

The Honorable Virginia Mahan, Co-Chair
Legislative Rule-Making Review Committee
West Virginia House of Delegates
Post Office Box 1114
Green Sulphur Springs, West Virginia 25966

Review Committee

Dear Chairpersons:

I am writing to advise your committee of PEIA's concern over Rule 14-2, expanded prescriptive authority for optometrists.

The proposed expansion of the prescriptive authority for optometrists is not justifiable based upon the type of care delivered by this specialty group. PEIA concurs with the West Virginia State Medical Association, the West Virginia Academy of Ophthalmology, and the West Virginia Academy of Family Physicians regarding their comments on the alteration of this rule.

The PEIA Medical Director, Sandra Joseph, M.D., and the PEIA Pharmacy Benefits Administrator, Felice Joseph, R.Ph., have reviewed the proposed changes, and expressed several concerns associated with increasing public access to prescription medications prescribed by optometrists. This is due to the potential adverse health issues that can develop from the use of these medications by practitioners not properly educated and trained in their use.

The following points outline PEIA's position of not expanding the prescriptive authority of optometrists.

DOSAGE FORMS

Although the Drug Formulary states "oral drugs to be considered...", PEIA believes the rules should be tightened to exclude all oral dosage forms within the outlined categories of medications with a few exceptions. PEIA's suggestion would be to include topical dosage forms of the approved classes of drugs. For example, non-steroidal anti-inflammatory drugs (NSAIDs) should be restricted to ophthalmic preparations. For oral dosages, there are several over-the-counter (OTC) preparations commercially available. Systemic NSAID use can cause gastrointestinal problems such as ulcers or gastric bleeds. Additionally, this class of medications should be used with extreme caution in patients with diabetes or congestive heart failure. PEIA does not oppose the inclusion of NSAID topical or ophthalmic preparations within an optometrist's scope of practice.

State Capitol Complex • Building 5, Room 1001 • 1900 Kanawha Boulevard, E. • Charleston, WV 25305-0710

ANALGESICS

It appears the three-day limit for the analgesics is a sufficient duration of therapy for the short-term treatment of abrasions or other maladies of the eye before referral to an ophthalmologist. The eye heals quickly. Persistent pain could be indicative of a more severe underlying problem which may be masked by pain medication and which would need referral to an ophthalmologist. Analgesic medications are potentially habit-forming. Drug-drug interactions from this class of medications are likely in those taking other maintenance drugs. Additionally, these medications tend to cause dizziness or drowsiness and caution should be exercised in use with driving a vehicle or with the elderly.

ANTIBIOTICS

While oral antibiotics may be justifiable treatment for an optometrist, PEIA believes there should be a seven-day limit. The necessity of treatment for eye infections beyond this time could represent an underlying infection that requires the referral to an ophthalmologist. Many optometrists might not be trained regarding the dose adjustments required for the elderly and those with special conditions involving the liver and kidney. In addition, there are significant drug-drug interactions with certain antibiotics and other maintenance medications. PEIA expresses no opposition to topical or ophthalmic antibiotic preparations.

ANTIFIBRINOLYTICS

Antifibrinolytics should be prescribed only by a licensed medical or osteopathic physician who has been trained to monitor such therapy. Prothrombin Time (PT), Partial Thromboplastin Time (PTT), and INR are tests and laboratory values that must be monitored on a regular basis to ensure therapeutic levels of the drug necessary for proper clotting times. Monitoring clotting times is especially important during the beginning of therapy. The possible uses for these medications in an eye patient would be for blood clots or surgery, both of which demand specialty care. Moreover, severe bleeding is a side effect.

ANTIHISTAMINES

Oral antihistamines should have the same seven-day limit as antibiotics. Per the literature, only one-third of the prescriptions written for the more popular second generation antihistamines are for FDA approved indications. Prolonged treatment is not without side effects, especially in the elderly, and may mask other conditions. PEIA expresses no opposition to topical or ophthalmic antihistamine preparations.

ANXIOLYTICS

Due to the addictive potential of the anxiolytics, this category of medication does not warrant prescribing by an optometrist. If medications within this class are to be used as a sedative prior to testing, the physician ordering or interpreting the test can more appropriately prescribe this medication. This class of medication should be used with caution in the elderly due to its potential to cause drowsiness or dizziness and the resulting accidents or falls.

CORTICOSTEROIDS

The current six-day limit on oral corticosteroids seems ample time to treat ocular conditions before a referral to an ophthalmologist. Several complications are associated with long-term use of corticosteroids, e.g.,

The Honorable Mike Ross
The Honorable Virginia Mahan
November 7, 2001
Page Three

osteoporosis, masking signs of an underlying condition, or preventing the body from healing itself. Use of systemic corticosteroids is relatively contraindicated in diabetic patients, as elevations of blood glucose are likely to occur.

HYPEROSMOTIC PREPARATIONS

PEIA opposes any prescriptive authority as it relates to hyperosmotic preparations. The potential for risks associated with congestive heart failure or severe diabetic reactions preclude this class of medications from falling under drugs which an optometrist should prescribe. A patient on any of these medications needs to be under the care and supervision of a physician trained to monitor the entire medical condition of the patient.

IMMUNOSUPPRESSANTS

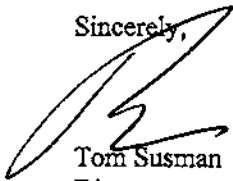
Any condition necessitating treatment with an immunosuppressant should be referred to a medical or osteopathic physician. Since the therapeutic effect of these medications is suppression of the immune system, only a physician trained to treat such conditions and monitor for the potential side effects should administer immunosuppressants. Corneal transplant patients should be under the care of an ophthalmologist.

In addition to the above clinical points, PEIA feels that this expansion would adversely affect the State's drug trend. The State paid \$86,216,000 for Plan Year 2001 for PEIA members and we are expecting a trend of approximately twenty percent for Plan Year 2002.

Also of concern to PEIA, is the fact that the Board of Pharmacy did not review the proposed expansion. As the regulatory body that oversees the practice of pharmacy, the input of the Board is critical.

