

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2639**

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

8 [Passed March 12, 2011; in effect from passage.]
9

10 AN ACT to amend and reenact article 9, chapter 64 of the Code of
11 West Virginia, 1931, as amended, relating generally to the
12 promulgation of administrative rules by the various executive
13 or administrative agencies and the procedures relating
14 thereto; legislative mandate or authorization for the
15 promulgation of certain legislative rules; authorizing certain
16 of the agencies to promulgate certain legislative rules in the
17 form that the rules were filed in the State Register;
18 authorizing certain of the agencies to promulgate certain
19 legislative rules with various modifications presented to and
20 recommended by the Legislative Rule-Making Review Committee;
21 authorizing certain of the agencies to promulgate certain
22 legislative rules as amended by the Legislature; authorizing
23 certain of the agencies to promulgate certain legislative
24 rules with various modifications presented to and recommended
25 by the Legislative Rule-Making Review Committee and as amended
26 by the Legislature; authorizing the Board of Pharmacy to
27 promulgate a legislative rule relating to the licensure and
28 the practice of pharmacy (15 CSR 1); authorizing the Board of
29 Pharmacy to promulgate a legislative rule relating to

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

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

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

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

18 That article nine, chapter 64 of the Code of West Virginia,
19 1931, as amended, be amended and reenacted to read as follows:

20 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO**
21 **PROMULGATE LEGISLATIVE RULES.**

22 **§64-9-1. Board of Pharmacy.**

23 (a) The legislative rule filed in the state register on July
24 29, 2010, authorized under the authority of section five, article
25 nine, chapter sixty-a, of this code, relating to the Board of
26 Pharmacy (licensure and the practice of pharmacy, 15 CSR 1), is
27 authorized with the following amendments:

28 On page thirty-seven, subsection 21.1, by striking out all of

1 subsection 21.1 and inserting in lieu thereof a new subsection 21.1
2 to read as follows:

3 "21.1. A prescription to be valid, shall be issued for a
4 legitimate medical purpose by a practitioner acting within the
5 course of legitimate professional practice, and shall bear the
6 preprinted, stamped, typed, or manually printed name, address and
7 telephone number of the prescribing practitioner. If it is a
8 prescription for a controlled substance listed in Schedules II
9 through V, then it shall also contain the prescriber's DEA
10 registration number, including any suffix. The National Provider
11 Identification (NPI) number shall be required on all valid
12 prescriptions beginning January 1, 2012."

13 And,

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

16 **"15-1-27. West Virginia Official Prescription Paper Program Rules.**

17 27.1. The purpose of this section is to establish rules for the
18 West Virginia Official Prescription Program Act set forth at West
19 Virginia Code Section §16-5W-1, et seq. for use in writing
20 prescriptions by practitioners.

21 27.2. Definitions. As used in this rule:

22 a. "Program Vendor" means the private contractor or
23 contractors selected to manage the production and delivery of
24 official state prescription paper.

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

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

7 27.3. Minimum Requirements of West Virginia Official
8 Prescription Paper. The prescription paper shall contain the
9 following security features:

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

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

- 17 1. 1-24;
- 18 2. 25-49;
- 19 3. 50-74;
- 20 4. 75-100;
- 21 5. 101-150; and
- 22 6. 151 and over:

23 *Provided*, That if the blank has the quantity prescribed
24 electronically printed in both numeric and word format, then the
25 quantity check-off boxes shall not be necessary;

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

28 d. Shall provide space for the patient's name and address, the

1 prescribing practitioner"s signature;

2 e. Shall provide space for the preprinted, stamped, typed, or
3 manually printed name, address and telephone number of the
4 prescribing practitioner, and the practitioner"s DEA registration
5 number and NPI number;

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

11 g. Each blank must be numbered on the face with a unique
12 identifying control number in both human readable and barcode
13 format.

14 27.4. The Board will solicit open bids and select a vendor or
15 vendors to provide West Virginia Official Prescription Paper and
16 maintain appropriate records of such product supplied to
17 practitioners based on ability of proposed program to prevent
18 prescription fraud, price and ability to meet these requirements.

19 a. Practitioners licensed to practice in this State may
20 purchase West Virginia Official Prescription Paper as per
21 individual orders from the selected vendor(s). The cost of the
22 Official Prescription Paper will be borne by the ordering
23 practitioner/institution, unless the state is successful in
24 securing offsetting funds such as federal grants, risk/reward
25 programs or private funding applied for and received by the state
26 for the express purpose of partially or fully funding the West
27 Virginia Official Prescription Program.

