JANUARY 12

Monday, January 12, 2009

9:00 a.m. to 11:00 a.m.

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

Earl Ray Tomblin
ex officio nonvoting member

Richard Thompson
ex officio nonvoting member

Senate		**House**
Minard, Chairman		Brown, Chairman
Fanning, Vice Chair		Miley, Vice Chair
Prezioso		Burdiss
Unger	Absent	Talbott
Boley		Overington
Facemyer		Sobonya

The meeting was called to order by Mr. Minard, Co-Chair.

The minutes of the December 7th and 9th, 2008, meetings were approved.

Debra Graham, Chief Counsel, explained her abstract on the rule proposed by the **Division of Motor Vehicles, Denial Suspension, Restriction or NonRenewal of Driving Privileges, 91CSR5,** and stated that the Division has agreed to technical modifications.

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

Mr. Minard moved items b., c. and d. to the foot of the agenda.

Ms. Graham, reviewed her abstract on the rule proposed by the **WV Division of Labor, *Supervision of Elevator Mechanics and Apprentices*, 42CSR21A,** stated that the Division has agreed to technical modifications and responded to questions from the Committee.

Jennifer Burdgiss with the Division responded to questions from the Committee.

Ms. Brown moved that the proposed rule be approved as modified.

William Miller, President of Oracle Elevator, addressed the Committee and responded to questions.

Ken Milnes with the U.S. Department of Labor, addressed the Committee and responded to questions.

David Mullins, Commissioner of Labor, responded to questions from the Committee.

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

Jay Lazell, Associate Counsel, explained his abstract on the rule proposed by the **Office of Air Quality**, Permits for Construction, Modification and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration, **45CSR14**, and stated that the Office has agreed to technical modifications.

Don Garvin, Legislative Coordinator for the WV Environmental Council, addressed the Committee.

Kristin Bogg with the Department of Environmental Protection responded to questions from the Committee.

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

Mr. Lazell, reviewed his abstract on the rule proposed by the **Division of Water & Waste Management**, State Water Pollution Control Revolving Fund, **47CSR31**, and responded to questions from the Committee.

Kathy Emmory with the Department of Environmental Protection responded to questions from the Committee.

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

Mr. Lazell, explained his abstract on the rule proposed by the **Office of Water Resources**, Dam Safety Rule, **47CSR34**, stated that the Office has agreed to technical modifications and responded to questions from the Committee.

Brian Long with the Department of Environmental Protection Safety Program responded to questions from the Committee.

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

Brian Skinner, Associate Counsel, reviewed his abstract on the rule proposed by the **WV Board of Accountancy, *Board Rules and Rules of Professional Conduct*, 1CSR1**, and stated that the Board has agreed to technical modifications.

Raid Spangler, President of the Board, responded to questions from the Committee.

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

Mr. Skinner, explained his abstract on the rule proposed by the **WV State Board of Architects, *Registration of Architects,* 2CSR1,** and stated that the Board has agreed to technical modifications.

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

Mr. Skinner, reviewed his abstract on the rule proposed by the **WV State Board of Architects, Fees for Registration of Architects, 2CSR3.**

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

Charles Roskovensky, Associate Counsel, explained his abstract on the rule proposed by the **WV Board of Examiners for Registered Professional Nurses, *Limited Prescriptive Authority for Nurses in Advanced Practice,* 19CSR8,** and stated that the Board has agreed to technical modifications.

Laura Rhodes, Executive Director with the Board, addressed the Committee and responded to questions.

Cindy Haynes, Director of Education and Practice with the Board, addressed to the Committee and responded to questions.

Beth Baldwin with the WV Nurses Association addressed the Committee.

Steve Mackaroy with the WV Nurses Association addressed the Committee.

Kevin Lewis, Nurse Practitioner, addressed the Committee.

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

Mr. Roskovensky, reviewed his abstract on the rule proposed by the **WV Division of Rehabilitation Services, *Establishment of the criteria and curriculum requirements for the Low Vision Driver Training Program,* 130CSR3,** and stated that the Board has agreed to technical modifications.

Chuck Huss from Dunbar, West Virginia addressed the Committee, provided handouts and responded to questions.

Tom Stevens with the WV Academy of Ophthalmology addressed the

Committee.

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

Mr. Roskovensky, explained his abstract on the rule proposed by the **WV Board of Dental Examiners, *Rule for the West Virginia Board of Dental Examiners*, 5CSR1**, stated that the Board has agreed to technical modifications and responded to questions from the Committee.

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

Ms. Graham addressed the Committee

Mr. Fanning moved to adjourn. The motion was adopted.

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 11, 12 and 13, 2009

Monday, January 12, 2009

9:00 am - 11:00 am

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex officio nonvoting member		Thompson, ex officio nonvoting member	
Senate		House	
Minard, Chair	✓	Brown, Chair	✓
Fanning, Vice Chair	✓ (present)	Miley, Vice Chair	✓
Prezioso	✓	Poling, Daniel	✓
Unger	✓	Talbott	✓
Boley	✓	Overington	✓
Facemyer	✓	Sobonya	✓

I certify that the attendance as noted above is correct.

Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday, January 12, 2008

9:00 a.m. to 11:00 a.m.

Senate Judiciary Committee Room

1. **Approval of Minutes** - Meetings of December 7 & 9, 2008.

2. **Review of Legislative Rules:**

   a. **Motor Vehicles, Division of**
   Denial Suspension, Restriction or NonRenewal of Driving Privileges
   91CSR5

      - Laid Over
      - Approve as Modified

   b. **Registered Professional Nurses, WV Board of Examiners for**
   Limited Prescriptive Authority for Nurses in Advanced Practice
   19CSR8

      - Laid Over
      - Approve as Modified

   c. **Rehabilitation Services, WV Division of**
   Establishment of the criteria and curriculum requirements for the Low Vision Driver Training Program
   130CSR3

      - Laid Over
      - Approve as Modified

   d. **Dental Examiners, WV Board of**
   Rule for the West Virginia Board of Dental Examiners
   5CSR1

      - Approve as Modified

   e. **Labor, WV Division of**
   Supervision of Elevator Mechanics and Apprentices
   42CSR21A

      - Approve as Modified

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 11, 12 & 13, 2009

Tuesday, January 12, 2009
9:00 a.m. - 11:00 a.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex officio nonvoting member	____	Richard Thompson, ex officio nonvoting member	____

Senate		**House**	
Minard, Chair	✓	Brown, Chair	✓
Fanning, Vice Chair	✓	Miley, Vice Chair	✓
Prezioso	✓	Poling	✓
Unger		Talbott	✓
Boley	✓	Overington	✓
Facemyer	✓	Sobonya	✓

Minard called to order
Minutes approved
DMV = approved as modified
Labor - Jennifer Burgess - does not apply to chair lifts in private homes, but would apply to small church
William Miller - 6 people here in WV
Grandfathering - "shall" rather than "may"
Training - wants to specify training program
Responded to questions
Ken Miles - apprenticeship programs
David Mullins, Commissioner - agrees to 1st modification
Modified

Prez

17 rules

Air Quality – 45 CSR 14
Jay explained
Don Garvin, WV Environmental Council
Christy, DEP
Brown adopted — Approve as mod

Water & Waste Mgt 47 CSR 31
Jay explained
Kathy ? DEP responded to questions
Brown adopted — Make rule

Water Resources 47 CSR 34
Jay explained
Brian Long, DEP
Brown adopted — Approve as mod

Accountancy
Brian explained → Reid, Pres of Board responded to questions
Brown adopted — Approve as modified

~~Arc~~ Architects 2 CSR 1
Brian explained
Brown adopted — Approve as mod

Architects 2 CSR 3
Brian explained
Brown adopted — Approve

52
40
2080

RN's

Charlie reviewed rule – new abstract

Available to ans questions

Laura Rhodes, Exec Dir

Cindy Haynes

Beth Baldwin WV Nursing Assoc – in favor of rule

Steve McElroy, Dir WV Nurses Assoc

Kevin Lewis – support

Brown adopted

Approve as mod

Rehab –

Charlie explained ? Tom Stevens

Brown

approve as mod

Dental Examiners

Charlie explained and responded to questions

Brown

Approve as mod

TENTATIVE AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday, January 12, 2008

9:00 a.m. to 11:00 a.m.

Senate Judiciary Committee Room

1. **Approval of Minutes** - Meetings of December 7 & 9, 2008.

2. **Review of Legislative Rules:**

Approved w. as modified

a. **Motor Vehicles, Division of**
Denial Suspension, Restriction or NonRenewal of Driving Privileges
91CSR5

- Laid Over
- Approve as Modified

Approved w. as modified

Registered Professional Nurses, WV Board of Examiners for
Limited Prescriptive Authority for Nurses in Advanced Practice
19CSR8

- Laid Over
- Approve as Modified

Approved w. as modified

Rehabilitation Services, WV Division of
Establishment of the criteria and curriculum requirements for the Low Vision Driver Training Program
130CSR3

- Laid Over
- Approve as Modified

Approved w. as modified

Dental Examiners, WV Board of
Rule for the West Virginia Board of Dental Examiners
5CSR1

- Approve as Modified

Approved w. as modified

Labor, WV Division of
Supervision of Elevator Mechanics and Apprentices
42CSR21A

- Approve as Modified

JANUARY INTERIM ATTENDANCE
Legislative Interim Meetings
January 11, 12 & 13, 2009

Tuesday, January 12, 2009
9:00 a.m. - 11:00 a.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex officio nonvoting member	____	Richard Thompson, ex officio nonvoting member	____

Senate		**House**	
Minard, Chair	✓	Brown, Chair	✓
Fanning, Vice Chair	✓	Miley, Vice Chair	✓
Prezioso	✓	Poling	✓
Unger		Talbott	✓
Boley	✓	Overington	✓
Facemyer	✓	Sobonya	✓

- Minard meeting to order
- Brown moved minutes - Approved
- DMV 91CSR5
  Debra explained
  Brown moved as modified
  Approved
- Minard moved b, c and d to foot

- Labor 42CSR21A
Debra explained and responded to ?'s
Jennifer Burdgiss w/ Labor responded to ?'s
Brown moved rule as modified
William Miller, President of Orion Elevator, addressed the Committee and responded to ?'s
Ken [redacted] Milness, US Office of Labor, addressed the Committee and responded to ?'s
David Mullins, Commissioner of Labor, responded to ?'s
Prezioso moved rule as modified
Approved

- Air Quality 45CSR14
Jay explained
Don Garvin, Leg. Coordinator, with WV Environmental Council addressed the Committee
Kristin Bogg w/ DEP responded to ?'s
Brown moved rule as modified
Approved

- Water & Waste 47CSR31
Jay explained and responded to ?'s
Kathy Emmory w/ DEP responded to ?'s
Brown moved rule
Approved

- Water 47CSR34
Jay explained and responded to ?'s
Brian Long w/ DEP Safety Program responded to ?'s
Brown moved rule as modified
Approved

- Accountancy 1CSR1
Brian explained
Raid Spangler, President of Board
responded to ?'s
Brown moved as modified
Approved

- Architects 2CSR1
Brian explained
Brown moved rule as modified
Approved

- Architects 2CSR3
Brian explained
Brown moved rule
Approved

- Reg. Pro. Nurses 19CSR8
Charlie explained
Laura Rhodes [redacted] Ex Dir w/ RN Bd addressed the Committee and responded to ?'s
Cindy Haynes Dir of Education & Practice w/ RN Bd addressed the Committee & responded to ?'s
Beth Baldwin w/ WV Nurses Association addressed the Committee
Steve Mackaray w/ WV Nurses Association addressed the Committee
Kevin Lewis, Nurse Practitioner, addressed the Committee
Brown moved rule as modified
Approved

- Rehab 130CSR3
Charlie explained
~~Brown moved rule as modified~~
Chuck Huss from Dunbar, WV addressed the Committee, provided 2 handouts and responded to ?s
Tom Stevens w/ WV Academy of Ophthalmology addressed the Committee
Brown moved rule as modified
Approved

- Rental SCSR1
Charlie explained and responded to ?'s
Brown moved rule as modified
Approved

- DAG addressed the Committee

- Meeting adjourned

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE **Date:** JAN. 12, 2008

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
WILLIAM MILLER	45 BLUE RIDGE DR WEATOGUE, CT	ORACLE ELEVATOR	2E 42CSR21A	X
ROBERT GILCHRIST	754 College Hill Rd WASHINGTON, WV	EMAR CORP.	"	X
Ken Milnes	405 Capitol Street Charleston	U.S. Dept of Labor Office of Apprenticeship	"	X
Chuck Huss	1338 W. Va. Ave. Dunbar, WV	SELF	91CSR5 & 13B CSR3	X
Reed Spangler & Brenda Turley	Chas. WV	WV Board of Accountancy	1CSR1	X

*Please return to Felisha Sutherland - Room MB-49

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE **Date:** 1-12-09

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
RICHARD STEVENS	2016½ KANAWHA BLVD., EAST CHARLESTON, WV 25311	WV DENTAL ASSOC.	5 CSR 1	IF REQUESTED
LAURA ALIFF	"	WV DENTAL HygienistsASSOC.	5 CSR 1	IF REQUESTED
GINA SHARPS	"	WV Public HEALTH ASSOC.	5 CSR 1	IF REQUESTED
MARIBETH SHEA	"	WV DENTAL Hygienists	5 CSR 1	IF REQUESTED