If you have any questions, please do not hesitate to contact Felice Joseph of our office at (888) 680-7342 or (304) 558-6244, Ext. 243. We would be happy to meet with you or members of your staff to further discuss our position.

Sincerely,



Tom Susman
Director

TS:FBJ:ts

cc: Greg Burton, Secretary, Department of Administration
Paul L. Nusbaum, Secretary, Division of Health and Human Resources
Nancy Atkins, Commissioner, Bureau of Medical Services
Debra Graham, Legislative Rule-Making Review Committee
Legislative Rule-Making Review Committee Members
The Honorable Earl Ray Tomblin, WV Senate
The Honorable Robert S. Kiss, WV House of Delegates
The Honorable Roman Prezioso, Jr., WV Senate
The Honorable Mary Pearl Compton, WV House of Delegates

\\Felice\memoranda\optometrist_exp authority letter.n07.2001

**Title 14 Legislative Rule: WV Board of Examiners in Optometry
Series 2, Rules for Expanded Prescriptive Authority**

**MEDICAL GROUPS IN SUPPORT OF THE
AMENDED RULE 14-2**

- 1. West Virginia Board of Medicine**
- 2. West Virginia Academy of Ophthalmology**
- 3. West Virginia School of Osteopathic Medicine**
- 4. West Virginia University School of Medicine**
- 5. West Virginia University Department of Ophthalmology**
- 6. West Virginia American Academy of Family Physicians**
- 7. West Virginia State Medical Association**
- 8. West Virginia University Residents in Training in
Ophthalmology**
- 9. American Medical Association**
- 10. American Academy of Ophthalmology**
- 11. WV Board of Pharmacy**
- 12. PEIA**

13. *Marshall University School of Medicine*
November 12, 2001

Delegate Mahan's proposed amendment retains all of the drugs on the formulary in the current rule and retains the limitations on oral corticosteroids and analgesics; it adds antibiotics, non-steroidal anti-inflammatory agents and nutritional supplements as provided in the proposed rule; and deletes carbonic anhydrase inhibitors, antifibrinolytics, anxiolytics, hyperosmotics and immunosuppressants that were added in the proposed rule.



The West Virginia Academy of Ophthalmology



Medical & Surgical Eye Care

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Huntington, WV

Secretary/Treasurer
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Charleston, WV

Executive Director
Nancy S. Tonkin
Charleston, WV

October 29, 2001

Clifton Hyre, O.D.
President
WV Board of Examiners in Optometry
101 Michael Street
Clarksburg, WV 26301-3937

Dear Dr. Hyre,

I wanted to provide you with a follow-up on our communications regarding Rule 14-2 and the possibility of a meeting. As I stated, trying to call a meeting within several days to discuss this formulary is not possible. Furthermore, we have had multiple contacts from the organizations that you sent your request to for a meeting. Your day and dates were not correct in the letter creating considerable confusion. Your letter stated that you wanted to "meet this Sunday, October 23, 2001..." October 23 was last Tuesday, and most organizations did not receive the letter until after the date specified. It took us 3 weeks to explain and coordinate a response from multiple medical organizations regarding concerns of your proposal. Many of these organizations are not happy with the current formulary, much less an expanded formulary.

There are a number of issues regarding your proposal that are of serious concern to representatives of medicine. While considering a compromise solution to Rule 14-2, there are several points that we must reiterate. I have listed these in a format that clearly outlines serious concerns regarding a successful and productive meeting.

1. We should not be at a point of having to compromise any further on patient safety issues. These issues have been discussed many times, in many formats, in many meetings (formal and informal), and we insisted last time on signing an honorable agreement that would honor the process.
2. During the 2001 legislative session you introduced legislation to change "archaic"

ADMINISTRATIVE OFFICE

Suite 220, 2110 Kanawha Blvd., E., Charleston, WV 25311
304-343-5842-Voice/304-344-4139-Fax

language in your code section. You stated on several occasions to legislators that it was not an effort to expand your prescriptive authority. It became clear to the attorneys in the Government Organization Committee that the current rule 14 -2 did not correctly reflect the Code. You were asked to redraft the rules to correctly list all of the drugs you can currently prescribe—so they will be listed in one place: Rule 14-2. Your Board of Examiners went far beyond the request by adding numerous classes of high-risk drugs to the Rule, and removing current patient protection language.

3. The additional drug categories that you are now insisting on are not acceptable to multiple medical organizations as has been discussed in the Rule-Making Committee. To reiterate and clarify our specific objections:
 - a. Analgesics – Removal of patient protection language limiting narcotic analgesics to three days puts patients at risk for over prescribing and failure to refer patients that have severe eye pain beyond three days.
 - b. Antifibrinolytics – This class of drug is rarely if ever used by ophthalmologists. The risk/benefit ratio is just too great for optometrists to prescribe these medications to the West Virginia public.
 - c. Anxiolytics – Even as a one dose regimen there are significant objections. The implication argued for use during CAT Scans, MRIs and other specialized testing makes the assumption that optometrists have the training and medical education to be ordering these tests. There are multiple reasons for objecting to this:
 - 1) Optometrists have not had medical education, internship or residency, and ordering these kinds of complex tests without medical consultation is not appropriate. Many of these tests can have significant risk in patients with compromised health. If a major and costly scan is in order, the attending or consulting physician should determine the need for such tests, and the safety of such tests relating to the patient's physical status.
 - 2) The cost of ordering these special tests will cost the payers significantly. A medical consultation may result in significant savings to the payers.
 - 3) The Board of Optometry has demonstrated that once a category of drug is placed on the formulary with patient protection language, the next step by the Board is to remove such patient protection language.
 - 4) The degree of change in mental cognition with these drugs can be significant during the action of the drug.
 - 5) In the rare event a patient may need sedation, a trained physician (primary care attending physician or radiologist) can more safely prescribe the medication.
 - d. Oral Corticosteroids – Removal of patient protection language limiting their use to six days puts patients at risk for severe whole body complications. This was discussed in the greatest of detail previously and agreed to and signed as acceptable. While the Board of Optometry may not recognize this as a legal document, Medicine recognizes it as an honorable agreement that took considerable time, energy and effort on the part of Medicine and the Legislature. This agreement is now being violated.