28 b. Orders shall be placed through a vendor supplied secure on-

1 line order capture system or on an order form to be supplied by the
2 Vendor, and must contain the requesting practitioner's name,
3 specialty, primary address and other practice site address(s),
4 Federal DEA registration number, if any, National Provider
5 Identification number, the State professional practice license
6 number, number of prescriptions requested, and shall be signed by
7 the requesting practitioner.

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

13 27.5. On and after January 1, 2012 every written prescription
14 written in West Virginia by a practitioner shall be written on West
15 Virginia Official Prescription Paper. A pharmacist may not fill a
16 written prescription from a West Virginia practitioner unless
17 issued upon an official state issued prescription form.

18 27.6. Practitioners; control and reporting of West Virginia
19 Official Prescription Paper.

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

25 b. The Practitioner must also notify the vendor of any failure
26 to receive Official Prescription Paper within a reasonable time
27 after ordering them. Further, practitioners must immediately notify
28 the Board and vendor in writing of the loss through destruction,

1 theft or loss, or unauthorized use of any Official Prescription
2 Paper blanks, including:

- 3 1. Estimated number of blanks affected;
 - 4 2. Control numbers if available; and
 - 5 3. Suspected reason for destruction, theft, or loss.
- 6 c. The program vendor must provide annual SAS70 or SSAE16
7 third party audits of the prescription paper
8 printing/personalization facility used in the preparation and
9 distribution of West Virginia Official Prescription Paper blanks
10 upon request. The program vendor must be able to provide such
11 report for each year and for two years prior to the term of the
12 contract."

13 (b) The legislative rule filed in the state register on July
14 29, 2010, authorized under the authority of section five, article
15 nine, chapter sixty-a, of this code, relating to the Board of
16 Pharmacy (controlled substances monitoring, 15 CSR 8), is
17 authorized with the following amendments:

18 On page two, subsection 2.15, by striking out the words "15-1-
19 27 of the West Virginia Code of State Rules" and inserting in lieu
20 thereof the word "5";

21 On page six, subdivision 7.3(b), by striking out all of
22 subdivision 7.3(b) and inserting in lieu thereof a new subdivision
23 7.3(b) to read as follows:

24 "(b) members of the West Virginia State Police expressly
25 authorized by the superintendent of the West Virginia State Police
26 to have access to the information;"

27 On page six, subdivision 7.3(e), after the word "(e)", by

1 striking out the word "The" and inserting in lieu thereof the word
2 "the";

3 On page six, subdivision 7.3(f), after the word "(f)" by
4 striking out the word "A" and inserting in lieu thereof the word
5 "a";

6 On page six, subdivision 7.3(g), by striking out the word
7 "board" and inserting in lieu thereof the word "Board";

8 On page six, subdivision 7.3(j), by striking out the word
9 "date" and inserting in lieu thereof the word "data";

10 On page six, subsection 7.4, by striking out the word "board"
11 and inserting in lieu thereof the word "Board";

12 And,

13 On page six, subsection 7.4, after the words "subsection 7.3"
14 by inserting the words "(a) through (i)".

15 **§64-9-2. Physical Therapy.**

16 (a) The legislative rule filed in the state register on July
17 30, 2010, authorized under the authority of section six, article
18 twenty, chapter thirty, of this code, modified by the Board of
19 Physical Therapy to meet the objections of the Legislative Rule-
20 Making Review Committee and refiled in the state register on
21 December 21, 2010, relating to the Board of Physical Therapy
22 (general provisions, 16 CSR 1), is authorized with the following
23 amendments:

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

26 "2.15.a. A physical therapy aide works under the direct
27 supervision of a physical therapist; *Provided*, That a physical
28 therapist assistant may directly supervise a physical therapy aide

1 in emergency situations necessary to provide patient safety.”

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

4 **§16-1-5. Issuance, Renewal or Reinstatement of License.**

5 5.1. The Board reserves the right to evaluate the applicant
6 according to the testing, licensure, and procedural requirements as
7 initiated by the agency responsible for the ownership and
8 development of the National exam.

9 5.2. Licenses expiring on December 31, of each particular year
10 must be renewed by payment of applicable fee along with completed
11 renewal application.

