

2 **Senate Bill No. 292**

3 (By Senator Snyder)

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5 [Introduced February 20, 2013; referred to the Committee on
6 Health and Human Resources; and then to the Committee on the
7 Judiciary.]
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12 A BILL to amend and reenact article 9, chapter 64 of the Code of
13 West Virginia, 1931, as amended, relating to authorizing the
14 Board of Optometry to promulgate a legislative rule relating
15 to expanded therapeutic procedures certificates.

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

17 That article 9, chapter 64 of the Code of West Virginia, 1931,
18 as amended, be amended and reenacted to read as follows:

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

21 **§64-9-1. Board of Optometry.**

22 The legislative rule filed in the State Register on the
23 thirty-first day of August, two thousand twelve, authorized under
24 the authority of section six, article eight, chapter thirty, of

1 this code, relating to the Board of Optometry (expanded therapeutic
2 procedures certificate, [14 CSR 12](#)), is authorized with the
3 following amendment:

4 On page one, by striking out everything after the series title
5 and inserting in lieu thereof the following:

6 "§14-12-1. General.

7 1.1. Scope. -- This rule establishes the requirements,
8 procedures and standards for the certification of a licensee to
9 perform expanded therapeutic procedures which are considered
10 rational to the diagnosis and treatment of the human eye and its
11 appendages.

12 1.2. Authority. -- W. Va. Code §30-8-6 and §30-8-9.

13 1.3. Filing Date. --

14 1.4. Effective Date. --

15 1.5. Purpose - This rule establishes the process for any
16 future legislative rule in which any proposed expanded or revised
17 scope of practice, through each specific expanded therapeutic
18 procedure, would be reviewed and approved for compliance on an
19 application for a sunrise review by the Performance Evaluation
20 Division of the Legislative Auditor's Office, in conformance with
21 W.Va. Code §30-1A-2, before it is submitted to the Legislative Rule
22 Making Review Committee.

23 **14-12-2. Definitions.**

24 2.1. "Accredited Optometry School" means an optometry school

1 accredited by the Accreditation Council on Optometric Education or
2 its successor organization recognized by the U.S. Department of
3 Education.

4 2.2. "Appendages" means the eyelids, the eyebrows, the
5 conjunctiva and the lacrimal apparatus.

6 2.3. "Board" means the West Virginia Board of Optometry.

7 2.4. "Certificate Holder" means a licensee who has met the
8 requirements of this rule and has been issued an Expanded
9 Therapeutic Procedures Certificate by the Board.

10 2.5. "Procedures," "Therapeutic Procedures" "Expanded
11 Therapeutic Procedures" or "Approved Procedures" are procedures
12 approved by the West Virginia Board of Optometry that meet the
13 criteria of this rule. All expanded therapeutic procedures must
14 meet the criteria listed in W.Va. Code, §30-8-6(14), which states
15 that all expanded therapeutic procedures shall be taught in at
16 least fifty percent (50%) of all optometry schools accredited by
17 the Accreditation Council on Optometric Education or its successor
18 organization recognized by the U.S. Department of Education.

19 **§14-12-3. Application to Add an Expanded Therapeutic Procedure.**

20 3.1. The Board may accept an application from any interested
21 party to add a therapeutic procedure or class of procedures for
22 certification of licensees. The application shall include:

23 3.1.1. The applicant or group's name, title, and form of
24 licensure, if applicable;

1 3.1.2. The address, telephone number, address and e-mail
2 address of the applicant or group;

3 3.1.3. The name and telephone number of a contact person to
4 discuss the application;

5 3.1.4. The name of the procedure or class of procedures that
6 is being requested for addition to therapeutic practice;

7 3.1.5. A statement of support for the procedure or class of
8 procedures proposed for regulation which has been signed by at
9 least ten residents or citizens of the State of West Virginia who
10 are licensed optometrists;

11 3.1.6. The estimated number of licensees who are represented
12 by the requesting person or group, if applicable;

13 3.1.7. A list of accredited optometry schools that are
14 teaching the expanded therapeutic procedure or class of procedures
15 and written documentation from each accredited school on the list
16 to the effect that each school is teaching the expanded therapeutic
17 procedure or class of procedures;

18 3.1.8. The names and contact information for the Dean of
19 Academic Affairs or his or her designee of each school the
20 applicant lists as teaching the expanded therapeutic procedure or
21 class of procedures; and

22 3.1.9. A definition of the problem which requires the
23 expansion of scope through the procedure or class of procedures
24 requested and the extent to which consumers need and will benefit

1 from licensees who are certified to practice the proposed
2 therapeutic procedure or class of procedures.

3 **§14-12-4. The Board's Education Committee.**

4 4.1. The application to approve a procedure or class of
5 procedures shall be referred to the Board's Education Committee.

6 4.2. The Board's Education Committee shall consist of at
7 least three Board members.

8 4.3. The Board's Education Committee may include additional
9 ex-officio members who are not be members of the Board to act as
10 consultants to the Board.