- e. Hyperosmotics – This class of drug has significant potential for acute congestive heart failure and diabetic coma. To minimize systemic risk to patients competent physicians must administer these medications. Only by understanding the complex medical status of the patient, and the other medications the patient is on, can this class of drug be used appropriately to minimize serious side effects. Optometrists do not have this medical training or experience.
 - f. Immunosuppressants – It is unfathomable that you would have requested such a toxic and life threatening class of drugs. If Ophthalmologists rarely if ever use these drugs, what in the world would optometry want with them?
4. While you have agreed to omit Immunosuppressives and Antifibrinolytics, none of the above drug categories or limitations should have been added or changed. Asking us to compromise on the other areas is unacceptable, as we have already compromised. Our position is clear; we will not compromise any further on patient safety issues.
 5. As you and Dr. Terry have stated in the Rule-Making Committee, Rule 14-2 was put in place to address NEW DRUGS that become available over time. None of the above drug classes are new. These have been around for many years and your request was not for any new class of drug available to treat eye disease.
 6. Since the 1998 agreement and revisiting the Rule in 2001 with the Legislature, nothing has changed in Optometrists education that requires medical training, internship, or residency. There are no additional requirements in curricula requiring supervised medical use of these medications as interns and residents in Medicine are required to perform.

While you have requested to meet again in Flatwoods, it is clear that you are not honoring the previous agreement that was reached after much effort. Your request to argue for any of the above compounds cannot overcome our concerns for patient safety. Because of the considerable confusion that was caused by your letter, communications regarding Rule 14-2 should come through my office. I will then notify three of the medical organizations that are signed on in opposition to the Rule. Of the organizations opposing your amended Rule 14-2, this will be the WVSMA, WVAO, and WVAAFP. This will help us to efficiently address Rule 14-2, and then communicate to the other organizations.

Accepting our positions on the above issues, we would be willing to meet and discuss (or discuss through communications) a possible compromise. We were impressed with your expanded arguments regarding nutritional supplements. We have also been impressed with multiple objections by physicians to the use of Carbonic Anhydrase Inhibitors. In the spirit of addressing patient safety issues and nutritional therapies, we ask that you

Page 4.

consider the following compromise to medicine's recently proposed and circulated amendment:

Add Nutritional supplements
Delete Carbonic Anhydrase Inhibitors

We hope that the Board will act favorably on this compromise.

Sincerely,

Nancy S. Tonkin
Executive Director

Cc: Members Rule Making-Review Committee
Medical Groups

November 5, 2001

Ms: Nancy S. Tonkin
Executive Director
West Virginia Academy of Ophthalmology

Dear Ms. Tonkin:

Thank you for your prompt response.

As always, the West Virginia Board of Optometry stands ready to meet and discuss substantive issues that relate to a compromise as to the composition of the optometry drug formulary. For this process to begin it is critical that the parties know both ends of the spectrum (what oral medications are currently on the formulary and what the WVBO has requested during this Rules-making process). Working together I am confident that we can reach an acceptable and constructive compromise.

To serve as one baseline from which to expand the formulary, the following categories of medications currently are contained within the 1997-8 Code and Title 14-2:

Analgesics (Time restriction)
Antibiotics.
Antihistamines.
Carbonic Anhydrase Inhibitors.
Oral Corticosteroids (Time restriction)
Non-steroidal anti-inflammatorys.

To serve as the other baseline, the proposed Title 14-2 recommends the followings categories of medications:

- 7.1.a. Analgesics: (No time restriction)
- 7.1.b. Antibiotics.
- 7.1.c. Antifibrinolytics.
- 7.1.d. Antihistamines.
- 7.1.e. Anxiolytics.
- 7.1.f. Carbonic Anhydrase Inhibitors.
- 7.1.g. Oral Corticosteroids. (No time restriction)
- 7.1.h. Hyperosmotics.
- 7.1.i. Immunosuppresants.
- 7.1.j. Non-steroidal anti-inflammatorys.
- 7.1.k. Nutritional Supplements.

Your recent correspondence of October 29, 2001 and subsequent e-mail of November 4, 2001 purporting a "compromise" in which Carbonic Anhydrase Inhibitors (CAIs) be omitted is blatantly ludicrous and totally out of the blue based on all our previous discussions and testimony. I am utterly and absolutely flabbergasted that you feel removing CAIs from Title 14-2 remotely resembles anything like a "compromise" since it is contained within the original 1997 30-8-2a legislation. As you are well aware, CAIs were added to 30-8-2a in the 1997 legislation because they are critical and indispensable to the practice of optometry. The use of CAIs by optometrists has benefited the citizens of West Virginia in innumerable ways over the past four years. The Board of Optometry has not received one single report of a misadventure with these medications.

The absolutely audacious suggestion that CAIs be removed from the currently considered Title 14-2 is absurd and absolutely unacceptable. It is an outrage to the legislative process in which 30-8-2a was enacted and the charge Rule-making Review Committee Chairman Senator Ross, to meld a real and acceptable compromise.

Your magnanimous offer to allow optometry to prescribe vitamins (nutritional supplements) under the pretense of a "compromise" is appreciated but falls far short of what the citizens of West Virginia deserve.

The West Virginia Board of Optometry appreciates honest and sincere efforts to achieve a compromise between the two above delineated baseline formularies. When your Association is in a position to move forward in a constructive manner feel free to contact me immediately. Currently it appears that a conference call aimed at a real and meaningful compromise as requested by the Rules-making Committee would be pointless. It is abundantly clear that your organization is intent on not complying with Senator Ross's directive. If and when you are serious about negotiating we stand ready to participate in a meaningful dialogue.

Sincerely,

E. Clifton Hyre O.D., President
West Virginia Board of Optometric Examiners

Comparison of Legislative Language for the Optometric Scope of Prescriptive Authority
October, 2001

CURRENT LAW/RULE

MEDICINE'S PROPOSAL

**OPTOMETRY'S
PROPOSAL**

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 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. The categories of oral drugs to be considered rational to the diagnosis and treatment of visual defects or abnormal conditions of the human eye and its appendages shall include:

7.1.a. Antihistamines;

7.1.a. Antihistamines;

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

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

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

7.1.b. Antibiotics

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

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

7.1.c. Antifibrinolytics (OMIT)

7.1.d. Antibiotics

7.1.d. Antibiotics

7.1.d. Antihistamines.