*Please return to Felisha Sutherland - Room MB-49

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE **Date:** _____

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Alexis Nathaniel	209 E. Grandview Rd Princeton, WV 24740	Nurse Practitioner	19 CSR 8	X
DON GARVIN	PO Box 666 Buckhannon, WV 26201	WV Environmental Council	45 CSR 14	X

*Please return to Felisha Sutherland - Room MB-49

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE **Date:** 1-12-09

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
LAURA RHODES	101 Dee Dr Ste 102 Charleston WV 25311	WV RN BOARD	19CSR8	if questions or if support to move it is needed
Cyndy Haynes	"	"	"	
Beth Baldwin	Rt. 1 Box 277, Grafton, WV 26354	WVNA APN Congress	19CSR8	if question or Nursing support needed.
Steve McElroy	PO Box 1946 CHARLESTON, WV 25314	WVNA	19CSRA	
Kevin Lewis	605 Rosemont Ave S Charleston WV 25303	Nurse Practitioner	19CSR8	if Nursing questions arise

*Please return to Felisha Sutherland - Room MB-49

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE **Date:** 01.12.09

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
Lloyd W. Miller	408 Abbey Dr. Charleston	Bd of Architects.	2CSR1 & 2CSR3	
Thom Stevens	POB 5008 Charleston WV	WV Academy of Ophthalmology (for Nancy Tonkin)	130CSR3	X

*Please return to Felisha Sutherland - Room MB-49

OFFICE OF APPRENTICESHIP

INFORMATIONAL SHEET ON REGISTERED APPRENTICESHIP IN WEST VIRGINIA

What is Apprenticeship:

Apprenticeship, in simplest terms, is training in occupations that require a wide and diverse range of skills and knowledge, as well as maturity and independence of judgment. It involves planned, day-by-day training on the job and experience under proper supervision, combined with related technical instruction.

Apprenticeship is a businesslike system designed to provide workers entering industry with comprehensive training by exposing them to practical and theoretical aspects of the work required in a highly skilled occupation. This is accomplished through structured training on the job and related theoretical instruction.

The Office of Apprenticeship:

The Office of Apprenticeship (OA) prides itself in being a service-oriented organization with its primary goals being:

1. To provide professional service to existing program sponsors.

2. To expand the use of the apprenticeship system by assisting potential sponsors to design, implement and operate apprenticeship programs.

The Office of Apprenticeship in West Virginia has field staff, located in 3 offices in the state. They provided technical assistance to potential and existing program sponsors and apprentices. Some of the technical assistance provided to potential and current program sponsors can include the identification of training needs, the development of apprenticeship standards, development of an apprentice record keeping system, identification of related instruction sources, and coordination of needed program sponsor services with other Federal employment and training programs (e.g., WIA, Job Corps, Veterans Affairs, School-to-Registered Apprenticeship). Technical assistance is also provided to those program sponsors who are required to adopt an Affirmative Action Plan and Selection Procedures.

Benefits for Program Sponsors

A well-planned administered apprenticeship program will:

1. Attract adequate numbers of highly qualified applicants.
2. Reduce absenteeism.
3. Reduce turnover.
4. Increase productivity.
5. Reduce cost of training.
6. Facilitate compliance with Federal and State Equal Employment Opportunity requirements.
7. Ensure availability of related technical instruction.
8. Enhance problem-solving ability of craftworkers.
9. Ensure versatility of craftworkers.
10. Address industry's need to remain competitive by investing in the development and continuous upgrade of the skills of its workforce.

Setting Up an Apprenticeship Program

Registered apprenticeship is a voluntary industry-driven training program. The registered apprenticeship program can be a partnership of business and organized labor as the primary operators of programs, or implemented by employers or employer associations. Government plays a support role. OA provides technical consultation services on the development of the apprenticeship standards.

Employers or groups of employers and unions design, organize, manage, and finance registered apprenticeship programs under a set of apprenticeship standards, which include an on-the-job learning outline, related classroom instruction curriculum and the apprenticeship operating procedures. These standards are then registered with the Office of Apprenticeship.
OA provides apprenticeship services in all States, and registers programs and apprentices in the 25 States where there is no SAC or Agency.

The SACs in 25 States, the District of Columbia, the Virgin Islands and Puerto Rico have been delegated authority by the Secretary of the U.S. Department of Labor to register apprenticeship programs for Federal purposes.

Basic Standards

The following are some of the characteristics of the basic standards under Title 29, Code of Federal Regulations, Part 29.5:

Full and fair opportunity to apply for apprenticeship;

A schedule of work processes in which an apprentice is to receive training and experience on the job;

The program includes organized instruction designed to provide apprentices with knowledge in technical subjects related to their trade (e.g., a minimum of 150 hours per year is normally considered necessary);

A progressively increasing schedule of wages;

Proper supervision of on-the-job learning with adequate facilities to train apprentices;

Apprentice's progress, both in job performances and related instruction is evaluated periodically and appropriate records are maintained;

No discrimination in any phase of selection, employment, or training.

On-the-Job-Learning

Every apprentice(s) participating in a registered apprenticeship program enters into an Apprenticeship Agreement. The registered apprenticeship program Sponsor and the apprentice agree to the terms of the Apprenticeship Standards incorporated as part of the Agreement. The on-the-job component is structured, supervised on-the-job learning consisting of at least 2,000 hours depending on the occupation. The actual on-the-job learning is outlined in the Registered Apprenticeship Standards. The apprentice is supervised during the term of the apprenticeship by a skilled craft worker(s). The supervisor reviews, evaluates and maintains records relating to the apprentice's job performance. Upon entry into the registered apprenticeship program, apprentice(s) are paid a progressively increasing schedule of wages. As the apprentice(s) demonstrate satisfactory progress in both the on-the-job learning and related instruction, they are advanced in accordance with the wage schedule as outlined in the registered Apprenticeship Standards.

Related Instruction

Related instruction is a required component of a registered apprenticeship program, which supplements the on-the-job learning. A minimum of 150 hours per year is required for each occupation. The related instruction may be given in a classroom through your local Technical Institute (Vo-Tech), Community Technical College, trade school, industrial or correspondence courses of equivalent value, or other forms of self study approved by the registration /approval agency.

The West Virginia Bat Offices

State Office

U.S. Department of Labor
Office of Apprenticeship
405 Capital Street
Suite 409
Charleston, WV 25301
Phone No. - 304/347-5794
Fax No. - 304/347-5798

Kenneth W. Milnes - State Director
E-mail Address – milnes.kenneth@dol.gov

Karen Wade - Apprenticeship & Training Representative
Phone No. - 304/347-5795
E-mail Address – wade.karen@dol.gov

Clarksburg Field Office

U.S. Department of Labor
Office of Apprenticesho
Clarksburg Federal Center - Room 130
320 West Pike Street
Clarksburg, WV 26301
Phone No. - 304/623-0916
Fax No. - 304/623-0411
Jeffrey C. Michael - Apprenticeship & Training Representative
E-mail Address – michal.jeffrey@dol.gov

Martinsburg Field Office

U.S. Department of Labor
Office of Apprenticesho
115-15 Aiken Center
Edwin Miller Blvd.
Martinsburg, WV 25401
Phone No. – 304/260-9137
Fax No. – 304-260-1245
Michael A. Ferrari – Apprenticeship & Training Representative
E-Mail Address – ferrari.michael@dol.gov

Handout by Chuck Hus

LIST OF STATES THAT REQUIRE 20/60 OR LESS THROUGH THE BIOPTIC PORTION OF THE BIOPTIC LENS SYSTEM FOR DRIVING PURPOSES

Required visual acuity thru bioptic	Name of State	Year bioptic law passed	No. of bioptic drivers
20/60	Alabama	2005	37 (2008)
	Arizona	2004	200 (2008)
	Georgia	1992	No figures kept (2008)
	Kentucky	2001	100 (2007)
	Louisiana	2007	12 (2007)
	Michigan	1989	1100 (2008)
	Ohio	1991	493 (2007)
	Tennessee	1996	235 (2007)
20/70	Maryland	1992	26 (1997) 18/78 (2008, Modified Vision Program c/s bioptic)
	Mississippi	2005	7 (2008)
	Virginia	1986	404 (2007)
No designated acuity requirement through bioptic*..	California	1971	750 (2008)
	Missouri	1982	
	Oregon	2004	23 (2008)

* No designated acuity requirement meaning that bioptic users do not need a specific strength of telescope by law to qualify for driver licensure in these three States; rather the decision is one that is determined under real world driving conditions as to what type and strength of telescope works best for a perspective low vision driver in

order to detect and identify traffic lights, read road signs, detect and react to hazards, etc.

No. of bioptic drivers nationwide:

a. Approximately 4,000 – 6,000

b. Based on the following numbers from various States' DMV or other reliable sources (figures represent only 19 of the 39 States that currently allow bioptics for driving):

AL – 37 (2008)
AZ – 200 (2008)
CO – 2 (1997)
CA – 750 (2008)
GA – No figures kept (2008)
IL – 300 (2007)
IN – 500-600 (2007)
KY – 100 (2007)
MA – 450 (1983), 20 (2008)
MD – 26 (1997)
MD – 18/78 (2008, Modified Vision Program (with/without bioptic)
MI – 1100 (2008)
MS – 7 (2006)
NJ – 47 (1995)
NY – 155 (1986)
OH – 493 (2007)
OR – 23 (2008)
TN -235 (2007)
VA – 404 (2007)
WA – 4 (1995)
WV – 32 (2007)

TELESCOPIC FIELDS OF VIEW OF BIOPTIC TELESCOPIC LENS SYSTEMS

Manufacturer	Field of view (degrees)
Designs For Vision, Inc.	
Galilean	
1.7X BIO I	18
2.2X BIO I	12
2.2X BIO II	11
3.0X BIO I	8
4.0X BIO I	6
2.2X WA BIO I	16
3.0X WA BIO I	11
Spiral Expanded Field Prism (EFP)	
2.0X EFP	18
3.0X EFP	14
4.0X EFP	9
5.0X EFP	8
6.0X EFP	6.5
Spiral Galilean	
3.0x	8
4.0x	6
Micro Spiral Galilean	
2.2X	7
3.0X	4

4.0X 3

Conforma Contact Lenses

Bi-level Telescopic Apparatus (BITA)
Vision Enhancer (adjustable galilean systems)

2.0X BITA (5/16 - 1/2 INCH DIAMETERS) 11
2.25X BITA (5/16 - 1/2 INCH DIAMETERS) 8
2.50X - 3.0X BITA (5/16 – ½ INCH DIAMETERS) .. 6-8
3.3X BITA (1/2 INCH DIAMETER) 7
4.0X BITA (3/8 INCH DIAMETER) 6.5

Ocutech, Inc.

Visual Enhancing Systems (VES)

4.0X VES-K (MANUAL-FOCUS
KEPLARIAN SYSTEM) 12.00
6.0X VES-K (MANUAL-FOCUS
KEPLARIAN SYSTEM) 9.60
4.0X VES AF (AUTO FOCUS
KEPLARIAN SYSTEM) 12.5
3.0X VES MINI (MANUAL FOCUS
KEPLARIAN SYSTEM) 15.0

Optical Designs, Inc.

Behind-The-Lens (BTL) Telescope
(Keplerian optics – involving the use of lenses and prisms)

3.30X BTL 13
4.25X BTL 11

VENDORS LIST FOR BIOPTIC TELESCOPIC LENS SYSTEMS

Designs For Vision, Inc. (Galilean, Spiral Expanded Field Prism and Spiral Galilean Telescopes)
Attn: Jody Klager
Low Vision Coordinator
760 Koehler Avenue
Ronkonkoma, NY 11779
Tel: 1-800-345-4009 or 631-585-3300
Fax: 631-585-3404
E-mail: jody@dvimail.com

Ocutech, Inc. ... Visual Enhancing Systems (VES)
Attn: Harpreet Cheema
Operations Manager
109 Conner Drive
Suite 2105
Chapel Hill, NC 27514
Tel: 1-800-326-6460
or 919-967-6460
Fax: 919-967-8146
E-mail: info@ocutech.com
Website: www.ocutech.com

Conforma Contact Lenses (has assumed the business, manufacturing and marketing operations of Edward's Optical Corporation Bi-Level Telescopic Apparatus (BITA) Vision Enhancer)
Attn: Randy Campbell
Low Vision Dept.
4705 Colley Avenue
Norfolk, VA 23508
Tel: 1-800-426-1700
757-423-5807
Fax: 1-800-423-8706
E=mail: Randy@conforma.com
Website: www.conforma.com

Houston Low Vision Center (Behind-The-Lens Telescope)
Attn:Larry Spitzberg, Ph.D., O. D. , F.A.A.O.
14441 Memorial Drive
Suite 13
Houston, Texas 77079
Tel: 281-497-2988
or 281-597-9955
Fax: 281-497-2919
E-mail: lspitzberg@aol.com

Chart shows, in feet, the distance at which 2, 3, 6, and 12 inch letters or numbers can be read corresponding to various visual acuity levels.