12 5.3. A license not renewed without specific request to place
13 it in “inactive” status will automatically be placed on delinquent
14 status.

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

20 5.5. To reinstate an “inactive” license, the licensee must
21 submit an application for renewal along with a non-refundable
22 application fee and license renewal fee.

23 5.6. A volunteer license will be marked as a “volunteer”
24 license and is restricted to practicing in accordance with §30-20-
25 13.

26 5.7. Any change in personal contact and employer/supervisor
27 information must be submitted in writing to the board as changes
28 occur.”

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

3 "6.1. An individual possessing a temporary permit issued by
4 the Board to practice Physical Therapy or act as a physical
5 therapist assistant in the State of West Virginia shall practice
6 under the on-site supervision of a Physical Therapist. All progress
7 notes written by the Physical Therapist or physical therapist
8 assistant with a temporary permit shall be cosigned by a Physical
9 Therapist supervisor within twenty-four (24) hours."

10 On page six, by inserting a new subsection 7.7, to read as
11 follows:

12 "7.7. A licensee must report to the board any discipline
13 received in another jurisdiction within 30 days of that discipline.
14 The board reserves the right to discipline up to and including
15 revocation of a license until disciplinary process in the other
16 jurisdiction is completed. If the licensee fails to report
17 discipline in another jurisdiction, they are subject to
18 disciplinary procedures in our jurisdiction determined by the
19 board."

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

22 "8.2.a. When care is delivered in a hospital or other
23 acute-care center, free-standing, outpatient, or independent
24 practice setting, a Physical Therapist must provide on-site
25 supervision, with the exception that general supervision is
26 permitted in a hospital or other acute-care center, free-standing,
27 outpatient, or independent practice setting 40% of the time once
28 the physical therapist assistant performing treatment has at least

1 1000 hours of experience. The supervising physical therapist shall
2 document when general supervision is utilized under this
3 subdivision."

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

6 "8.2.b. General supervision may be utilized when care is
7 delivered in a skilled/unskilled nursing facility, distinct part
8 skilled/unskilled nursing unit or swing-bed unit in an acute-care
9 hospital, home health, or school system setting, and the following
10 requirements must be observed and documented in the patient records
11 when general supervision is used:"

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

14 "8.2.b.1. A physical therapist must be accessible by
15 telecommunications to the physical therapist assistant at all times
16 that the physical therapist assistant is treating patients; and
17 available to make a joint onsite visit with the physical therapist
18 assistant within 24 hours as prudent practice indicates."

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

21 "8.2.b.2 The physical therapist must visit the patient at
22 least once every 10 physical therapist assistant visits, or within
23 30 calendar days, whichever occurs first."

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

26 "8.2.b.3. In the event that the supervising physical therapist
27 changes, the new supervising physical therapist must discuss the
28 patient's diagnosis and plan of care with the previous supervising

1 physical therapist before the next physical therapist assistant
2 visit is made. Either physical therapist must document such
3 communication."

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

6 "8.5. In an emergency situation, such as serious illness or
7 injury of the therapist or therapist's family member or death of a
8 family member, which causes the unanticipated absence of the
9 supervising physical therapist for not more than three consecutive
10 days, and no more than twelve days per calender year, a licensed
11 physical therapist assistant may continue to render services, under
12 the supervision of another physical therapist, to only those
13 patients for which the licensed physical therapist assistant has
14 previously participated in the intervention for established plans
15 of care not to exceed the regularly scheduled operational hours of
16 the particular day or days the supervising physical therapist is
17 absent. When this provision is utilized, the ratio in subdivision
18 8.1.c. may be exceeded and the physical therapist shall document
19 the dates and the emergency situation."

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

22 "8.6. In a temporary situation, which causes the absence of
23 the supervising physical therapist up to one day, and no more than
24 eighty hours in a calender year, a licensed physical therapist
25 assistant may continue to render services, under general
26 supervision of the supervising physical therapist, to only those
27 patients for which the licensed physical therapist assistant has
28 previously participated in the intervention for established plans

1 of care not to exceed the regularly scheduled operational hours of
2 the particular day the supervising physical therapist is absent.
3 When this provision is utilized, the level of supervision in
4 subdivision 8.2.a. may be exceeded and the physical therapist shall
5 document the hours, date and temporary situation."

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

7 **§16-1-10. Continuing Education.**

8 10.1. A "unit" is one clock hour spent in a continuing
9 education activity unless otherwise defined in this section.