7.1.e. Non-steroidal anti-inflammatory agents

7.1.e. Non-steroidal anti-inflammatory agents

7.1.e. Anxiolytics (ADD: "as a single dose only for a diagnostic or treatment procedure").

7.1.f. Carbonic Anhydrase Inhibitors

~~7.1.f. Carbonic Anhydrase Inhibitors~~

7.1.f. Carbonic anhydrase inhibitors.

Comparison of Legislative Language for the Optometric Scope of Prescriptive Authority
October, 2001

~~7.1.g. Oral Corticosteroids. For a duration of no more than six days; and for the purpose of treatment of visual defects or abnormal conditions of the human eye and its appendages:~~

7.1.g. Nutritional supplements

7.1.h. Hyperosmotics.

7.1.i. Immunosuppressants. (OMIT THIS CATEGORY)

7.1.j. Non-steroidal anti-inflammatory.

7.1.k. Nutritional supplements

7.1 h Hyperosmotics
(single dose)

Carbonic Anhydrase Inhibitors

Diamox, Neptazane

This class of drugs can have the following whole body complications

1. Salt imbalance (both sodium and potassium)
2. Problems with lung function
3. Acid-Base imbalance
4. Cirrhosis and other liver function impairment
5. Adrenal gland dysfunction
6. Severe aplastic anemia and death
7. Skin necrosis
8. Total liver failure
9. Loss of appetite
10. Neurological tingling
11. Taste changes
12. Upset stomach
13. Increased urination
14. Kidney stones

There is no need for Optometry to use these medications without medical consultation because:

- This class of drug now comes in eye drop form
- The interactions with other drugs being taken is significant and the patients physician should coordinate the use of the medications, not the optometrist
- Using this class of drug should be used only by physicians who understand kidney, heart and other organ diseases
- If a patient has such a serious blinding eye disease that Carbonic Anhydrase Inhibitors might be needed, an ophthalmologist should confirm that there are no other alternatives
- Alternative treatments such as laser surgery and conventional surgery is often preferred over using Carbonic Anhydrase Inhibitors due to their serious side effects— Only physicians can provide this type of care and offer alternatives
- Optometrists do not know how to adjust the amount of drug needed based on other medical conditions such as kidney failure, or how to document kidney status
- Optometrists do not know how to monitor for complications of kidney, liver or other organs

**Important points opposing optometry's amended rule and supporting medicines
Rule 14-2 amendment**

- There is a **large list of organizations opposed to Optometry's amendment** and supportive of Medicine's amendment – these organizations recognize the importance of appropriate education and training to safeguard the public.
- All three of the state medical schools support medicines position and oppose optometry's position.
- **Optometrists do not have the training and education to use such dangerous medicines** – They have never had clinical training and supervision as physicians do in Internship and Residency (4 years).
- Education and training is important to minimize the risk to the public
- **The Board of Medicine voted unanimously to oppose Optometry's amendment and support Medicine's position.**
- The Board of Optometry members are Optometrists who do not have the education and training necessary to use these medications, much less monitor and discipline other optometrists that use them.
- Dr. Terry has suggested to the committee that the Board of Medicine and Marshall University are supportive of optometry's position – That is absolutely false as the **Board of Medicine and all of the Medical School Deans are very concerned about protection of the public and have provided confirmation of the position taken by the rest of Medicine.**
- **The Board of Optometry should be concerned about protection of the public, not about self promotion** of the profession at the public's expense.
- These drugs are simply not required to practice optometry. **The drugs requested by optometry are rarely, if ever, used by Ophthalmology**, so why would optometry want to use them.
- Optometry has agreed to patient protection language in the past and now they are trying to remove it – nothing has changed in their education or training. They are also trying to add Valium-like drugs with patient protection language. If successful, you can be guaranteed that they will not honor this in the future and will return to ask to have the patient protection language removed. **It is not appropriate for optometrists to be ordering expensive and sometimes dangerous tests such as CAT scans with contrast dye or MRIs. A medical consultation would be more in order to determine if these tests are indicated.**
- **The welfare of the public must outweigh the self-interests of the profession of optometry.** There is nothing keeping optometrists from returning to medical school with post-graduate training to obtain the appropriate training and education needed to use these medications and to practice medicine.

November 7, 2001

The Honorable Mike Ross, Co-Chair
Legislative Rule-Making Review Committee
West Virginia Senate
Post Office Box 219
Coalton, West Virginia 26257

The Honorable Virginia Mahan, Co-Chair
Legislative Rule-Making Review Committee
West Virginia House of Delegates
Post Office Box 1114
Green Sulphur Springs, West Virginia 25966

Dear Chairpersons:

I am writing to advise your committee of PEIA's concern over Rule 14-2, expanded prescriptive authority for optometrists.

The proposed expansion of the prescriptive authority for optometrists is not justifiable based upon the type of care delivered by this specialty group. PEIA concurs with the West Virginia State Medical Association, the West Virginia Academy of Ophthalmology, and the West Virginia Academy of Family Physicians regarding their comments on the alteration of this rule.

The PEIA Medical Director, Sandra Joseph, M.D., and the PEIA Pharmacy Benefits Administrator, Felice Joseph, R.Ph., have reviewed the proposed changes, and expressed several concerns associated with increasing public access to prescription medications prescribed by optometrists. This is due to the potential adverse health issues that can develop from the use of these medications by practitioners not properly educated and trained in their use.

The following points outline PEIA's position of not expanding the prescriptive authority of optometrists.

DOSAGE FORMS

Although the Drug Formulary states "oral drugs to be considered...", PEIA believes the rules should be tightened to exclude all oral dosage forms within the outlined categories of medications with a few exceptions. PEIA's suggestion would be to include topical dosage forms of the approved classes of drugs. For example, non-steroidal anti-inflammatory drugs (NSAIDs) should be restricted to ophthalmic preparations. For oral dosages, there are several over-the-counter (OTC) preparations commercially available. Systemic NSAID use can cause gastrointestinal problems such as ulcers or gastric bleeds. Additionally, this class of medications should be used with extreme caution in patients with diabetes or congestive heart failure. PEIA does not oppose the inclusion of NSAID topical or ophthalmic preparations within an optometrist's scope of practice.