11 **§14-12-5. Board's Education Committee Data Request.**

12 5.1. The Board's Education Committee shall communicate in
13 writing with each optometry school accredited by the American
14 Council on Optometric Education or its successor approved by the
15 U.S. Department of Education which teach the proposed procedure or
16 class of procedures cited in the application. The request may be
17 sent to each optometry school's Dean of Academic Affairs or his or
18 her designee. The Board's Education Committee may enlist the
19 assistance of accrediting bodies or professional associations to
20 obtain this information. The request by the Board's Education
21 Committee shall include:

22 5.1.1. If the procedure or class of procedures are taught by
23 the optometry school; and

24 5.1.2. Additional information the Board determines necessary,

1 which may include, but not be limited to:

2 5.1.2.1. The methods of instruction used to teach the
3 requested procedure or class of procedures; and

4 5.1.2.2. The clinical experience of each student or the
5 methods used to provide instruction for the proposed procedure or
6 class of procedures in a closely supervised environment.

7 **§14-12-6. Board's Education Committee Report.**

8 6.1. The Board's Education Committee shall evaluate the
9 responses from accredited optometry schools and confirm that 50% of
10 all accredited optometry schools teach the proposed therapeutic
11 procedure or class of procedures. If the Board's Education
12 Committee determines that less than fifty percent (50%) of the
13 accredited optometry schools teach the expanded therapeutic
14 procedure or class of procedures, it shall reject the proposed
15 procedure.

16 6.2. The Board's Education Committee shall prepare a list of
17 schools that teach the proposed procedure or class of procedures
18 and make it available to the public for inspection. The Board's
19 Education Committee may make the list available to the public
20 including, but not limited to, publication through the Board's web
21 site.

22 6.3. The Board's Education Committee may gather additional
23 information and make a recommendation to the Board for approval or
24 disapproval of the procedure or class of procedures. Based on the

1 sole determination as to whether the expanded therapeutic procedure
2 or class of procedures are taught at fifty (50%) or more of all
3 accredited optometry schools and the sufficiency of the supported
4 documentation submitted by the applicant and gathered by the
5 Board's Education Committee. The recommendation shall include:

6 6.3.1. Proposed guidelines for training to ensure the
7 proficiency of optometrists certified in the procedure or class of
8 procedures. The recommendation may include the appropriate hours of
9 instruction required;

10 6.3.2. Treatment guidelines for the proposed procedure or
11 class of procedures; and

12 6.3.3. Methods of testing to be used to ensure that
13 optometrists certified to perform the requested procedure or class
14 of procedures are proficient in using the procedure or class of
15 procedures.

16 6.4. The Board shall hold a public hearing regarding the
17 recommendation of the Board's Education Committee if the Board's
18 Education Committee recommends that the proposed therapeutic
19 procedure or class of procedures be approved. The purpose of the
20 public hearing is to determine whether the documentation reviewed
21 and gathered by the Board's Education Committee is sufficient to
22 prove that the expanded therapeutic procedure is currently being
23 taught at fifty percent or more of all accredited optometry
24 schools. The Board shall allow those members of the public who wish

1 to speak solely to the sufficiency of the documentation submitted
2 by the applicant and evidence gathered by the Board's Education
3 Committee. If, after the public hearing and review of the
4 recommendation, the Board determines that the documentation and
5 evidence is sufficient to demonstrate that fifty percent (50%) or
6 more of all accredited optometry schools currently teach the
7 expanded therapeutic procedure, the Board shall approve the
8 application. If the Board determines that the documentation and
9 evidence is not sufficient to demonstrate that fifty percent (50%)
10 or more of all accredited optometry schools currently teach the
11 expanded therapeutic procedure, the board shall reject the
12 application.

13 6.5. The Board's Education Committee shall review the list of
14 expanded therapeutic procedures or class of procedures that have
15 been approved pursuant to this process not less than once every two
16 years. In such review, the Board shall verify that each expanded
17 therapeutic procedure or class of procedures are still taught at
18 fifty percent (50%) or more of all accredited optometry schools.
19 If, upon such review, the Board finds that any expanded therapeutic
20 procedure or class of procedures is not taught at fifty percent
21 (50%) or more of all accredited optometry schools, the Board shall
22 remove the expanded therapeutic procedure or class of procedures
23 from the list of approved expanded therapeutic procedures.

24 **§14-12-7. Public Access and Board Accountability.**

1 7.1. The Board shall document and maintain a list for public
2 inspection of each approved expanded therapeutic procedure for each
3 approved licensee. The list shall contain clinical educational and
4 treatment guidelines and the minimum number of clinical procedures
5 performed for each procedure by each licensee, as approved by the
6 Board.

7 **§14-12-8. Certification Generally.**

8 8.1. A licensee shall complete a Board approved application
9 and meet all requirements as listed in this rule in order to be
10 certified to perform expanded therapeutic procedures.

11 8.2. A licensee shall obtain injectable pharmaceutical agents
12 certification prior to application for certification to perform
13 expanded therapeutic procedures.