10 10.2. All licensees desiring to remain "active" and in good
11 standing must complete 24 units of board approved continuing
12 education within the two year licensing period. If the licensee
13 does not complete the 24 units of board approved continuing
14 education within the license period, that licensee will be placed
15 on delinquent status and will be subject to all fees associated
16 with delinquent status.

17 10.2.a. For those applicants reinstating their license for a
18 period of 6 months or less, only 6 units are required for that
19 year.

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

23 10.2.c. Accumulated CEU's may not be carried over from one
24 renewal period to another.

25 10.2.d. A new graduate does not need continuing education
26 hours for the current year of graduation.

27 10.3. Completion of examinations, residencies, fellowships,
28 tools, and courses for continuing education credit.

1 10.3.a. A maximum of 8 units per license period can be
2 obtained from any combination of clinical instruction or competency
3 tools.

4 10.3.b. Passing the following specialty examinations will
5 qualify for twenty-four contact hours of continuing education in
6 the year the examination is taken:

7 10.3.b.1 Specialty examinations and recertification
8 administered by the American board of physical therapy specialties
9 (ABPTS).

10 10.3.b.2. The hand therapy certification commission (HTCC)
11 certification examination.

12 10.3.b.3. Continuing education course instructors can receive
13 1 unit per hour of class instruction time will be awarded for board
14 approved continuing education courses in the year the course given.
15 Credit awarded to the instructor for said course will be granted
16 only one time.

17 10.3.c. The successful completion of an American physical
18 therapy association credentialed residency or fellowship program
19 will qualify for twenty-four contact hours of continuing education
20 in the year the residency or fellowship is completed.

21 10.3.d. The successful completion of a practice review tool of
22 the federation of state boards of physical therapy pertaining to
23 continued competence will qualify for continuing education.

24 10.3.d.1. Eight contact hours of continuing education will be
25 awarded for completion of a practice review tool.

26 10.3.d.2. Licensees may use a practice review tool identified
27 in paragraph 3.d.1 of this section no more than every other renewal
28 period.

1 10.3.e. Clinical instruction.

2 10.3.e.1. Providing clinical instruction to PT or PTA
3 student(s) enrolled in a CAPTE approved physical therapist or
4 physical therapist assistant program can qualify for up to a
5 maximum 8 units per year.

6 10.3.e.2. Four weeks of clinical instruction is equal to 1
7 unit of continuing education.

8 10.3.f. Continuing education courses are subject to board
9 approval.

10 10.3.f.1 One unit per hour of class instruction time will be
11 awarded for board approved continuing education courses in the year
12 the course is taken.

13 10.3.g. One unit per hour of class instruction time shall be
14 awarded and automatically approved for CAPTE College/University,
15 American Physical Therapy Association or West Virginia Physical
16 Therapy Association sponsored continuing education courses in the
17 year the course is taken.

18 10.3.h. One unit per hour of class instructions for CAPTE
19 college or university physical therapy or doctorate physical
20 therapy programs.

21 10.4. The board may grant a waiver of the continuing education
22 requirements in the case of illness, disability or undue hardship.

23 10.4.a. A request for waiver form must be completed in full.
24 In the case of illness or disability, a physician's statement is
25 required.

26 10.4.b. All completed forms must be received by the Board for
27 consideration no later than the first day of October of the year
28 preceding the renewal date.

1 10.4.c. A waiver may be granted for any period of time not to
2 exceed one renewal cycle.

3 10.4.d. In the event that the illness, disability or hardship
4 continues to the next renewal cycle, then a new waiver request is
5 required.

6 10.4.e. Should a waiver be granted due to disability or
7 illness, the section may require the individual to provide
8 appropriate documentation from a physician or another qualified and
9 appropriate practitioner to verify the individual's competency and
10 ability to practice physical therapy in the state of West Virginia
11 prior to the return to active practice of physical therapy in West
12 Virginia.”.

13 (b) The legislative rule filed in the state register on July
14 30, 2010, authorized under the authority of section six, article
15 twenty, chapter thirty, of this code, relating to the Board of
16 Physical Therapy (fees for physical therapists and physical
17 therapist assistants, 16 CSR 4), is authorized.