	20/20	20/40	20/100	20/120	20/200	20/400
2 inch	116.2	58.0	23.2	19.3	11.6	5.8
3 inch	174.2	87.0	34.8	29.0	17.4	8.7
6 inch	348.4	174.2	69.6	58.0	34.8	17.4
12 inch	696.6	348.4	139.4	116.2	69.6	34.8

Chart shows, in feet, the distance at which 2, 3, and 6 foot objects can be seen corresponding to various visual acuity levels.

	20/20	20/40	20/100	20/120	20/200	20/400
2 foot	1393.4	696.7	278.7	232.2	139.3	69.7
3 foot	2090.1	1045.0	418.0	348.3	209.0	104.5
6 foot	4180.1	2090.1	836.0	696.7	418.0	209.0

clinical

The Visually Handicapped, Driving and Bioptics—some new facts

Randy Jose, O.D.
University of Houston/College of Optometry
Bruce A. Ousley, O.D.
Houston, Texas

The issue of using bioptic telescopes to drive has been going on for several years (Korb, 1970). This paper will provide the reader with an overview of the major areas of discussion regarding the use of bioptics for operating a motor vehicle. (Kelleher, 1971; Keeney, 1974; Jose, 1975; Bailey, 1979; Fonda, 1974; Feinbloom, 1977)

Acuity

Much concern has been directed towards belief that 20/100 or 20/120 is insufficient visual acuity for driving an automobile. This is not true. One does admittedly notice a definite blurring in the distance, but its prominence (or better, its hindrance) is surprisingly undramatic.

One can better understand this by placing +1.50 or +1.75 spherical lenses before the eyes and looking at objects in the distance. The detailed edges and preciseness of the image is lost somewhat, but it remains very easy to recognize and react to it.

What's more important to remember is that these persons with 20/100 acuity are usually well-adapted to seeing the world in this fashion. Their so-called blur interpretation usually far exceeds an artificially blurred-out normal viewer of an equal magnitude.

Theoretical calculations demonstrate that persons with 20/100 can read a stop sign (8-inch letters) at 93 feet. This person can distinguish a small child or similar 3-foot object at approximately 418 feet. That's almost 1½ football fields in distance. An acuity of 20/100-20/120 allows drivers to detect and recognize objects of various sizes at a *minimum* of the distances indicated in Figures 1 and 2. These distances provide a reasonable margin of safety for the visually-impaired driver. This is important to realize since the bioptic is used sporadically while driving and the conventional lens (or 20/120) acuity is used for the majority of the driving task. If we allow that a person can operate a vehicle safely without recognizing an object and just detecting its presence, then these distances can be easily doubled or tripled. This point is discussed more thoroughly in Dr. Freeman's article (this issue) in the Journal of Rehabilitative Optometry. A good example is our stop sign. It can be read at 93 feet but its presence is detected at over 300 feet by most of the drivers tested in our special study at the University of Houston. They did not have to read the letters S-T-O-P to know how to safely react to a red octagonal sign with white letters on a street corner!

With these considerations, we add the nicety of a bioptic telescopic system for the person's use to gain the magnification to "see" objects at an even greater distance than that allowed by using the Approach Magnification theory (Fonda, 1983). For instance a 3× EFTS yields ability to read a stop sign at a distance of greater than 279 feet (assuming 20/40 and 8-inch letters) instead of 93 feet using the conventional correction and Approach Magnification. The 3-foot-tall child can now be spotted at about 1050 feet (or over 3 football fields away). The telescope simply increases the driver's margin of safety and provides the driver more reaction time than if the concept of Approach Magnification is used. This concept has been used for a hundred years in low vision and offers nothing new. Just like the normal driver, the central area of 20/40 vision through the telescope affords readability of street signs—otherwise, cars, persons, road barriers, etc., can be seen with the paramacular retina because of the much less visual acuity requirement. One can detect objects long before they become a danger or threat to the driving situation.

Chart shows, in feet, the distance at which 2, 3, 6, and 12 inch letters or numbers can be read corresponding to various visual acuity levels.

	20/20	20/40	20/100	20/120	20/200	20/400
2 inch	116.2	58.0	23.2	19.3	11.6	5.8
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12 inch	696.6	348.4	139.4	116.2	69.6	34.8

Figure 1

Ring Scotomas

So, this all sounds dandy . . . what's the problem? Well, people get uptight about telescopic ring scotomas. Take the 3.0× EFTS—it has a 12- to 14-degree central field of view. This 14-degree field is, of course, in a static situation. With the head and eye movement component, a full field of the visual world with limitations due only to the spotting and scanning skills of the bioptic user is obtained. Accompanying this large viewing area is a surrounding scotoma of about 10 degrees in an annular fashion when it is used as a binocular correction or the person is monocular (has vision in one eye). What a person must understand and remember is that even though this sounds somewhat limiting on paper and in the testing (static) situation, this scotoma practically loses its significance and essentially goes unnoticed in a dynamic or real life situation. When tested on a Goldman Perimeter with both eyes open, a scotoma of any kind cannot be plotted (specifics of this finding will be presented in a future paper). Dr. William Feinbloom drew the analogy of the normally sighted driver's scotomas present while operating a motor vehicle. One cannot see behind or through the left and right doorposts; however, with proper eye and head movements these obstructions are not consciously noticed. The rearview mirror affords a person the information about those objects outside the field of vision and requires momentary attention away from the road. The same holds true with the bioptic telescope—i.e., once an object is spotted and recognized, one shifts into the mainstay of driving vision—the carrier or conventional

Chart shows, in feet, the distance at which 2, 3, and 6 foot objects can be seen corresponding to various visual acuity levels.

	20/20	20/40	20/100	20/120	20/200	20/400
2 foot	1393.4	696.7	278.7	232.2	139.3	69.7
3 foot	2090.1	1045.0	418.0	348.3	209.0	104.5
6 foot	4180.1	2090.1	836.0	696.7	418.0	209.0

Figure 2

lens. This is done by the successful bioptic wearer in less than a second (University of Houston study) for most quick spotting tasks required while driving. If one assumes that these numbers are reasonable, the auto has traveled only 40 feet or so even at the velocity of 60 mph before the magnified image view is refocused back to the normal vision through the carrier. Who has the time to worry about a ring scotoma? Many people who use bioptics state that this scotoma is not really noticed as one goes through the routine of spotting an object (i.e., detecting an object in the carrier portion, dropping into the telescope, spotting the object, recognizing it, popping out of the telescope, and carrying on through the carrier). It's like Dr. Bill Chapman says, "You think I'm gonna forget it's there?" (Chapman). As indicated earlier, those drivers wearing one telescope and having useful vision in the other eye simply do not have a scotoma present. Before dropping into the telescope, the driver can visually clear the distance traveled by car (during the *.4* to *1.5* seconds the telescope is used) with his/her conventional acuity (Figure 3). More importantly, the ring scotoma is dynamic and not stationary as portrayed in many films and slides. Objects cannot "hide" in the scotoma areas (Figure 4).

It is also important to point out that in normal binocular use the scotoma of an expanded field bioptic lies:

a) several feet off the ground superiorly

b) mostly merges with the scotoma from the hood of an average car inferiorly

c) beyond 95 feet an entire 2-lane road is viewed *through the telescope* in the lateral field. Thus, the extent and movement of the ring scotomas make it an insignificant problem especially to the *trained driver* who can spot through the telescope in less than one second of head-eye movements (Figure 5 and 6). The distances traveled in an automobile at different speeds were calculated. They appear dramatic on the surface—e.g., traveling at 50 mph, 110 feet is covered in 1½ seconds. So what? It's the same distance for the 20/20 driver too when he/she looks in the rearview mirror. What we have here is a perspective problem. Provided with the necessary magnification, ability and training, the visually impaired driver has all the tools to see objects confronted in driving, react to them, and carry on normally as is required. His ability to spot by scanning is limited only by his eye and head movement capability. These visual tasks are on the order of milliseconds (the whole process taking around a second or so). This capability allows for the task of spotting an object entailed in the driving role to be taken care of in much less time than would create any significant decrease in safely operating a motor vehicle.

Field of View through Telescope

The ring scotoma was more of a problem when the older Galilean designs of telescopes were used. These telescopes had fields of less

DISTANCE TRAVELED IN AUTO IN 1.5 sec DURATION

60 mph = 1 mile/minute = 5280 feet/minute = 88 feet/second

@ 60 mph, 88 feet traveled in 1 second

$$(88 \text{ ft./sec.})\ (1.5 \text{ sec.}) = \frac{132 \text{ ft./1.5 sec.}}{44 \text{ ft./.5 sec.}}$$

@ 50 mph, $73.\overline{3}$ feet traveled in 1 second

$$(73.3 \text{ ft./sec.})\ (1.5 \text{ sec.}) = \frac{110 \text{ ft./1.5 sec.}}{37 \text{ ft./.5 sec.}}$$

@ 40 mph, $58.\overline{6}$ feet traveled in 1 second

$$(58.6 \text{ ft./sec.})\ (1.5 \text{ sec.}) = \frac{88 \text{ ft./1.5 sec.}}{29 \text{ ft./.5 sec.}}$$

@ 30 mph, 44 feet traveled in 1 second

$$(44 \text{ ft./sec.})\ (1.5 \text{ sec.}) = \frac{66 \text{ ft./1.5 sec.}}{22 \text{ ft./.5 sec.}}$$

@ 20 mph, $29.\overline{3}$ feet traveled in 1 second

$$(29.3 \text{ ft./sec.})\ (1.5 \text{ sec.}) = \frac{44 \text{ ft./1.5 sec.}}{15 \text{ ft./.5 sec.}}$$