The Honorable Mike Ross
The Honorable Virginia Mahan
November 7, 2001
Page Two

ANALGESICS

It appears the three-day limit for the analgesics is a sufficient duration of therapy for the short-term treatment of abrasions or other maladies of the eye before referral to an ophthalmologist. The eye heals quickly. Persistent pain could be indicative of a more severe underlying problem which may be masked by pain medication and which would need referral to an ophthalmologist. Analgesic medications are potentially habit-forming. Drug-drug interactions from this class of medications are likely in those taking other maintenance drugs. Additionally, these medications tend to cause dizziness or drowsiness and caution should be exercised in use with driving a vehicle or with the elderly.

ANTIBIOTICS

While oral antibiotics may be justifiable treatment for an optometrist, PEIA believes there should be a seven-day limit. The necessity of treatment for eye infections beyond this time could represent an underlying infection that requires the referral to an ophthalmologist. Many optometrists might not be trained regarding the dose adjustments required for the elderly and those with special conditions involving the liver and kidney. In addition, there are significant drug-drug interactions with certain antibiotics and other maintenance medications. PEIA expresses no opposition to topical or ophthalmic antibiotic preparations.

ANTIFIBRINOLYTICS

Antifibrinolytics should be prescribed only by a licensed medical or osteopathic physician who has been trained to monitor such therapy. Prothrombin Time (PT), Partial Thromboplastin Time (PTT), and INR are tests and laboratory values that must be monitored on a regular basis to ensure therapeutic levels of the drug necessary for proper clotting times. Monitoring clotting times is especially important during the beginning of therapy. The possible uses for these medications in an eye patient would be for blood clots or surgery, both of which demand specialty care. Moreover, severe bleeding is a side effect.

ANTIHISTAMINES

Oral antihistamines should have the same seven-day limit as antibiotics. Per the literature, only one-third of the prescriptions written for the more popular second generation antihistamines are for FDA approved indications. Prolonged treatment is not without side effects, especially in the elderly, and may mask other conditions. PEIA expresses no opposition to topical or ophthalmic antihistamine preparations.

ANXIOLYTICS

Due to the addictive potential of the anxiolytics, this category of medication does not warrant prescribing by an optometrist. If medications within this class are to be used as a sedative prior to testing, the physician ordering or interpreting the test can more appropriately prescribe this medication. This class of medication should be used with caution in the elderly due to its potential to cause drowsiness or dizziness and the resulting accidents or falls.

CORTICOSTEROIDS

The current six-day limit on oral corticosteroids seems ample time to treat ocular conditions before a referral to an ophthalmologist. Several complications are associated with long-term use of corticosteroids, e.g.,

The Honorable Mike Ross
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Page Three

osteoporosis, masking signs of an underlying condition, or preventing the body from healing itself. Use of systemic corticosteroids is relatively contraindicated in diabetic patients, as elevations of blood glucose are likely to occur.

HYPEROSMOTIC PREPARATIONS

PEIA opposes any prescriptive authority as it relates to hyperosmotic preparations. The potential for risks associated with congestive heart failure or severe diabetic reactions preclude this class of medications from falling under drugs which an optometrist should prescribe. A patient on any of these medications needs to be under the care and supervision of a physician trained to monitor the entire medical condition of the patient.

IMMUNOSUPPRESSANTS

Any condition necessitating treatment with an immunosuppressant should be referred to a medical or osteopathic physician. Since the therapeutic effect of these medications is suppression of the immune system, only a physician trained to treat such conditions and monitor for the potential side effects should administer immunosuppressants. Corneal transplant patients should be under the care of an ophthalmologist.

In addition to the above clinical points, PEIA feels that this expansion would adversely affect the State's drug trend. The State paid \$86,216,000 for Plan Year 2001 for PEIA members and we are expecting a trend of approximately twenty percent for Plan Year 2002.

Also of concern to PEIA, is the fact that the Board of Pharmacy did not review the proposed expansion. As the regulatory body that oversees the practice of pharmacy, the input of the Board is critical.

If you have any questions, please do not hesitate to contact Felice Joseph of our office at (888) 680-7342 or (304) 558-6244, Ext. 243. We would be happy to meet with you or members of your staff to further discuss our position.

Sincerely,

Tom Susman
Director

TS:FBJ:ts

cc: Greg Burton, Secretary, Department of Administration
Paul L. Nusbaum, Secretary, Division of Health and Human Resources
Nancy Atkins, Commissioner, Bureau of Medical Services
Debra Graham, Legislative Rule-Making Review Committee
Legislative Rule-Making Review Committee Members
The Honorable Earl Ray Tomblin, WV Senate
The Honorable Robert S. Kiss, WV House of Delegates
The Honorable Roman Prezioso, Jr., WV Senate
The Honorable Mary Pearl Compton, WV House of Delegates



Phone (304) 558-0558
Fax (304) 558-0572

Office
232 Capitol Street
Charleston, West Virginia 25301

November 7, 2001

Clifton Hyre, O.D., President
WV Board of Examiners in Optometry
101 Michael Street
Clarksburg, WV 26301-3937

Dear Dr. Hyre:

The members of the West Virginia Board of Pharmacy have reviewed the proposed changes to Title 14-2 of your legislative rules regarding expansion of the formulary from which optometrists can prescribe. The Board does not feel comfortable with certain aspects of the expanded formulary that has been proposed. The Board opposes the removal of time restrictions on analgesics and oral corticosteroids because the increased duration can mask the symptoms of underlying diseases. In addition, the Board is not in favor of adding antifibrinolytics, anxiolytics, and immunosuppressants to the formulary because they do not believe that optometrists have the appropriate training and medical education to make informed prescriptive decisions regarding these potentially dangerous class of drugs. All other proposed changes are acceptable including the addition of hyperosmotics and nutritional supplements.

Sincerely,

A handwritten signature in cursive script that reads "William T. Douglass, Jr.".