18 (c) The legislative rule filed in the state register on July
19 30, 2010, authorized under the authority of section four, article
20 twenty-a, chapter thirty, of this code, modified by the Board of
21 Physical Therapy to meet the objections of the Legislative Rule-
22 Making Review Committee and refiled in the state register on
23 September 20, 2010, relating to the Board of Physical Therapy
24 (general provisions for athletic trainers, 16 CSR 5), is
25 authorized.

26 (d) The legislative rule filed in the state register on July
27 30, 2010, authorized under the authority of section four, article
28 twenty-a, chapter thirty, of this code, modified by the Board of

1 Physical Therapy to meet the objections of the Legislative Rule-
2 Making Review Committee and refiled in the state register on
3 September 20, 2010, relating to the Board of Physical Therapy (fees
4 for athletic trainers, 16 CSR 6), is authorized.

5 **§64-9-3. Sanitarians.**

6 (a) The legislative rule filed in the state register on July
7 29, 2010, authorized under the authority of section six, article
8 seventeen, chapter thirty, of this code, relating to the of Board
9 of Sanitarians (interim fee schedule, 20 CSR 3), is authorized.

10 (b) The legislative rule filed in the state register on July
11 29, 2010, authorized under the authority of section six, article
12 seventeen, chapter thirty, of this code, relating to the Board of
13 Sanitarians (practice of public health sanitation, 20 CSR 4), is
14 authorized, with the following amendments:

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

17 "4.1.d. Has not previously failed an examination for licensure
18 in this state;"

19 And,

20 By re-designating the remaining subdivisions accordingly.

21 **§64-9-4. Secretary of State.**

22 The legislative rule filed in the state register on November
23 12, 2010, authorized under the authority of section twelve, article
24 two, chapter three, of this code, relating to the Secretary of
25 State (combined voter registration and driver licensing fund, 153
26 CSR 25), is authorized with the following amendments:

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

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

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

16 And,

17 On page four, by striking out subsection 4.4 and subdivisions
18 4.4.1, 4.4.2, 4.4.3 and 4.4.4 in their entirety and renumbering the
19 remaining sections of the rule.

20 **§64-9-5. Board of Barbers and Cosmetologists.**

21 (a) The legislative rule filed in the state register on July
22 30, 2010, authorized under the authority of section six, article
23 twenty-seven, chapter thirty, of this code, modified by the Board
24 of Barbers and Cosmetologists to meet the objections of the
25 Legislative Rule-Making Review Committee and refiled in the state
26 register on October 18, 2010, relating to the Board of Barbers and
27 Cosmetologists (procedures, criteria and curricula for examinations
28 and licensure of barbers, cosmetologists, manicurists and

1 aestheticians, 3 CSR 1), is authorized with the following
2 amendments:

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

5 And,

6 On page three, subsection 4.2, after the word "obtain" by
7 inserting the word "a".

8 (b) The legislative rule filed in the state register on July
9 30, 2010, authorized under the authority of section six, article
10 twenty-seven, chapter thirty, of this code, modified by the Board
11 of Barbers and Cosmetologists to meet the objections of the
12 Legislative Rule-Making Review Committee and refiled in the state
13 register on October 18, 2010, relating to the Board of Barbers and
14 Cosmetologists (qualifications, training, examination of licensure
15 of instructors, 3 CSR 2), is authorized, with the following
16 amendments:

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

19 "2.1.1 Have been licensed 5 years with 5 years of salon/shop
20 experience.";

21 On page one, subdivision 2.1.6 by striking out the percentage
22 amount "70%" and inserting in lieu thereof the percentage amount
23 "80%";

24 And,

25 On page one, by striking out all of subdivisions 2.1.7. and
26 2.1.8. and inserting in lieu new subdivisions 2.1.7. and 2.1.8. to
27 read as follows:

1 "2.1.7. Submit an application to the board;

2 2.1.8. Pay applicable certification, examination and
3 registration fees."

4 (c) The legislative rule filed in the state register on July
5 30, 2010, authorized under the authority of section six, article
6 twenty-seven, chapter thirty, of this code, modified by the Board
7 of Barbers and Cosmetologists to meet the objections of the
8 Legislative Rule-Making Review Committee and refiled in the state
9 register on October 18, 2010, relating to the Board of Barbers and
10 Cosmetologists (operational standards for schools of barbering and
11 beauty culture, 3 CSR 4), is authorized with the following
12 amendments:

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

16 "\$3-4-5. Enrollment";

17 And,

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

21 "\$3-4-8 Teaching Staff".