Figure 3

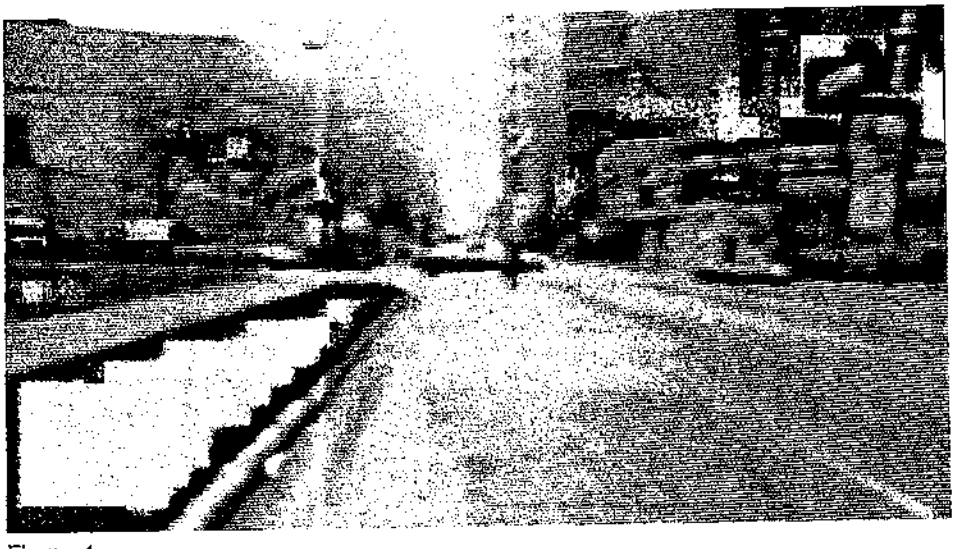

Figure 4

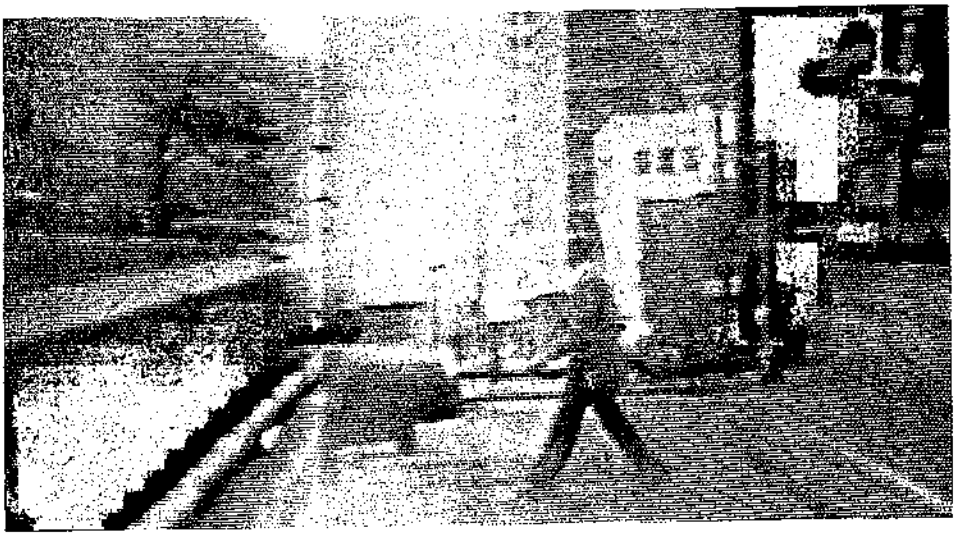

Figure 4

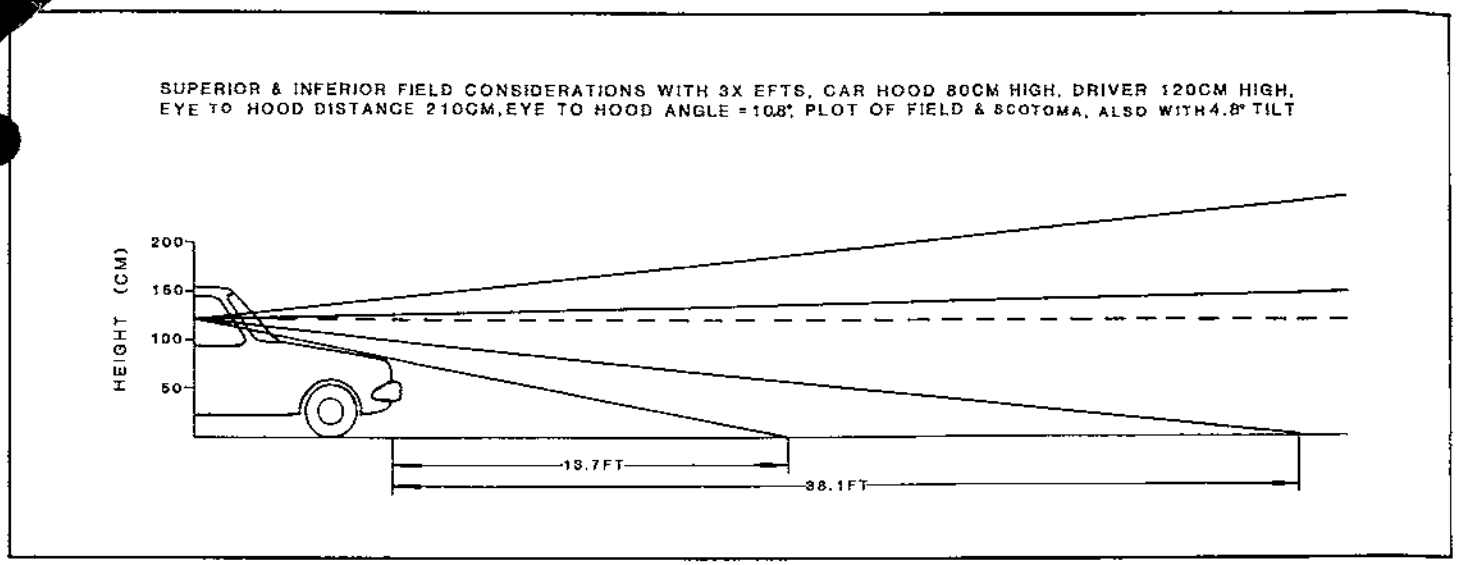

Figure 5

than 6 degrees and made it difficult for the driver to spot quickly and efficiently to pick up pertinent information on the highway. A 6-degree field of view seems to be the amount of field needed in order to minimize the limiting effects of the ring scotoma and keeping the spotting times in the .5- to 1.5-second category. It might be speculated that the reason the ring scotoma of cataract lenses never created a major problem for drivers was the large central field offered by the lens design. Without training and adaptation, even the common cataract lens ring scotoma presents a major driving hazard. Based on clinical experience with persons using the bioptic to drive, the ring scotoma is not nearly as important as the size of the telescope's central field. It's this central field where information is processed and decisions on driving or traffic are made.

Clinically (UH study), it has been found that all patients (whether driving or not) will be able to more efficiently use their telescopes for spotting tasks and will require much less training time if the telescope they are using has a field of view through it of 6 degrees or larger. It makes sense from an information processing model. The more information available through the telescope in a single view; the more other cues in the field of the telescope can be used to reduce scanning and improve localization for quick spotting and identification of objects in the person's environment. The advent of the Expanded Field Telescope provided the clinician with a 3× system which provides a 12- to 14-degree field (Figure 7) instead of the old Galilean design which provided a field of 7-9

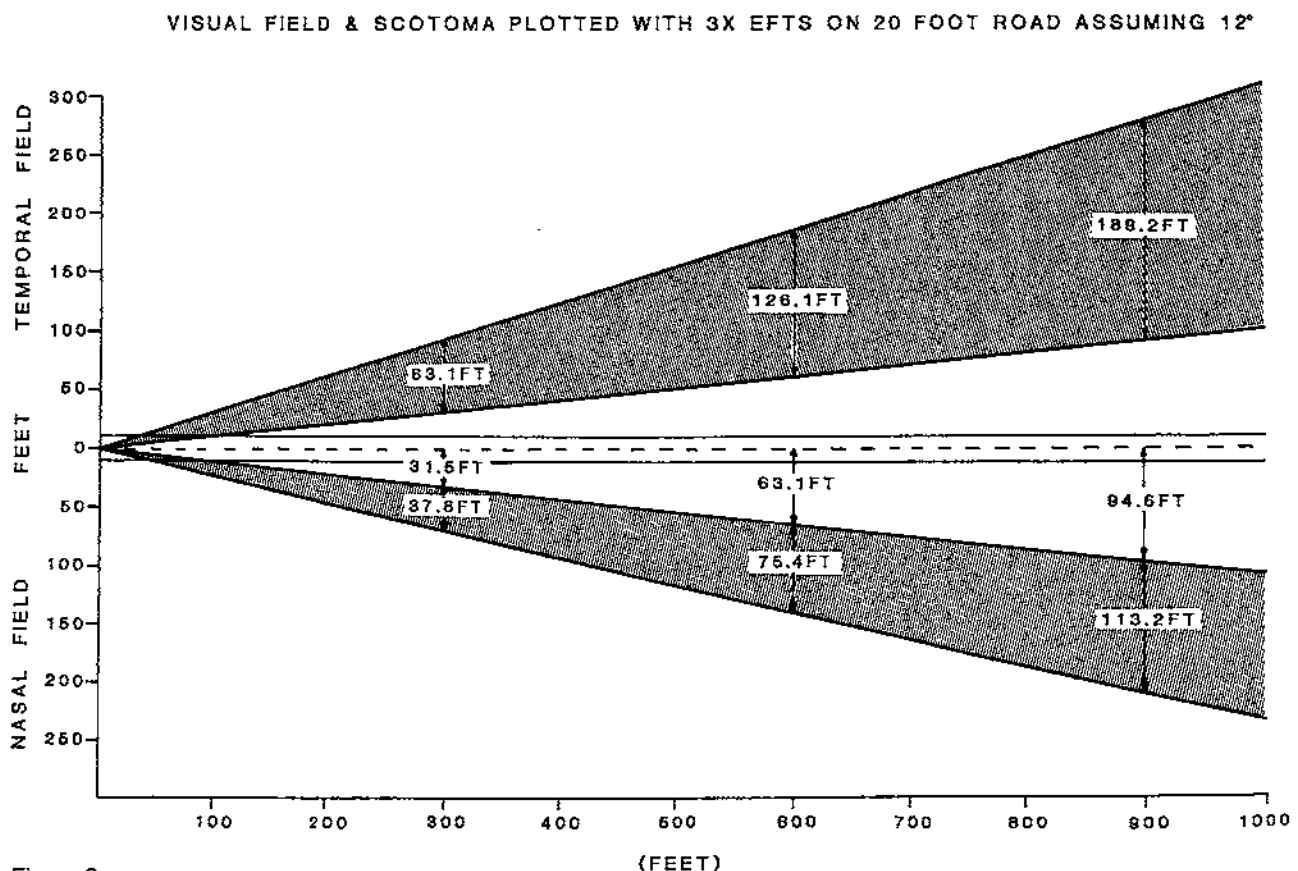

Figure 6

degrees and yet did not significantly increase the size of the ring scotoma (3× Galilean = 10 degrees and 3× Expanded Field = 10-11 degrees).

Spotting Time

The larger field of the new telescopes helps the visually handicapped driver attain spotting times of .4 to 1.5 seconds by decreasing the figure-ground confusion looking through smaller field telescopes. These times were established by videotaping subjects while they used a bioptic system to identify words on signs which could not be read with their conventional correction. Details of this continuing study will be published at a later date. However, confidence in these figures is justified in that individuals who had never used a bioptic system (or any other telescope) were able to correctly identify signs in times better than 1.5 seconds. All of these individuals were able to perform the required recognition task in at least 1 second with only 4 or 5 trials. These times fell below 1.5 seconds for the untrained subjects when smaller field telescopes were used. (Again this is further substantiated by patient performance in the training programs of the University of Houston College of Optometry Low Vision Clinic.) If the person is properly trained to use the telescope to identify or recognize most highway information, these spotting times can be attained for all drivers. The telescope is used for spotting signs, distant objects a few blocks from the road and other spotting tasks involving usually no more than 10 percent of the driving time even in the most demanding areas. Thus the real issue is the safety of driving with 20/120 acuity. The telescopes are a tool to help this person drive *more* safely and comfortably.

Safety Records

While it is impossible to analyze all the factors involved in safe driving, it appears from the studies out of New York and California that those individuals driving with bioptics are at slightly higher risk on the highway; however, they are not as prone to accidents, etc., as many other high risk segments of the driving population (Feb. 1983 report of Dept. of Motor Vehicles—California). In spite of higher accident rates than those reported for the visually handicapped, the physically handicapped are licensed routinely. Better training programs will result in even better driving records for the visually impaired population.

Guidelines

Driving is both a right and privilege. However, it is a right that carries with it heavy responsibilities. Not every visually impaired person with 20/120 acuity or better can drive. The issue of driving should not be centered on the establishment of parameters which will allow all people with 20/120 (or 20/100) acuity to drive; rather, the guidelines should be established under which an *individual* may be evaluated regarding his/her ability to operate a motor vehicle safely. This approach will allow an individual with 20/200 vision to drive and yet deny the license to someone with 20/80. This "functional" variation in vision as opposed to acuity is the most important parameter to evaluate in the process of considering an individual for licensing. This evaluation will be most successful if the licensing protocol consists of an interaction between the optometrist or ophthalmologist fitting the bioptic; the specialized driving instructor who will train the person to operate the motor vehicle; and the specially trained officers of the Department of Public Safety who provide an extensive road performance test. The Bioptic Telescope is not a cure-all. It is an excellent tool to assist the visually impaired to become safe and competent drivers on our highways and help them lead more normalized and productive lifestyles.