William T. Douglass, Jr.
Executive Director and
General Counsel

NOVEMBER 13

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, November 13, 2001
9 a.m. to 11 a.m.
Senate Finance Committee Room, M-451

1. **Review of Legislative Rules:**
 - a. **Board of Examiners of Land Surveyors**
Rules and Minimum Standards for the Practice of Land Surveying in West Virginia, 23CSR1
 - b. **Board of Examiners of Land Surveyors**
Mandatory Continuing Education for Land Surveyors, 23CSR2
 - c. **Board of Accountancy**
Board Rules and Rules of Professional Conduct, 1CSR1
 - d. **West Virginia State Police**
West Virginia State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline, 81CSR10
 - e. **Economic Development Authority**
General Administration of the West Virginia Capital Company Act: Establishment of the Application Procedures to Implement the Act, 117CSR1
 - f. **Economic Development Authority**
General Administration of the West Virginia Venture Capital Act, 117CSR3
 - g. **West Virginia Development Office**
Community Development Assessment and Real Property Valuation Procedures for the Office of Community Development, 145CSR8
 - h. **Board of Examiners for Registered Professional Nurses**
Fees, 19CSR12
 - i. ***Board of Examiners for Registered Professional Nurses**
Requirements for Registration and Licensure, 19CSR3

- j. *West Virginia Board of Examiners for Speech-Language Pathology and Audiology
Licensure of Speech-Language Pathology and Audiology, 29CSR1
- k. *Department of Administration
Parking, 148CSR6
- l. *Department of Administration
Purchasing - Vendor Debarment, 148CSR9

2. Other Business

Tuesday, November 13, 2001

9 a.m. to 11 a.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
Minard
Snyder Absent
Boley
Minear

Mahan, Chairman
Wills, Vice Chairman
Cann
Kominar
Faircloth
Riggs Absent

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

Debra Graham, Committee Counsel, explained the rule proposed by the **Board of Examiners of Land Surveyors-Rules and Minimum Standards for the Practice of Land Surveying in West Virginia, 23CSR1**, stated that the Board has agreed to technical modifications and responded to questions.

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

Ms. Graham reviewed her abstract on the rule proposed by the **Board of Examiners of Land Surveyors-Mandatory Continuing Education for Land Surveyors, 23CSR2**, stated that the Board has agreed to technical modifications and responded to questions.

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 Accountancy-Board Rules and Rules of Professional Conduct, 1CSR1**, and stated that the Board has agreed to technical modifications. Ms. Graham and Jeff Blaydes, Attorney representing the Board from

the Attorney General's Office, responded to questions from the Committee.

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 *West Virginia State Police-West Virginia State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline, 81CSR10*, and stated that the State Police 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 *Economic Development Authority-General Administration of the West Virginia Capital Company Act: Establishment of the Application Procedures to Implement the Act, 117CSR1*, and stated that the Authority has agreed to technical modifications. Ms. Graham, Paul Papadopoulos, Attorney for the Authority, and David Fontalbert, Associate Director, responded to questions from the Committee.

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 *Economic Development Authority-General Administration of the West Virginia Venture Capital Company Act, 117CSR3*, and stated that the Authority has agreed to technical modifications.

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

Joe Altizer, Associate Counsel, explained the rule proposed by the *West Virginia Development Office-Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development, 145CSR8*, responded to questions and stated that the Development 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 Examiners for Registered Professional Nurses-Fees, 19CSR12*.

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

Ms. Graham explained the rule proposed by the *Board of Examiners for Registered Professional Nurses, Requirements for Registration and Licensure, 19CSR3*, 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 reviewed her abstract on the rule proposed by the *West Virginia Board of Examiners for Speech-Language Pathology and Audiology-Licensure of Speech-Language Pathology and Audiology, 29CSR1*, and stated that the Board has agreed to technical modifications. The Board distributed a request to the Committee members to increase the renewal fee from \$150 to \$175. Vicki Mathess, Administrative Secretary to the Board, and Vickie Pullens, member of the Board, addressed the Committee and responded to questions.

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

Ms. Graham explained the rule proposed by the *Department of Administration-Parking, 148CSR6*, and stated that the Department has agreed to technical modifications. Dave Tincher, Director of the Purchasing Division, addressed the Committee and responded to questions.

Ms. Boley directed the staff to invite Secretary Burton to address the Committee at the next meeting.

Ms. Boley moved that the proposed rule be laid over. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the *Department of Administration-Purchasing - Vendor Debarment, 148CSR9*, and stated that the Department has agreed to technical modifications.

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

Ms. Mahan directed staff to draft a bill making the rule proposed by the **Contractor Licensing Board-West Virginia Contractor Licensing Board - Complaints, 28CSR3**, a procedural rule. The motion was adopted.

The meeting was adjourned.

NOVEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
November 11, 12 and 13, 2001

Tuesday, November 13, 2001

9:00 - 11:00 a.m.

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

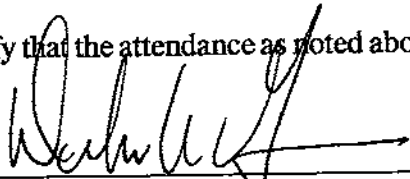
Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate
Ross, Chair ✓
Anderson, Vice Chair ✓
Minard ✓
Snyder ✓
Boley ✓
Minear ✓

House
Mahan, Chair ✓
Wills, Vice Chair ✓
Cann ✓
Kominar ✓
Faircloth ✓
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 11/13/01
Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Greg Smith	PO Box 150 Glenville, WV	Surveyors License Board	
Paul Papadopoulos	PO Box 1791 Charleston WV	WVEDA	
Dave Fontalbert	1018 Kan. Blvd. East Chas.	WVEDA	
Jackie Bragg	2013 Quarrier St	WV HTA	

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Tuesday, November 13, 2001
9 a.m. to 11 a.m.
Senate Finance Committee Room, M-451

1. Review of Legislative Rules:

Approved as modified

~~Board of Examiners of Land Surveyors~~
Rules and Minimum Standards for the Practice of Land Surveying in West Virginia, 23CSR1

- Technical Modifications

Approved as modified

~~Board of Examiners of Land Surveyors~~
Mandatory Continuing Education for Land Surveyors, 23CSR2