22 (d) The legislative rule filed in the state register on June
23 18, 2010, authorized under the authority of section six, article
24 twenty-seven, chapter thirty, of this code, relating to the Board
25 of Barbers and Cosmetologists (schedule of fees, 3 CSR 6), is
26 authorized with the following amendment:

1 On page one, subsection 2.1, by striking out the words
2 "\$99.00" and inserting in lieu thereof the words "Based on the
3 National Interstate Council Index with a cap of \$107.00".

4 **§64-9-6. Commissioner of Agriculture.**

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

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

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

22 **§64-9-7. Board of Veterinary Medicine.**

23 The legislative rule filed in the state register on July 27,
24 2010, authorized under the authority of section six, article ten,
25 chapter thirty, of this code, modified by the West Virginia, 1931,
26 as amended, relating to authorizing the Board of Veterinary
27 Medicine to meet the objections of the Legislative Rule-Making
28 Review Committee and refiled in the state register on November 24,

1 2010, relating to the West Virginia, 1931, as amended, relating to
2 the Board of Veterinary Medicine (organization and operation and
3 licensing of veterinarians, 26 CSR 1), is authorized with the
4 following amendments:

5 On page two, subdivision 2.4.4, by striking out the
6 subdivision in its entirety;

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

15 And,

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

19 (b) The legislative rule filed in the state register on July
20 27, 2010, authorized under the authority of section six, article
21 ten, chapter thirty of this code, modified by the Board of
22 Veterinary Medicine to meet the objections of the Legislative Rule-
23 Making Review Committee and refiled in the state register on
24 November 24, 2010, relating to the Board of Veterinary Medicine
25 (registration of veterinary technicians, 26 CSR 3), is authorized.

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

1 Veterinary Medicine to meet the objections of the Legislative Rule-
2 Making Review Committee and refiled in the state register on
3 November 24, 2010, relating to the Board of Veterinary Medicine
4 (standards of practice, 26 CSR 4), is authorized, with the
5 following amendments:

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

9 (d) The legislative rule filed in the state register on July
10 27, 2010, authorized under the authority of section six, article
11 ten, chapter thirty of this code, modified by the Board of
12 Veterinary Medicine to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the state register on
14 November 24, 2010, relating to the Board of Veterinary Medicine
15 (certified animal euthanasia technicians, 26 CSR 5), is authorized,
16 with the following amendment:

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

19 (e) The legislative rule filed in the state register on July
20 27, 2010, authorized under the authority of section six, article
21 ten, chapter thirty of this code, modified by the Board of
22 Veterinary Medicine to meet the objections of the Legislative Rule-
23 Making Review Committee and refiled in the state register on
24 November 24, 2010, relating to the Board of Veterinary Medicine
25 (schedule of fees, 26 CSR 6), is authorized.

26 **§64-9-8. Board of Optometry.**

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

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

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

22 (d) The legislative rule filed in the state register on July
23 30, 2010, authorized under the authority of section six, article
24 eight, chapter thirty, of this code, modified by the Board of
25 Optometry to meet the objections of the Legislative Rule-Making
26 Review Committee and refiled in the state register on November 24,
27 2010, relating to the Board of Optometry (examination and scoring
28 policy, 14 CSR 6), is authorized with the following amendments:

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

4 "2.1. The Board shall conduct the interview with a quorum of
5 the Board being present.";

6 On page one, subsection 3.2, after the word "The" by inserting
7 the word "Board";

8 And,

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

12 "4.1. A Board quorum may evaluate the applicant's successful
13 or unsuccessful completion of the interview by consensus.".

14 (e) The legislative rule filed in the state register on July
15 30, 2010, authorized under the authority of section six, article
16 eight, chapter thirty, of this code, modified by the Board of
17 Optometry to meet the objections of the Legislative Rule-Making
18 Review Committee and refiled in the state register on November 24,
19 2010, relating to the Board of Optometry (licensure by endorsement,
20 14 CSR 8), is authorized with the following amendments:

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

23 "2.2.6. At the option of the Board, an applicant for licensure
24 by reciprocity may be required to take the National Board
25 Examination.;

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

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

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

5 And,

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

9 "3.9. The Board may require an applicant to interview with the
10 Board."