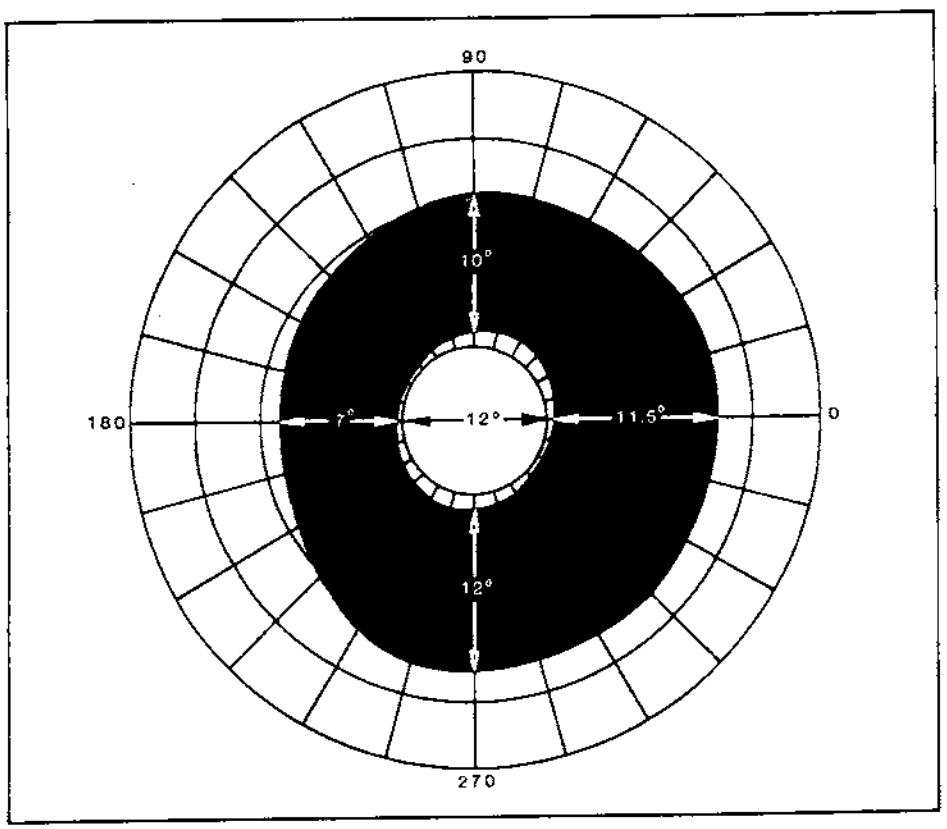

Figure 7

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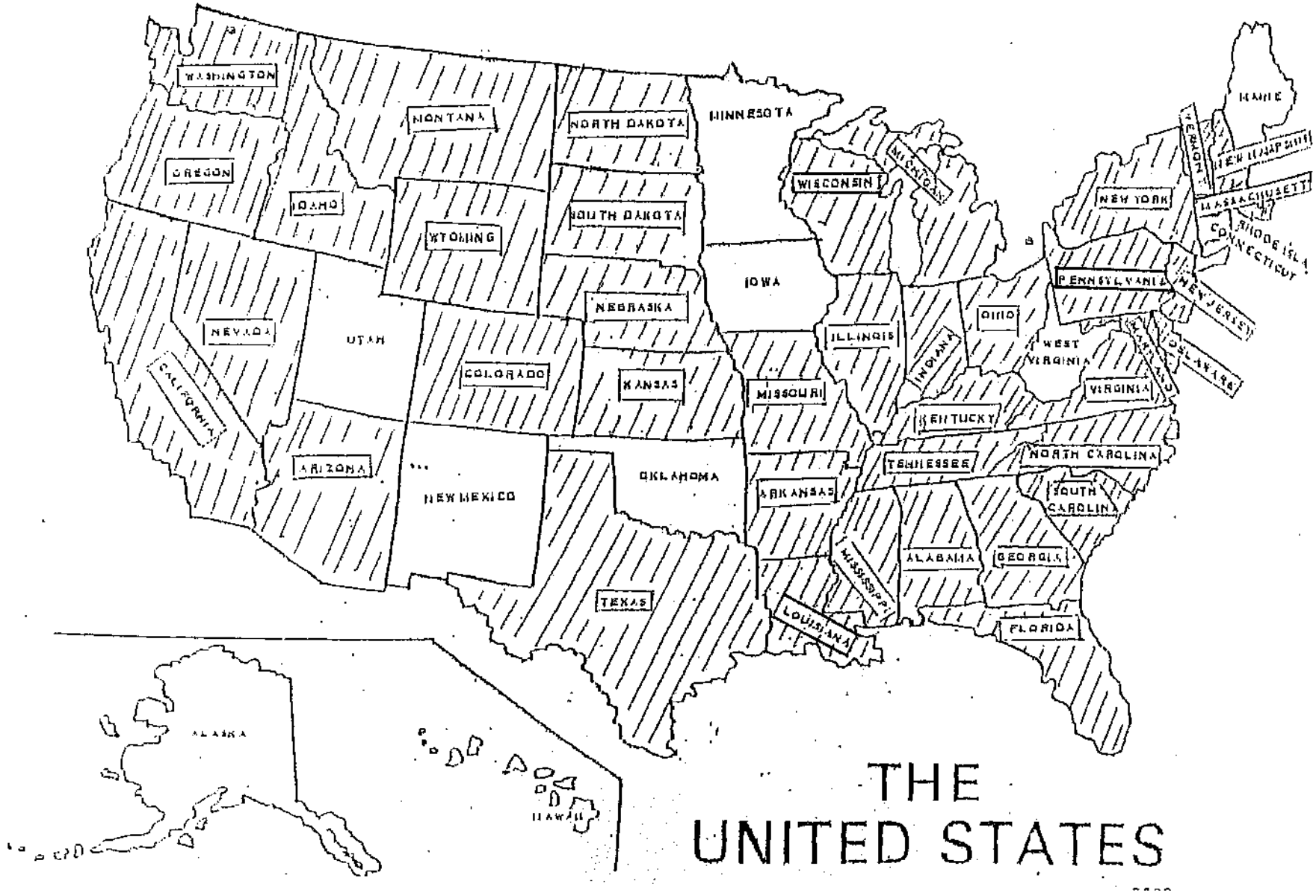
States That License Bioptic Drivers

According to Peli's book titled **Driving with Confidence: A Practical Guide to Driving with Low Vision** and other sources, the following 39 States will license bioptic drivers following an individual assessment of the driver's capabilities:

Alabama	Louisiana	North Dakota
Arkansas	Maryland	Ohio
Arizona	Massachusetts	Oregon
California	Michigan	Pennsylvania
Colorado	Mississippi	South Carolina
Delaware	Missouri	South Dakota
Florida	Montana	Tennessee
Georgia	Nebraska	Texas
Idaho	Nevada	Vermont
Illinois	New Hampshire	Virginia
Indiana	New Jersey	Washington
Kansas	New York	Wisconsin
Kentucky	North Carolina	Wyoming

For more information about Peli's 2002 book log onto:
www.BiOpticDriving.org

STATES WHICH OFFICIALLY PERMIT USE OF BIOPTICS FOR DRIVING



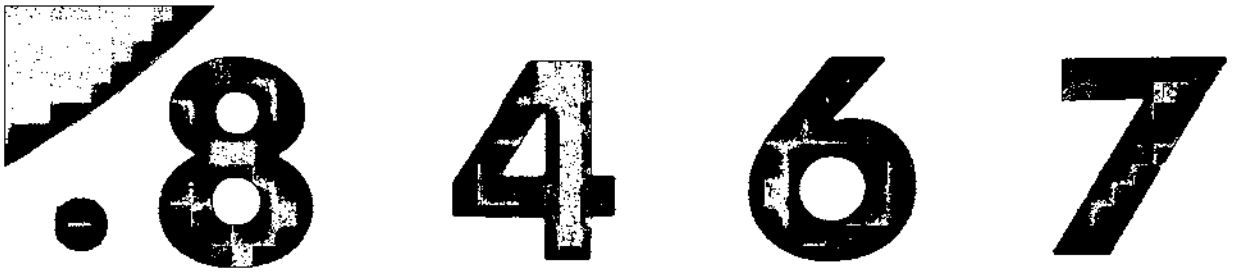
LIST OF STATES THAT REQUIRE 20/60 OR LESS THROUGH THE BIOPTIC PORTION OF THE BIOPTIC LENS SYSTEM FOR DRIVING PURPOSES

20/60 ..... Alabama
Arizona
Georgia
Kentucky
Louisiana
Michigan
Ohio
Tennessee

20/70 ..... Maryland
Mississippi
Virginia

No designated acuity requirement through bioptic *... California
Missouri
Oregon

* no designated acuity requirement meaning that bioptic users do not need a specific strength of telescope by law to qualify for driver licensure in these three States; rather the decision is one that is determined under real world driving conditions as to what type and strength of telescope works best for a perspective low vision driver in order to detect and identify traffic lights, read road signs, detect and react to hazards, etc.



60

5 1 6 2 3

40

4 3 0 9 7

30

6 1 5 4 8 2

25

4 2 9 5 3 8 7

20

DISTANCE TEST CHART FOR THE PARTIALLY SIGHTED

ARRANGED BY
WILLIAM FEINBLOOM, O.D., PH.D.
FOR
DESIGNS FOR VISION, INC.

VISUAL ACUITY *

1) Visual acuity testing has been in existence for over 140 years.

2) The visual acuity figure is not a fraction, but a comparison of a person's performance against a known standard.

3) The standard assumes that the best resolving power or ability to separate two distant points, of the human eye is 1 minute (1') of arc.

4) The 20/20 letter is the standard for 20 feet, and the standard comparison for all other letters.

5) The letters larger than 20/20 are designated by the distance (in feet) at which their parts subtend at 1' angle. For example, the 20/80 letter components can be identified (separated) by the normal eye at 80 feet.

6) The visual angle is the reciprocal of the visual acuity figure in minutes; and a constant at any distance. For example the visual angle of 20/80 is 4'.

7) The visual angle expresses: (1) how many times the image has to be enlarged to be seen; and (2) how many times closer the object must be brought to enlarge the retinal image sufficiently.

8) The visual acuity figure written down to express the relationship of the test distance to the size of letter seen states only that in a given test location, with

an unknown level of illumination, at a stated distance, the patient was able to identify symbols of a known size.

9) Acuity has no functional implications without other clinical information. It does not indicate:

a. The diagnosis
b. The distribution of eye pathology
c. The adequacy of visual function
d. The refractive error
e. The effect of lighting and glare
f. The perceptual or mental status

It does however indicate:

a. The size of the retinal image that can be appreciated by the diseased eye
b. How far a person can see objects of a known size
c. The level of vision for classification of legal blindness
d. What range of magnification will be used for prescription of a visual aid.

* Taken from the book ***The Low Vision Patient: Clinical Experience with Adults and Children*** by Eleanor E. Faye, M.D., Grune & Stratton, New York, pages 29-31, 1970.

UNDERSTANDING THE LOW VISION DRIVER
STAFF IN-SERVICES

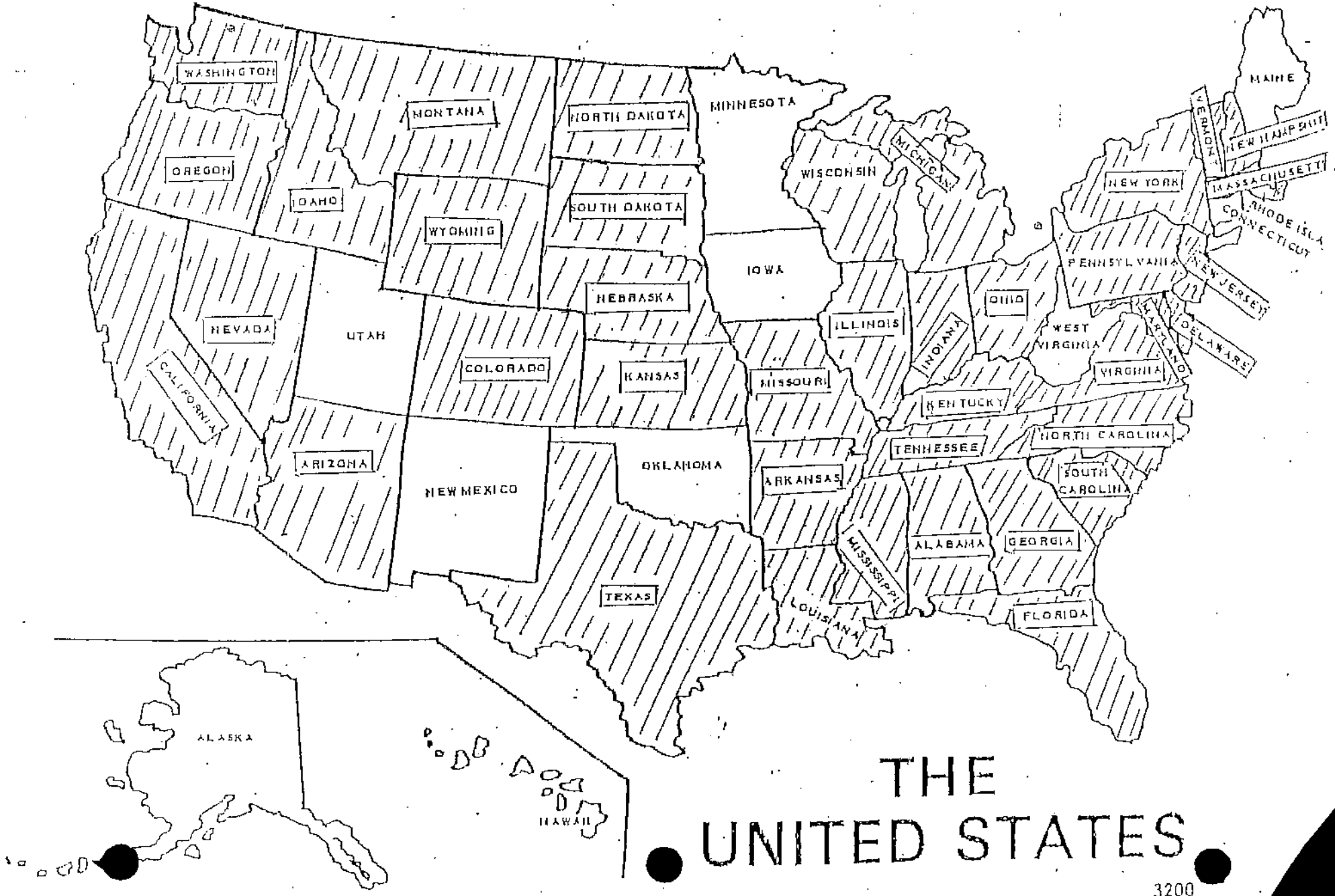
YEAR	NO.OF IN-SERVICES	NO. OF PROFESSIONALS
1985	2	3
1986	0	0
1987	0	0
1988	1	2
1989	1	2
1990	6	9
1991	7	14
1992	5	10
1993	5	8
1994	1	1
1995	0	0
1996	3	4
1997	3	4
1998	4	7
1999	2	5
2000	2	6
2001	5	10
2002	2	4
2003	3	6
2004	4	16
2005	3	7
2006	1	3
2007	4	10
2008	1	3
	TOTAL: 65	TOTAL: 136

STATES OR PROVINCES REPRESENTED AT IN-SERVICES:

Arizona	Maryland	Oregon
Florida	Michigan	Pennsylvania
Georgia	Mississippi	South Dakota
Indiana	Missouri	Tennessee
Kansas	New Hampshire	Virginia
Kentucky	New York	West Virginia
Louisiana	Ohio	Quebec, Canada

STATES WHICH OFFICIALLY PERMIT USE OF BIOPTICS FOR DRIVING

STATES IN-SERVICE TRAINED AT WVDRS COMPLEX, INSTITUTE, WV ('85 - '08)