- Technical Modifications

Approved as modified

~~Board of Accountancy~~
Board Rules and Rules of Professional Conduct, 1CSR1

- Technical Modifications

Approved as modified

~~West Virginia State Police~~
West Virginia State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline, 81CSR10

- Technical Modifications

Approved as modified

~~Economic Development Authority~~
General Administration of the West Virginia Capital Company Act: Establishment of the Application Procedures to Implement the Act, 117CSR1

- Technical Modifications

Approved as modified

~~Economic Development Authority~~
General Administration of the West Virginia Venture Capital Act, 117CSR3

- Technical Modifications

Approved as modified

West Virginia Development Office ✓
Community Development Assessment and Real Property Valuation
Procedures for the Office of Community Development, 145CSR8

- Technical Modifications

Approved

Board of Examiners for Registered Professional Nurses -
Fees, 19CSR12

- NO Technical Modifications

Approved as modified

Board of Examiners for Registered Professional Nurses -
Requirements for Registration and Licensure, 19CSR3

- Filed Late
- Technical Modifications

Laid over

West Virginia Board of Examiners for Speech-Language
Pathology and Audiology
Licensure of Speech-Language Pathology and Audiology, 29CSR1

- Filed Late
- Technical Modifications

Laid over

Department of Administration
Parking, 148CSR6

- Filed Late
- Technical Modifications

Laid over

Department of Administration
Purchasing - Vendor Debarment, 148CSR9

- Filed Late
- Counsel Recommends the Department Withdraw the Proposed Rule
- If Not Withdrawn, Technical Modifications

2. Other Business

2) 23CSR1 Land Surveyors - Practice of

~~200~~ Explained the rule and (did) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions

Makar

Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

④ 23C5R2 Land Surveyors - Cont. Ed

do Explained the rule and (~~did~~/did not) answer questions.

Modifications to the rule? (~~Yes~~/No) Agency agrees to the modifications? (~~Yes~~/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions

Mahon

Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

dag Explained the rule and (~~did~~/did not) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions
<i>Off Blades</i>	<i>allway qual ofc</i>	<i>allway f t Bd</i>		<input checked="" type="checkbox"/>

Maha

Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

81CSR10 State Police - Professional Stnds

dao Explained the rule and (did/did not) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions

Mahan Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

② 117CSR1 EPA - Capital Company

dag Explained the rule and (did/did not) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions
Paul Pap. ...	WVEA	attorny		✓
	WVEA	Assoc. Director		

David T
Fontalbert
Assoc. Dir
WVEA

Mohar Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

Ⓟ EDA 117CSR3 - VENTURE CAPITAL

das Explained the rule and (did) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes)/No

Name	Agency	Title	Addressed the Committee	Responded to Questions

Wills Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

145CSE 8 Dev. Ofc - Com. Dev.

ma Explained the rule and (did/did not) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions

Maha Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

② 19CSR12 RNs - fees

dag Explained the rule and (did/did not) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions

Mohan Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

① 19CSR 3 RNS - Registration

day Explained the rule and (did/~~did not~~) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions

Mahan Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

① 2ACSRI - Speech - Licensure

day Explained the rule and (did) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions
Vicki Mathis				
Vicki Mathis	Bd	Admin Sec		✓
Vickie Pullens	Bd	mbrs		✓

Handed distributed 1 cmle members ask of L
 moves to move for ~~and~~ L \$175.00

Mohar Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

(K) 148C526 Admin - Parking

day Explained the rule and (did/did not) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions
<u>DAVE TIRCHER</u>	<u>Admin</u>			<input checked="" type="checkbox"/>

Bolay Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

Burton to amend
ML - b.

① Admin - Debarment 148CSR9

day Explained the rule and (did/did not) answer questions.

Modifications to the rule? (Yes/No) Agency agrees to the modifications? (Yes/No)

Name	Agency	Title	Addressed the Committee	Responded to Questions

Mahan Moved that the rule be:

- Approved as filed
- Approved as modified
- Approved as amended
- Laid over
- Moved to the foot of the agenda
- Withdrawn
- No Action

Rule Title: 145 CSR 8 -- Community Development Assessment and Real Property Valuation Procedures for the West Virginia Office of Coalfield Community Development

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The modifications to the existing rule will be handled by current funding and staffing for the Office of Coalfield Community Development.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

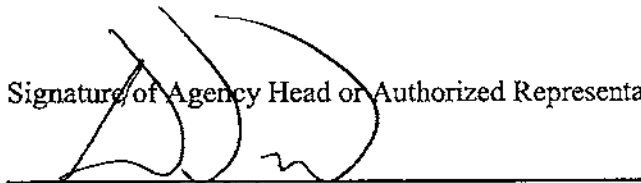
None anticipated.

C. Economic Impact on Citizens/Public at Large.

None anticipated.

Date: November 8, 2001

Signature of Agency Head or Authorized Representative:



West Virginia Board of Examiners for Speech-Language Pathology and Audiology

Board Members

Michael J. Zagarella, M.A., CCC-A, Chairman

Gary Vandevander, M.S., CCC-A

Cinda Shaver, M.S., CCC-SLP, Secretary

Vickie Pullins, M.A., CCC-SLP

Thelma Gibson, Lay Member

Vicki Mathess, Administrative Services Manager

November 9, 2001

West Virginia Legislature
Legislative Rule-Making Review Committee
Building 1, Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

ATTENTION: Debra A. Graham, Counsel

RE: Licensure of Speech-Language Pathology and Audiology 29CSR1

The Board would like to request, after careful consideration, that the proposed rule be modified by the Committee to state the **renewal fee** be modified from \$150.00 as proposed to \$175.00.

Justification:

Out of 592 licenses to be renewed, 178 are speech pathologist employed by the State Board of Education. Speech pathologist working for the school system are exempt from licensure, if they so choose. Therefore, we anticipate that several of these licensees will not renew; cutting our revenue by several thousands of dollars. There is no guarantee of how many will apply for renewal.

Last licensing period we lost approximately 110 licensees. This was an \$8,250.00 lose in revenue due to people retiring, leaving the state and choosing not to renew. Now with the anticipation of losing even more licensees, we need to make adjustments to securely meet our budget.