14 **§14-12-9. Certification Requirements.**

15 To be certified, a licensee shall:

16 9.1. Complete the required application form;

17 9.2. Submit proof of injectable pharmaceutical agents
18 certification;

19 9.3. Submit proof of attendance and satisfactory completion
20 of the required clinical education and treatment training in
21 expanded therapeutic procedures. The Board shall verify successful
22 completion of the approved clinical educational and treatment
23 training directly with the provider accredited school of optometry;
24 and

1 9.4. Submit the Expanded Therapeutic Procedures Fee as listed
2 in the Board's rule, Schedule of Fees, 14 CSR 5.

3 **§14-12-10. Clinical Education and Training.**

4 10.1. The Board shall accept clinical education and treatment
5 training for certification in expanded therapeutic procedures that
6 is provided by or through a school or college of optometry
7 accredited by the Accreditation Council on Optometric Education or
8 its successor organization.

9 10.2. The Board shall submit any expanded therapeutic
10 procedure on an application for a sunrise review by the Performance
11 Evaluation Division of the Legislative Auditor's Office, in
12 conformance with W.Va. Code §30-1A-2, before it is filed with the
13 Legislative Rule Making Review Committee. The Board shall confirm
14 that each therapeutic procedure is actually performed as taught
15 through clinical educational and treatment training by optometry
16 students in at least fifty percent (50%) of all optometry schools
17 accredited by the Accreditation Council on Optometric Education or
18 its successor organization.

19 10.3. The Board may accept expanded therapeutic procedure
20 clinical educational and treatment training used to obtain
21 licensure for expanded therapeutic procedures from another state or
22 states: Provided, that the other state or states have requirements
23 that are substantially equivalent for each procedure to the
24 clinical educational and treatment training required by this state,

1 and that each procedure is documented to be currently taught
2 through clinical educational and treatment training in at least 50%
3 of all accredited optometry schools.

4 10.4. Additional clinical education and treatment training
5 requirements shall be required by the Board and promulgated by a
6 rule, that includes the minimum number of specific procedures that
7 must be performed by each applicant for each expanded therapeutic
8 procedure, prior to certification. A complete log of each
9 procedure performed must be kept and submitted to the Board with
10 documentation that the applicant was supervised by an individual
11 licensed to perform each procedure.

12 **§14-12-11. Certification.**

13 11.1. Upon the licensee's successful completion of the
14 requirements listed in sections 9 through 10 of this rule and
15 approval by the Board, an expanded therapeutic procedures
16 certificate may be issued.

17 11.2. Upon issuance of the certificate, the licensee's
18 license number shall be changed. The license number shall be
19 followed by a dash and the initial "E" for expanded therapeutic
20 procedures.

21 **§14-12-12. Treatment Guidelines.**

22 12.1. A certificate holder may perform Board approved
23 expanded therapeutic procedures which are considered rational to
24 the diagnosis and treatment of the human eye or its appendages.

1 12.2. Any pharmaceutical agent which may be administered
2 while performing approved procedures shall be selected from the
3 agents the certificate holder is authorized to prescribe or
4 administer under his or her topical, oral or injectable
5 pharmaceutical agents certification granted by W.Va. Code, §30-8-1,
6 et. seq. and the provisions of the Board's Rules, Oral
7 Pharmaceutical Certificate, 14 CSR 2, and Injectable
8 Pharmaceutical Agents Certificate, 14 CSR 11;

9 12.3. The certificate holder shall follow all applicable
10 Occupational Safety and Health Administration (OSHA) and Centers
11 for Disease Control (CDC) guidelines pertaining to performance of
12 expanded therapeutic procedures.

13 12.4. The certificate holder shall adhere to generally
14 accepted standards of care and follow established clinical
15 guidelines for approved procedures. The certificate holder shall
16 monitor the patient for an adverse outcome and provide appropriate
17 follow up care for patients treated by expanded therapeutic
18 procedures. Any adverse outcome shall be reported to the Board by
19 the certificate holder.

20 **§14-12-13. Recertification.**

21 A certificate holder shall meet the following requirements for
22 recertification:

23 13.1. The certificate holder shall submit proof of current
24 certification in life support for the professional rescuer or for

1 medical providers from the American Red Cross or American Heart
2 Association or their successors.

3 13.2. The certificate holder shall submit proof of a minimum
4 of 2 hours of continuing clinical education instruction in
5 performing each expanded therapeutic procedures per two year
6 continuing education cycle as listed in the Board's Rule,
7 Continuing Education 14 CSR 10.

8 13.3. The certificate holder shall submit the Annual Renewal
9 fee as listed in the Board's Rule, Schedule of Fees, 14 CSR 5.

10 **§14-12-14. Compliance with W. Va. Code §30-1A-2.**

11 14.1 This rule requires the Board of Optometry to follow all
12 provisions of W. Va. Code, §30-1A-2."

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15 NOTE: The purpose of this bill is to authorize the Board of
16 Optometry to promulgate a legislative rule relating to Expanded
17 Therapeutic Procedures Certificates.

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19 This section is new; therefore, strike-throughs and
20 underscoring have been omitted.