THE UNITED STATES

3200

LIST OF STATES BY MINIMUM ACUITY LEVEL FOR RESTRICTED DRIVING PRIVILEGES

Visual acuity	Names of State(s)
20/40	HI, NE*, RI, VT* (4)
20/50	DE (1)
20/60	AR, ID, KS, SD, WV (5)
20/70	CO*, FL, ME, MI*, NH, NJ*, OH*, SC, TX*, DC (10)
20/80	MN, NM (2)
20/100	AK, IL, MD, MA, MT, NY, NC, OK, PA, UT, WS, WY (12)
20/120	NV, WA (2)
20/130	ND (1)
20/160	MO (1)
20/180	CA (1)
20/200	AL, AZ, CT, GA, IN, IA, KY, LA, MS, OR, TN, VA (12)

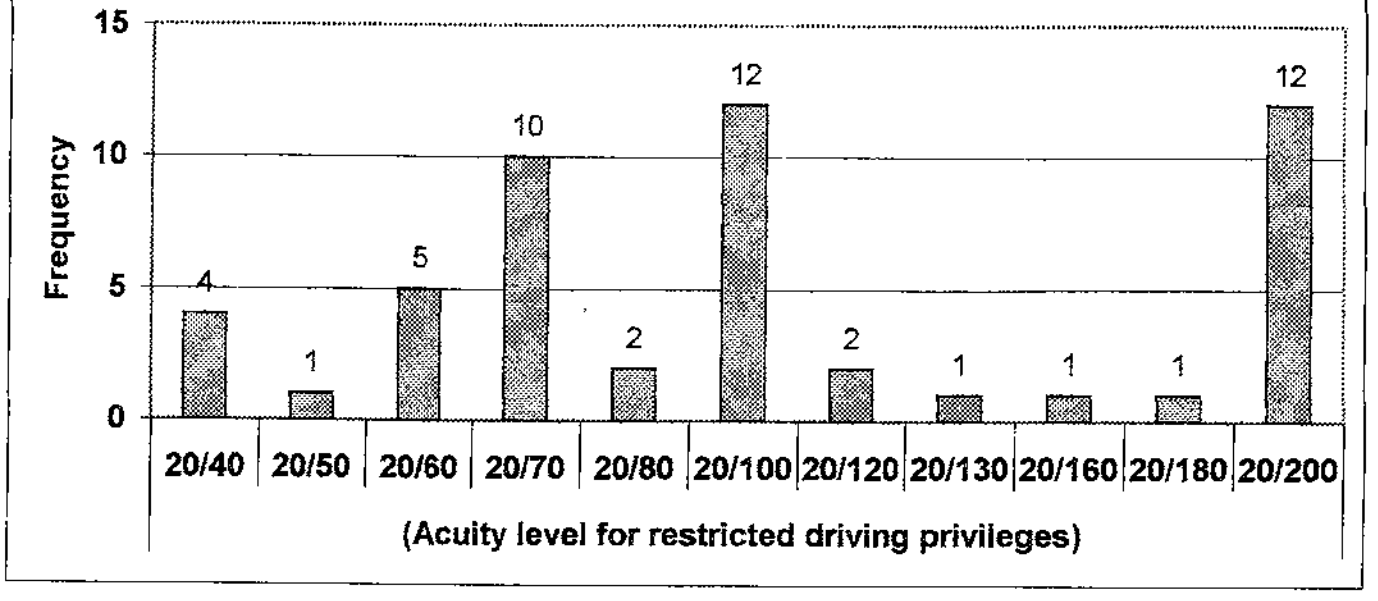
* States without carrier lens limits that allow driver applicants to use bioptics to meet required visual acuity levels as indicated for restricted driving privileges

Sources of information:

Richard Shuldiner, O.D., F.A.A.O., 1610 South Riverside Avenue, Rialto, CA, 92376, TEL: 909-820-4514 or 909-421-2020, FAX: 909-421-1215, website: http://www.lowvisioncare.com/visionlaws.htm

Chuck Huss, COMS, Consultant – Bioptic Driving, WV Division of Rehabilitation Services, P. O. Box 1004, Barron Drive, Building J, Institute, WV 25112, TEL; 304-766-4803, FAX; 304-766-5533, E-MAIL: chuck.huss@wvdrs.org

GRAPH OF STATES BY MINIMUM ACUITY LEVEL FOR RESTRICTED DRIVING PRIVILEGES



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Handout by Chuck Huss

LEGISLATIVE RULES MAKING REVIEW COMMITTEE

INTERIM SESSION - JANUARY 11th-13th, 2009

NOTES – re 91CSR5 & 130CSR3

Chuck Huss, COMS
Consultant – Bioptic Driving

A) Extend a special thanks to all WV legislators for the time, efforts and attention given to the needs of its visually challenged residents who wish to explore the driving privilege

B) With the passage of WV HB 4139 and its promulgated rules, West Virginia will become the 40th State to permit the use of bioptic lens systems for driving purposes (see list and map)

C) One of the proposed rules before this interim committee for review and consideration deals with:

1. What level of improvement in central vision (visual acuity) will be required of candidates when spotting through the telescopic portion of their bioptic lens system?

   - 20/40 as used during past research efforts in WV ('85-'98)
   - 20/60 or less as is allowed in 35% of the 39 States that allow bioptic driving (see list of States that allow 20/60 or less through bioptic for driving purposes)

D) Supportive rationale for allowing 20/60 v. 20/40 through the telescopic portion of the bioptic lens system is as follows:

1. In reality, the difference in actual letter or number size when progressing from the larger 20/60 to the smaller 20/40 line of visual acuity on a typical distant visual acuity chart is minimal (see illustration taken from the Designs For Vision, Inc. Low Vision Test Booklet)

   - For example, while a number on the 20/60 line is 1 1/8 inches in height, a number on the 20/40 line is 6/8's of an inch in height (a mere 3/8's of an inch difference)

   - Likewise, while a number on the 20/60 line is 7/8 of an inch in width, a number on the 20/40 line is 5/8's of an inch in width (a mere 2/8's of an inch difference).

2. 14 of the 39 (35%) States that currently allow bioptic driving require 20/60 or less through the telescopic portion of their bioptic lens system

   - The above statement suggests that the latter more liberal acuity standard which has been effect for several years in a number of these States is an acceptable and safe practice.

     - See amended list of 14 States that allow 20/60 or less through bioptic for driving purposes

       - Note year of passage and number of bioptic drivers licensed to date in these 14 States (sum total = 3,487)

       - Eleven (11) of these States license bioptic drivers down to and including 20/200 through the carrier lens (same as that proposed for West Virginia's future bioptic driving program)

   - West Virginia professionals experienced in bioptic driving issues have been involved in train-the-trainer staff in-services at WV DRS, on-site seminars and ADED workshops for over two decades ('86-'08)

     - 65 1 ½ day in length staff in-services at WV DRS facility – 136 professionals (representative of 20 States & 1 Province)

     - On-site 2-3 day in length seminars:

       VA – '86
       WV – '90 & '92
       OH – '91
       MD – '92, '94 & '96
       KY – '01 & '04
       OR – '03 & '04
       Quebec, CAN - '04
       LA – '07

     - Eight (8) ADED workshops ('88, '95, '99, '01, '03, '06, '07, '08)

3. Permitting a more liberal visual acuity standard through the bioptic (from 20/40 to 20/60) will not expand the eligibility for the West Virginia Bioptic Driving Program (as perceived and

expressed by both DMV and DRS administrative officials during recent public comment periods)

- In reality it would mean that Class G applicants could be prescribed lower power bioptic lens systems which offer larger magnified fields of view.

- The latter leads to enhanced spotting abilities by low vision persons under dynamic conditions through the telescopic portion of the bioptic device

    - 11 o'clock spotting activities

    - 1 o'clock spotting activities

- There are more bioptic systems with larger fields of view appropriate for driving purposes available now than ever before by the four (4) bioptic major manufacturers

    - See enclosed lists of bioptic lens systems appropriate for driving & current vendors

4. There are various compensatory methods available to enhance a low vision driver's driving abilities (in addition to the bioptic)

    - Formalized driver training practices
    - Global positioning systems (GPS)
    - Driving restrictions (area, roadway, time of day, type of vehicle, driving speed, etc.)

5. There is ample evidence of accommodation for visually challenged drivers throughout West Virginia and other States for identifying the correct color of traffic lights and/or reading road signs.

    For example, most traffic lights are now:

    - Larger in size, offer better contrast (black borders and reflective yellow trim)
    - Offer better illumination or visibility
    - Appear in at least multiples of two at most if not all traffic light controlled intersections

    Likewise various types of road signs illustrate:

    - Increased size

- Increased visibility or legibility
- Increased frequency
- Better colorization (i.e. regulatory, directional, warning and construction signs)

The above changes that have occurred over the past several years and are due in part to expanded width and depth of roadways and intersections, aging of drivers, legal driving speeds, etc.

6. For years it has been known that objects or forms larger in size than traffic lights or road signage are capable of being detected, identified and reacted to from adequate driving distances at the 20/60 or less visual acuity level if needed

   - See numerical graphs taken directly from the Jose & Ousley article titled *The Visually Handicapped, Driving and Bioptics – some new facts* (Journal of Rehabilitative Optometry, Summer, 1984)

E) Sampling of responses from members of the American Academy of Ophthalmology (AAO) vision rehab list serv and/or DMV contacts of States that license bioptic drivers required to achieve 20/60 or less through the bioptic:

- Arizona

  - The rationale for picking the acuity guidelines for our patients came from my comfort level after 25 years of working with low vision patients and my research into bioptic driving throughout the country. Based on the results from our patients I am very comfortable with our patients driving ability. I believe that there has been only one car accident with all of our patients in the past two years and that accident was not the patient's fault.

    Lynne Noon, OD, FAAO
    Diplomate in Low Vision Rehabilitation
    Practicing Doctor of Optometry, limited to low vision rehabilitation
    ViewFinder
    Low Vision resource Centers
    1830 South Alma School Road
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    Mesa, AZ 85215
    Cell: 480-695-2595

- California

  - In 1996, I began fitting bioptic telescopes in California. Over the past dozen years I have fit over 600 pairs of bioptic telescopes for the purpose of driving. My experience tells me this:

1. The level of magnification of the bioptic telescope should be decided upon by the patient and the doctor. There should not be DMV restrictions on the level of magnification.
2. The level of visual acuity required through the telescope should not be mandated. Depending upon the type of driving the person does, the level of visual acuity required is different. Those doing local driving and need not read signs need a lower power scope for accessing emergencies in the road ahead. Requiring a stronger telescope just to meet an acuity standard can actually be counter productive and possibly dangerous.
3. Peripheral vision is far more important to safe driving than acuity. The person should be evaluated behind the wheel to determine if they are a safe driver.
4. DMV's should design behind the wheel tests according to the type of driving the persons wants to do. For example, is they want to drive freeways at night, the test should be done under those conditions. If it is local, daylight driving that's warranted, test in the person's local area during daylight.

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- Georgia

  - "Georgia law mandates 30 hours of classroom training and 6 hours of behind-the-wheel training, provided by state-certified driving instructors, with a passing score on exit exams for each of these components, along with specific comments on driver capability, all of which must be reported back to the prescribing doctor, prior to licensure. We consistently hear from driver educators that our candidates are competent, licensable drivers" (December, 2008).

Harvey C. Clark, M.Ed., COMS, CLVT
Director, Florence H. Maxwell Low Vision Clinic
Center for the Visually Impaired
739 West Peachtree Street N.W.
Atlanta, GA 30308
Phone: 404 875 9011
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- Ohio

  - When I evaluate bioptics, I always measure acuity in the clinic and then go outside on S. Main Street to view traffic signs and signals BEFORE making a final recommendation for the bioptic.

Cheryl J. Reed, O.D.
Director, UDS Low vision Services
United Disability Services
388 South Main Street, Suite 302
Akron, OH 44311
TEL: 330-996-4080
FAX: 330-996-4181

- Oregon

  - "There are currently six driving instructors certified for training drivers with bioptic lenses. There are 23 drivers licensed with bioptic lenses since the program's inception in July 2004. There has not been any safety issues brought to DMV's attention" (December, 2008).

    Mary L. Grosso
    Program Coordinator/Driver Control Unit
    Oregon DMV
    Driver and Motor Vehicle Services
    1905 Lana Avenue, NE
    Salem, OR 97314
    Ph: (503) 945-5520
    Email: mary.l.grosso@odot.state.or.us

- Tennessee

  - "I am writing as a consumer who has driven for 17 years without restrictions on my license. I have been licensed in both Texas and Tennessee. Although my visual acuity with standard correction and my acuity through the telescope meet the requirements of these states, I believe the more liberal measures have merit for consideration.

    My rationale for this statement is based on personal experience and recent advances in technology. For the past three years I've been using a Global Positioning System (GPS). This has eliminated my need to use the telescopic portion for street signs, highway mile markers, and other tasks requiring fine detail vision. I continue to use the telescope for seeing speed limit postings, checking for hand signals of someone directing traffic, checking the color of a light at a greater distance, and other tasks that are not accessible by the GPS.

    I realize that not all drivers with low vision will choose to use a GPS. I find that it is a valuable technology that has many advantages. These devices were not available when I began driving.