(Example of original proposal: Considering a 100 drop in renewals at \$50.00 fee is
 $492 \times \$150.00 = 73,800.00$ revenue)

(Example of modified proposal at \$175.00 for renewals: $492 \times \$175 = 86,100.00$ revenue).
This figure plus approximately \$17,500.00 miscellaneous revenue received from new licensees, mailing list request and license verification fees would equal \$103,600.00. This figure should give us a safety net of 15 – 20,000 remaining.

Please see attached 2001 fiscal year report.

HC 78 Box 9-A, Troy, WV 26443-9707

Email: wvbeslpa@mail.wvnet.edu

Web Site: www.state.wv.us/wvbeslpa

In-State toll-free 1-877-462-5460

Ph: 304-462-5460

Fax: 304-462-5482

West Virginia Board of Examiners for Speech-Language Pathology and Audiology

Board Members

Michael J. Zagarella, M.A., CCC-A, Chairman

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Vickie Pullins, M.A., CCC-SLP

Thelma Gibson, Lay Member

Vicki Mathess, Administrative Services Manager

As you can see, our revenue for the year 2000 (which was our revenue year) was only \$54,393.50, this revenue is for two years and our expenses for one year was \$49,029.15. This should show justification in itself.

On November 9, 2001 our cash balance was 47,205.00. At the end of FY 2002 we anticipate expenses to be \$27,000.00, leaving \$20,205. The remaining figure will have to carry the Board's expenses until revenue starts coming in for renewals in the winter of 2003.

After reviewing these figures, the Board would appreciate your consideration of modifying Appendix One of our rule.

Sincerely,



Vicki Mathess

Administrative Services Manager

HC 78 Box 9-A, Troy, WV 26443-9707

Email: wvbeslpa@mail.wvnet.edu

Web Site: www.state.wv.us/wvbeslpa

In-State toll-free 1-877-462-5460

Ph: 304-462-5460

Fax: 304-462-5482

APPENDIX ONE FEES

INITIAL FEES:

1. <u>Initial Application for Provisional and Professional (non-refundable)</u>	<u>\$100.00</u>
2. <u>Initial license in Speech-Language Pathology (two years)</u>	<u>\$150.00</u>
3. <u>Initial license in Audiology (two years)</u>	<u>\$150.00</u>
4. <u>Initial Dual license in Speech-Language Pathology and Audiology</u>	<u>\$225.00</u>

Note: Initial applications received the first twelve (12) months of the two-year licensure period will pay one hundred (\$175.00) dollars licensing fee. Applications received from the thirteenth (13) through the twenty-fourth (24) month will pay one hundred (\$100.00) licensing fee. Dual applications will pay \$225.00 for initial license for the first twelve (12) months of the two-year licensure period. Dual applications received from the thirteenth (13) through the twenty-fourth (24) month will pay \$125.00 licensing fee.

RENEWAL FEES:

1. <u>Renewal in Speech-Language Pathology (two years)</u>	<u>\$175.00</u>
2. <u>Renewal in Audiology (two years)</u>	<u>\$175.00</u>
3. <u>Renewal in Speech-Language Pathology and Audiology (two years)</u>	<u>\$225.00</u>
4. <u>Renewal Late Fee</u>	<u>\$ 75.00</u>
5. <u>Reinstatement Fee</u>	<u>\$100.00</u>
6. <u>Provisional License in Speech-Language Pathology (one year)</u>	<u>\$ 50.00</u>
7. <u>Provisional license in Audiology (one year)</u>	<u>\$ 50.00</u>

ABASE ID: FIMSDB
REQUESTED BY: CAROLYN FA

STATE OF WEST VIRGINIA
OFFICE OF THE STATE AUDITOR

ACCOUNT STATUS FOR JULY 2001 PFY 2001
IN ORGANIZATION SEQUENCE

RUN OPTION: 4

ORGANIZATION 0930 SPEECH LANGUAGE PATHOLOGY AUDIOLOGY BD OF EXAM

8646-999-640

DOC ID	TRANS TYPE	COMPLETION DATE	WARRANTY NO. OR OBJ/CLASS	REVENUES	DISBURSEMENTS	OTHERS
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FUND: 8646 SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY OPERATING FD

FUND: 8646 TOT FOR MONTH GROSS					972.77	0.00
			NET			

7/01/2000 CASH BALANCE					54,393.50	
2001 PFY GROSS REVENUE					54,681.14	
REVENUE REFUNDS					75.00	-
13TH MONTH EXPENDITURES - LAST PFY					2,366.58	-
2001 PFY EXPENDITURES					49,029.15	-
OTHER TRANSACTIONS					0.00	
BUDGETARY CASH BAL JULY 2001					57,605.91	

FUND: 8647 SPEECH LANGUAGE PATHOLOGY & AUDIOLOGY-UNCLASSIFIED

APP YR 01	8647-099	TOTALS FOR MONTH		0.00	0.00	0.00
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01 PFY TOTAL YEAR TO DATE				0.00	0.00	0.00
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8647-999-640 NET REV - MONTH				0.00	0.00	0.00
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01 PFY TOTAL YEAR TO DATE				0.00	0.00	0.00
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FUND: 8647 TOT FOR MONTH GROSS					0.00	0.00
			NET			

7/01/2000 CASH BALANCE					0.00	
2001 PFY GROSS REVENUE					0.00	
REVENUE REFUNDS					0.00	-
13TH MONTH EXPENDITURES - LAST PFY					0.00	-
2001 PFY EXPENDITURES					0.00	-
OTHER TRANSACTIONS					0.00	
BUDGETARY CASH BAL JULY 2001					0.00	

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 145 CSR 8 -- Community Development Assessment and Real Property Valuation Procedures for the West Virginia Office of Coalfield Community Development

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Development Office

Address: State Capitol Complex

1900 Kanawha Boulevard, East, Bldg. 6, Rm. 553

Charleston, WV 25305-0311

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

N/A

3. Objectives of These Rules:

To implement the provisions of 2001 Senate Bill No. 603 (Chapter 5B, Article 2A, Sections 5, 9, 12, West Virginia Code) relating to economic development and reclamation of surface mining sites.