11 (f) The legislative rule filed in the state register on July
12 30, 2010, authorized under the authority of section six, article
13 eight, chapter thirty, of this code, modified by the Board of
14 Optometry to meet the objections of the Legislative Rule-Making
15 Review Committee and refiled in the state register on November 24,
16 2010, relating to the Board of Optometry (contact lenses that
17 contain and deliver pharmaceutical agents certificates, 14 CSR 9),
18 is authorized with the following amendment:

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

21 (g) The legislative rule filed in the state register on July
22 30, 2010, authorized under the authority of section six, article
23 eight, chapter thirty, of this code, modified by the Board of
24 Optometry to meet the objections of the Legislative Rule-Making
25 Review Committee and refiled in the state register on November 24,
26 2010, relating to the Board of Optometry (continuing education, 14
27 CSR 10), is authorized with the following amendments:

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

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

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

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

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

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

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

17 And,

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

21 (h) The legislative rule filed in the state register on July
22 30, 2010, authorized under the authority of section fifteen,
23 article eight, chapter thirty, of this code, modified by the Board
24 of Optometry to meet the objections of the Legislative Rule-Making
25 Review Committee and refiled in the state register on December 23,
26 2010, relating to the Board of Optometry (injectable pharmaceutical
27 agents certificate, 14 CSR 11), is authorized with the following
28 amendments:

1 On page five, subsection 10.1., by striking out the word
2 `not`;

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

5 "11.1 A certificate holder may not establish a pharmacy in an
6 optometric office or sell injectable pharmaceutical agents
7 prescribed in treatment unless there is a licensed pharmacist on
8 staff or present when the prescription is filled. Nothing in this
9 rule shall prohibit the optometrist from charging a usual and
10 customary fee for performing the injection.

11 11.2 Retrobulbar and Peribulbar injections are prohibited.

12 11.3. The board shall establish a formulary of pharmaceutical
13 agents to be administered by injection.

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

19 11.3.2. New drugs or drug indications may be added to the
20 formulary by a decision of the Board based on any of the following
21 criteria:

22 11.3.2.1. A new or existing drug has been approved by the Food
23 and Drug Administration for the treatment of the eye or its
24 appendages.

25 11.3.2.2. A new drug or new drug indication has gained
26 accepted use in the eye care field. Such acceptance may be
27 indicated by its inclusion in the curriculum of an optometry school
28 accredited by the Accreditation Council on Optometric Education or

1 its successor approved by the U.S. Department of Education or
2 approved post-graduate continuing education, through peer-reviewed,
3 evidence-based research and professional journal articles, or by
4 inclusion in established standards of practice and care published
5 by professional organizations.

6 **§64-9-9. Board of Osteopathy.**

7 (a) The legislative rule filed in the state register on July
8 30, 2010, authorized under the authority of section one, article
9 fourteen-a, chapter thirty, of this code, modified by the Board of
10 Osteopathy to meet the objections of the Legislative Rule-Making
11 Review Committee and refiled in the state register on November 29,
12 2010, relating to the Board of Osteopathy (osteopathic physician
13 assistants, 24 CSR 2), is authorized with the following the
14 following amendments:

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

18 And,

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

21 (b) The legislative rule filed in the state register on July
22 28, 2010, authorized under the authority of section three, article
23 fourteen-a, chapter thirty, of this code, modified by the Board of
24 Osteopathy to meet the objections of the Legislative Rule-Making
25 Review Committee and refiled in the state register on November 29,
26 2010, relating to the Board of Osteopathy (fees for services
27 rendered by the Board, 24 CSR 5), is authorized.

28 **§64-9-10. Treasurer's Office.**

1 The legislative rule filed in the state register on July 30,
2 2010, authorized under the authority of section two, article two,
3 chapter twelve, of this code, modified by the Treasurer's Office to
4 meet the objections of the Legislative Rule-Making Review Committee
5 and refiled in the state register on July 30, 2010, relating to the
6 Treasurer's Office (establishment of imprest funds, 112 CSR 3), is
7 authorized.

8 **§64-9-11. State Election Commission.**

9 The legislative rule filed in the state register on the July
10 29, 2010, authorized under the authority of section fourteen,
11 article twelve, chapter three, of this code, modified by the State
12 Election Commission to meet the objections of the Legislative Rule-
13 Making Review Committee and refiled in the state register on
14 January 14, 2011, relating to the State Election Commission (West
15 Virginia Supreme Court of Appeals Public Campaign Financing Pilot
16 Program, 146 CSR 5), is authorized, with the following amendment:

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