    I hope this information is helpful" (December, 2008).
    Anne Corn, Ed. D. (retired, 2008)
    Professor of Special Education & Physiological Optics
    Former Dept. Chair, Vanderbilt University, Teacher of Children with Visual Impairments Professional Preparation Program & Originator of Project PAVE (Providing Access to the Visual Environment)

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- Virginia

  - "It has been our experience that some bioptic users can become very proficient at the skill of driving. Determination of someone's competence comes only after they have had the opportunity to participate in a driving evaluation as well as driver's training. This training is offered by professionals that are knowledgeable about disability types, specific driving techniques, and adaptive equipment (including the bioptic). During the course of driver's training, the hope is that progress will occur to the point of demonstrating competence and independence in a wide variety of driving skills as well as in a wide variety of driving environments. If this is demonstrated, then the final step is to take the individual to the Virginia Department of Motor vehicles for a road test.

  According to the Virginia DMV Medical Review Services, there are presently 404 drivers in this State who are licensed with a bioptic. They are initially restricted to driving during daylight hours only but can request the nighttime driving test after holding a driver's license for one year. DMV reports that most people who request the nighttime driving test are ultimately cleared to drive at night. We are in full support of offering the opportunity to pursue driving using a bioptic to West Virginia residents in order to potentially foster greater independence for those that demonstrate the necessary skills and abilities" (December 5th, 2007).

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1 CSR 1 Accountancy

§1-1-18. Fees.

Several fees included in this section have been increased as follows:

Certification/Licensure Fees

Fee	Current Fee Amount	Fee Amount Upon Enactment
Initial Certificate Fee (§18.2.a)	$90.00	$120.00
Reciprocal Certificate Fee (§18.2.b)	$90.00	$200.00
Annual Certificate Renewal Fee (§18.2.c)	$65.00	$85.00
Annual CPA-Inactive Certificate Renewal Fee (§18.2.d)	None	$65.00
Duplicate Wall Certificate Fee (§18.2.e)	$30.00	$35.00
Reinstatement fee of person previously ineligible for renewal (§18.2.g)	$65.00	$85.00
Reinstatement fee of lapsed certification (§18.2.h)	$65.00	$75.00
Activation of License Fee (§18.2.i)	$65.00	$85.00

Firm Fees

Fee	Current Fee Amount	Fee Amount Upon Enactment
Fee for Issuance or Renewal of Firm Permit (§18.3.a)	$65.00	$100.00
Additional Fee for late renewals (§18.3.b)	$50.00	$75.00
Application to form an Accounting Corp. Fee (§18.3.c)	$65.00	$200.00

Application for form a PLLC or RLLC fee (§18.3.d)	$65.00	$200.00

Continuing Professional Education Fees

Fee	Current Fee Amount	Fee Amount Upon Enactment
Late fee for CPE reports (§18.4.a)	$110.00	$150.00
Fee to Request Extension of Time to Secure CPE Requirements (§18.4.b)	$55.00	$75.00
Fee to Request Extension of Time to Secure CPE Requirements for Previous Year (§18.4.c)	$110.00	$225.00
Initial or Additional Extension Requests after June 30 (§18.4.d)	$55.00 per month	$75.00 per month

Authorization Fees

Fee	Current Fee Amount	Fee Amount Upon Enactment
Issuance or Renewal of Firm Authorization (§18.5.a)	$65.00	1-5 Licenses $100.00 6-10 Licenses $200.00 11+ Licenses $300
Issuance or Renewal of an Authorization for Individual Practitioner (§18.5.b)	$65.00	$85.00

Other Fees

Fee	Current Fee Amount	Fee Amount Upon Enactment
Directory of Active Licensees (§18.6.b)	$110.00	$125.00
Application for Section 12 Practice when substantially equivalent	$10.00	Removed
Application for Section 12 Practice when not substantially equivalent	$50.00	Removed.

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: West Virginia Board of Examiners for Registered Professional Nurses
Subject: Limited Prescriptive Authority for Nurses in Advanced Practice
CSR Cite: 19 CSR 8
Counsel: CR

PERTINENT DATES

Filed for public comment: April 30, 2008
Public comment period ended: July 10, 2008
Filed following public comment period: August 1, 2008
Filed LRMRC: August 1, 2008
Filed as emergency: n/a
Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule.

Summary

The rule updates prescriptive authority of nurses.

The following is synopsis of the sections amended in the proposed rule.

§19-8-2 - Definitions - Define this following term:

" Pharacology Contact Hour" means a unit of measurement that describes at least 50 minutes of an approved, organized didatic learning experience related to advanced pharmacological therapy

§19-8-3 - Application and Eligibility for Limited Prescriptive Authority - Moves section 5 to this section and clarifies that prior to applying to the board an applicant must complete an 15 hours in advanced pharmacothrapy. Technical clean-up.

§19-8-4 - Renewal of Prescriptive Privileges - the board decided to keep the number of pharmacology contact hours required for renewal at 8.

§19-8-5 - Drugs Excluded from Prescriptive Authority -

Prohibits the prescription of MAO inhibitors, except when in a collaborative agreement with a psychiatrist.

Returns the prohibition of prescribing benzodiazepines

Permits the prescription of Schedule IV and V drugs in a 90 day quantity and 1 refill, The prescription shall expire in 6 months. Currently, a prescription may only contain a 30 day quantity.

Prescriptions for phenothiazines be limited to a 30 day supply and not refillable.

Prescriptions for non-controlled substances of antipsychotics and sedatives shall not exceed the recommended therapeutic does for that drug based on standard prescribing guidelines not exceed a 30 day supply and 5 refills which expire in 6 months.

Requires the dosage to be consistent with industry standards and included in the collaborative agreement.

Returns the section which states Advanced nurse practitioners and certified nurse midwives shall not prescribe other prescription drugs or refill for a period exceeding six (6) months provided, that this limitation shall not include contraceptives.

§19-8-6 - Termination of limited prescriptive privileges - technical clean-up

Deletes section 7 because it is not necessary.

AUTHORITY

§30-7-15a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; coordination with other boards; coordination with board of pharmacy.

(a) The board may, in its discretion, authorize an advanced nurse practitioner to prescribe prescription drugs in a collaborative relationship with a physician licensed to practice in West Virginia and in accordance with applicable state and federal laws. An authorized advanced nurse practitioner may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.

(b) For purposes of this section an agreement to a collaborative relationship for prescriptive practice between a physician and an advanced nurse practitioner shall be set forth in writing. Verification of such agreement shall be filed with the board by the advanced nurse practitioner. The board shall forward a copy of such verification to the board of medicine. Collaborative agreements shall include, but not be limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced nurse practitioner's clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced nurse practitioner and the physician pursuant to the collaborative agreement between them;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(c) The board shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced nurse practitioner may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by advanced nurse practitioners, including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, radio-pharmaceuticals and general anesthetics. Drugs listed under schedule III shall be limited to a seventy-two hour supply without refill.

(d) The board shall consult with other appropriate boards for the development of the formulary.

(e) The board shall transmit to the board of pharmacy a list of all advanced nurse practitioners with prescriptive authority. The list shall include:

(1) The name of the authorized advanced nurse practitioner;

(2) The prescriber's identification number assigned by the board; and

(3) The effective date of prescriptive authority.

§30-7-15b. Eligibility for prescriptive authority; application; fee.

An advanced nurse practitioner who applies for authorization to prescribe drugs shall:

(a) Be licensed and certified in West Virginia as an advanced nurse practitioner holding a baccalaureate degree in science or the arts;

(b) Not be less than eighteen years of age;

(c) Provide the board with evidence of successful completion of forty-five contact hours of education in pharmacology and clinical management of drug therapy under a program approved by the board, fifteen hours of which shall be completed within the two-year period immediately before the date of application;

(d) Provide the board with evidence that he or she is a person of good moral character and not addicted to alcohol or the use of controlled substances; and

(e) Submit a completed, notarized application to the board, accompanied by a fee of one hundred twenty-five dollars.

§30-15-7a. Prescriptive authority for prescription drugs; collaborative relationship with physician requirements; promulgation of rules; classification of drugs to be prescribed; consultation with other boards; coordination with board of pharmacy.

(a) The board shall, in its discretion, authorize a nurse-midwife to prescribe prescription drugs

in a collaborative relationship with a physician licensed to practice in West Virginia and in accordance with applicable state and federal laws. An authorized nurse-midwife may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.

(b) For purposes of this section an agreement to a collaborative relationship for practice between a physician and a nurse-midwife shall be set forth in writing. Verification of such agreement shall be filed with the board by the nurse-midwife. The board shall forward a copy of such verification to the board of medicine. Collaborative agreements shall include, but not be limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive practice as it applies to the nurse-midwife's clinical practice;

(2) Statements describing the individual and shared responsibilities of the nurse-midwife and the physician pursuant to the collaborative agreement between them;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(c) The board shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which a nurse-midwife may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by nurse-midwives, including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, anticoagulants, antineoplastics, radio-pharmaceuticals and general anesthetics. Drugs listed under schedule III shall be limited to a seventy-two hour supply without refill.

(d) The board shall consult with other appropriate boards for development of the formulary.

(e) The board shall transmit to the board of pharmacy a list of all nurse-midwives with prescriptive authority. The list shall include:

(1) The name of the authorized nurse-midwife;

(2) The prescriber's identification number assigned by the board; and

(3) The effective date of prescriptive authority.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT

OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has suggested technical corrections.

TITLE 19
LEGISLATIVE RULE
REGISTERED PROFESSIONAL NURSES

SERIES 8
LIMITED PRESCRIPTIVE AUTHORITY FOR NURSES IN ADVANCED PRACTICE

Green is language we added

Pink is language we removed

§19-8-1. General.

1.1. Scope. – This rule establishes the requirements whereby the Board authorizes qualified nurses in advanced practice to prescribe prescription drugs in accordance with the provisions of W. Va. Code §§30-7-15a, 15b, 15c, and §§30-15-1 through 7c. An authorized advanced nurse practitioner may write or sign prescriptions or transmit prescriptions verbally or by other means of communication.

1.2. Authority. – W. Va. Code §§30-7-15a, and 30-15-7a.

1.3. Filing Date. –

1.4. Effective Date. –

§19-8-2. Definitions.

2.1. ~~The nurse in~~ "Advanced Practice Nurse" means ~~is~~ a nurse who has been recognized by the Board for Announcement of Advanced Practice as provided for in ~~Legislative Rules~~ the Board's rule, Announcement of Advanced Practice, 19 CSR 6.

2.2. "Advanced Nurse Practitioner" means an advanced practice nurse as defined in the Board's rule, Announcement of Advanced Practice, 19 CSR 6.

2.3. ~~The~~ "Certified Nurse Midwife" ~~is~~ means a nurse who has been licensed by the Board to practice nurse-midwifery as provided for in W. Va. Code §30-15-1c.

A new 2.4

2.4. "Pharmacology Contact Hour" means a unit of measurement that describes at least fifty (50) minutes of an approved, organized didactic learning experience related to advanced pharmacological therapy."

~~2.4. "Contact hour" means a unit of measurement that describes at least fifty (50) minutes of an approved, organized learning experience, either didactic or clinical experience: One (1) successfully completed academic semester hour equals fifteen (15) contact hours of instruction; and one (1) successfully completed academic quarter hour equals ten (10) contact hours of instruction as defined in the 19 CSR 11.~~

~~2.3~~ ~~2.5.~~ ~~Nurses in advanced practice shall be referred to in these rules~~ this rule ~~as:~~

~~2.5.a. Advanced Nurse Practitioners, and~~

~~2.5.b. Advanced Practice Nurse, and~~

~~2.5.c. Certified Nurse Midwives as defined in WV Code §30-15-1.(c).~~

§19-8-3. Eligibility and Application for Limited Prescriptive Authority.

3. 1 The Board shall grant prescriptive authority to an advanced nurse practitioner applicant who meets the eligibility requirements specified in W. Va. Code §30-7-15b and to the certified nurse-midwife applicant who meets all eligibility requirements specified in W. Va. Code §30-15-7b and the following:

3.1.a. Prior to application to the Board for approval for limited prescriptive authority, the applicant shall successfully complete accredited course of instruction in pharmacology during undergraduate study; and an advanced pharmacotherapy graduate level course approved by the Board of not less than 45 pharmacology contact hours; provide documentation of the use of pharmacotherapy in clinical practice in the education program; and provide evidence of 15 ~~additional~~ pharmacology contact hours in advanced pharmacotherapy completed within 2 years prior to application for prescriptive authority. The applicant shall submit official transcripts or certificates documenting completion of pharmacology and pharmacotherapy course work. The Board may request course outlines and/or descriptions of courses if necessary to evaluate the pharmacology course's content and objectives.

3.1.b. The advanced nurse practitioner or certified nurse-midwife shall submit a notarized application for prescriptive authority on forms provided by the Board with the following:

3.1.b.1 A fee set forth in the Board's rule, Fees For Services Rendered by the Board, 19 CSR 12.

3.1.b.2 A voided sample of the prescription form. ~~shall be submitted with the application.~~

3.1.b.3 ~~The advanced nurse practitioner or certified nurse-midwife shall submit~~ Written verification of an agreement to a collaborative relationship with a licensed physician for prescriptive practice on forms provided by the Board. The applicant shall certify on this form that the collaborative agreement includes the following:

3.1.b.1. A. Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced nurse practitioner's or certified nurse-midwife's clinical practice;

3.1.b.1.B. Statements describing the individual and shared responsibilities of the advanced nurse practitioner or certified nurse-midwife and the physician pursuant to the collaborative agreement between them;

3.1.b.1.C. A provision for the periodic and joint evaluation of the prescriptive practice; and

3.1.b.1.D. A provision for the periodic and joint review and updating of the written guidelines or protocols.

A I C

3.1.~~b.~~2. ~~The advanced nurse practitioner or certified nurse-midwife with prescriptive authority shall submit~~ Additional documentation ~~of the regulations of Subdivision~~ Section ~~3.1.b. of this~~ rule at the request of the Board.

3.2. If ~~at the time of application for prescriptive authority,~~ the Board obtains information that an applicant for prescriptive authority was previously ~~nurse, although not currently~~ addicted to or dependent upon alcohol or the use of controlled substances~~, has had any addiction or dependency problem in the past~~, the Board may grant prescriptive authority with any limitations it considers proper. The limitations may include, but are not limited to, restricting the types of schedule drugs a nurse may prescribe.

3.3. The Board shall forward a copy of the verification specified in Subdivision ~~Section~~ 3.1.b. of this rule to the Board of Medicine or to the Board of Osteopathy, whichever is indicated.

3.4. Upon satisfactory evidence that the advanced nurse practitioner or certified nurse midwife applicant has met all above requirements for prescriptive authority, the Board shall assign an identification number to that nurse.

3.5. The Board shall notify the Board of Medicine, the Board of Osteopathy, and the Board of Pharmacy of those advanced nurse practitioners or certified nurse-midwives who have been granted prescriptive authority, and shall also provide the prescriber's identification number and effective date of prescriptive authority.

3.6. The advanced nurse practitioner or certified nurse-midwife shall file with the Board any restrictions on prescriptive authority that are not imposed by W. Va. Code §60A-3, or this rule, but which are ~~agreed to~~ within the written collaborative agreement and the name of the collaborating physician~~(s)~~ for each advanced nurse practitioner or certified nurse-midwife on the approved list.

3.7. The advanced ~~practice~~ nurse practitioner ~~and~~ or certified nurse-midwife with prescriptive authority who wishes to prescribe Schedules III through V drugs shall comply with federal Drug Enforcement Agency requirements prior to prescribing controlled substances.

3.8. The advanced nurse practitioner and/or certified nurse-midwife shall immediately file any and all of his or her Drug Enforcement Agency registrations and numbers with the Board.

3.9. The Board shall maintain a current record of all advanced nurse practitioners and/or certified nurse-midwives with Drug Enforcement Agency registrations and numbers.

3.10. Any information filed with the Board under the provisions of this rule shall be available, upon request, to any pharmacist, regulatory agency or board or shall be made available pursuant to other state or federal law.

§19-8-4. Renewal of Prescriptive Privileges.

4.1. An ~~The~~ applicant for renewal of prescriptive authority shall meet all eligibility requirements as specified in W. Va. Code §30-7-15b for advanced nurse practitioners or W. Va. Code §30-15-7b for certified nurse-midwives.

4.2. The applicant shall maintain national certification as an advanced nurse practitioner or certified nurse-midwife as required for initial authorization for limited prescriptive privileges.

4.3. The applicant shall complete during the two (2) years prior to renewal a minimum of ~~eight (8)~~ fifteen (15) pharmacology contact hours of ~~pharmacology~~ education that has~~ve~~ been approved by the Board.

4.4. The Board shall renew prescriptive authority for advanced nurse practitioners or certified nurse-midwives biennially by June 30, of odd-numbered years.

4.5. The advanced nurse practitioner and certified nurse midwife shall submit an application for renewal of prescriptive authority on forms provided by the Board. The application must be notarized, and the fee set forth in the Board's rule, Fees For Services Rendered by the Board, 19 CSR 12~~of one hundred twenty-five dollars ($125.00)~~ must accompany the application.

~~**§19-8-5. Pharmacology Course Requirements.**~~

~~5.1. Prior to application to the Board for approval for limited prescriptive authority, the applicant shall successfully complete an accredited course(s) of instruction in clinical pharmacology and clinical management of drug therapy pharmacology during undergraduate study; and an advanced pharmacotherapy graduate level course approved by the Board of not less than forty-five (45) contact hours; provide documentation of the use of pharmacotherapy in clinical practice in the education program; and provided that evidence of fifteen (15) additional contact hours in advanced pharmacotherapy of these hours have been completed within two (2) years prior to application for prescriptive authority.~~

~~5.2. The applicant shall submit official transcripts or certificates documenting completion of pharmacology and pharmacotherapy course work. The Board may request course outlines and/or descriptions of courses if necessary to evaluate the pharmacology course's content and objectives.~~

§19-8-5. Drugs Excluded from Prescriptive Authority.

5.1. The advanced nurse practitioner or certified nurse-midwife shall not prescribe from the following categories of drugs:

5.1.a. Schedules I and II of the Uniform Controlled Substances Act; ~~.~~

5.1.b. Anticoagulants;~~.~~

5.1.c. Antineoplastics; ~~.~~

5.1.d. Radio-pharmaceuticals; or ~~.~~

5.1.e. General anesthetics.

5.1.f. MAO Inhibitors, except when in a collaborative agreement with a psychiatrist.

5.2. Drugs listed under Schedule III and benzodiazepines are limited to a seventy-two (72) hour supply without refill.

5.3. The advanced nurse practitioner or certified nurse-midwife may ~~shall not~~ prescribe drugs from Schedules IV through V in ~~excess of~~ a quantity necessary for ~~thirty (30)~~ up to a ninety (90) day supply, ~~shall not~~ may provide for ~~more than five (5)~~ only one (1) refill, and shall provide that the prescription expires in six (6) months~~.~~ : Provided, that *1) prescriptions for phenothiazines and shall be limited to up to a thirty (30) day supply and shall be non-refillable: Provided, however that 2) Prescriptions for non-controlled substances of antipsychotics, and sedatives prescribed by the advanced nurse practitioner and/or certified nurse-midwife shall not exceed ~~the recommended average therapeutic dose for that drug based on standard prescribing guidelines, shall not exceed~~ the quantity necessary for a thirty (30)*

day supply, shall provide for no more than five (5) prescription refills and shall expire in six (6) months.

~~5.4. In addition, an advanced nurse practitioner or certified nurse-midwife may not prescribe any parenteral preparations except insulin and epinephrine.~~

~~5.5. The Board may revise the prescribing protocols annually, and they shall include the following designated sections:~~

~~a. Choice of drugs used less commonly in primary care outpatient settings not to be prescribed by advanced nurse practitioners and/or certified nurse-midwives shall have the following limitations:~~

5.4. ~~A~~ The maximum dosage of any drug, including antidepressants, prescribed by the advanced nurse practitioner or certified nurse-midwife ~~shall be indicated in the protocol and~~ shall be consistent with industry standard prescribing guidelines specific to the advanced nurse practitioner or certified nurse-midwife area of practice and these guidelines shall be included in the collaborative agreement. ~~in no case exceed the standard prescribing guidelines manufacturer's average for the therapeutic dose for that drug.~~

5.5. ~~B.~~ Each prescription and subsequent refill~~(s)~~ given by the advanced nurse practitioner and/or certified nurse-midwife shall be entered on the patient's chart.

~~C. The advanced nurse practitioner and/or certified nurse-midwife authorized to issue prescriptions for Schedules III through V controlled substances shall write on the V prescription the federal Drug Enforcement Agency number issued to that advanced nurse practitioner and/or certified nurse-midwife.~~

~~D. The maximum amount of Schedule IV or V drugs prescribed shall be not more than ninety (90) dose units or a thirty (30) day supply, whichever is less.~~

~~E. Prescriptions for phenothdiazepines and benzodiazepines shall be limited up to a seventy-two (72) hour~~ thirty (30) day ~~supply and shall be non-refillable.~~

~~F. Prescriptions for specific antidepressants, to include tricyclics, MAO inhibitors, and miscellaneous antidepressants of buprophin, fluoxtine, maprotline, trazodone, shall be limited to non-toxic quantities and shall be non-refillable.~~

~~G. Prescriptions for non-controlled substances of antipsychotics, and sedatives prescribed by the advanced nurse practitioner and/or certified nurse-midwife shall not exceed the manufacturer's recommended average therapeutic dose for that drug, shall not exceed the quantity necessary for a thirty (30) day supply, shall provide for no more than five (5) prescription refills and shall expire in six (6) months.~~

The Board is leaving in H which is in the current rule and adding the last phrase, "provided, that this limitation shall not include contraceptives":

5.5 ~~H.~~ Advanced nurse practitioners and certified nurse midwives shall not prescribe other prescription drugs or refill for a period exceeding six (6) months.~~;~~ provided, that this limitation shall not include contraceptives.

~~I. Advanced nurse practitioners and certified nurse midwives shall not prescribe combination drug products containing drugs fully excluded in section 5.1 of this rule and limitations set forth in this rule apply to any other combination drug products.~~

~~5.5.~~ An advanced nurse practitioner ~~and~~ or certified nurse-midwife may administer local anesthetics.

~~5.6.~~ The advanced nurse practitioner or certified nurse-midwife who has been approved for limited prescriptive authority by the Board may ~~is authorized to~~ sign for, accept, and provide to patients samples of drugs received from a drug company representative.

~~5.8.~~ The form of the prescription shall comply with all state and federal laws and regulations.

5.8.a. All prescriptions shall include the following information:

5.8.a.1.~~A.~~ The name, title, address and phone number of the prescribing advanced nurse practitioner ~~and~~ or certified nurse-midwife who is prescribing;

5.8.a.2.~~B.~~ The name and address of the patient;

5.8.a.3.~~C.~~ The date of the prescription;

5.8.a.4.~~D.~~ The full name of the drug, the dosage, the route of administration and directions, for its use;

5.8.a.5.~~E.~~ The number of refills;

5.8.a.6.~~F.~~ The expiration date of the advanced nurse practitioner or certified nurse midwife's prescriptive authority;

5.8.a.6.~~G.~~ The signature of the prescriber on the written prescription; and

5.8.a.8.~~H.~~ The Drug Enforcement Agency number of the prescriber~~.~~, when required by

federal laws.

~~5.~~8.b. The advanced nurse practitioner ~~and/~~or nurse mid-wife shall document the records of all prescriptions in patient records.

~~5.~~8.c. An advanced nurse practitioner ~~and/~~or certified nurse-midwife shall~~, within thirty (30) days~~ at the time of the initial prescription; record in the patient ~~client~~ record the plan for ~~his or her~~ continued evaluation of the effectiveness of the controlled substances prescribed.

~~5.~~8.d. An advanced nurse practitioner ~~and/~~or certified nurse-midwife shall ~~not~~ prescribe refills of controlled substances according to current laws and standards ~~unless the refill prescription is in writing~~.

~~5.~~8.e. Drugs considered to be proved human teratogens shall not be prescribed during a known pregnancy by the advanced nurse practitioner ~~and/~~or certified nurse midwife. This prohibition includes all Category D and X drugs from the Federal Drug Administration Categories of teratogen risks (21 CFR 201.57).

~~5.~~9. The Board may, in its discretion, approve a formulary classifying pharmacologic categories of all drugs which may be prescribed by an advanced nurse practitioner or certified nurse-midwife with prescriptive authority.

§~~19-8-~~6. Termination of Limited Prescriptive Privileges.

6.1. The Board may deny or revoke privileges for prescriptive authority if the applicant or licensee has not met conditions set forth in the law or this rule, or if the applicant has violated any part of W. Va. Code §30-7-1 et seq. or §30-15-1 et seq.

6.2. The Board shall notify the Board of Pharmacy, the Board of Osteopathy, and the Board of Medicine within twenty-four (24) hours after the termination of, or a change in, an advanced nurse practitioner's or certified nurse-midwife's prescriptive authority.

6.3. The Board shall immediately terminate prescriptive authority of the advanced nurse practitioner or certified nurse-midwife if disciplinary action has been taken against his or ~~/~~her license to practice registered professional nursing in accordance with W. Va. Code §30-7-11.

6.4. Prescriptive authority for the advanced nurse practitioner or the certified nurse-midwife terminates immediately if either the license to practice registered professional nursing in the State of West Virginia lapses or the license to practice as a nurse-midwife in the State of West Virginia lapses.

~~6.5. Prescriptive authority for the certified nurse-midwife terminates immediately if either the license to practice registered professional nursing~~

6.56. Prescriptive authority is immediately and automatically terminated if national certification as an advanced nurse practitioner or certified nurse-midwife lapses.

6.6.7.If authorization for prescriptive authority is not renewed by the expiration date which appears on the document issued by the Board reflecting approval of prescriptive authority, the authority terminates immediately on the ~~upon~~ expiration date.

6.7.8. Any advanced nurse practitioner or certified nurse-midwife who allows her or his prescriptive authority to lapse by failing to renew in a timely manner, may have his or her prescriptive authority ~~be~~ reinstated by the Board on satisfactory explanation for the failure to renew and submission of the prescriptive authority application and fee.

6.8.9. An advanced nurse practitioner ~~and~~/or certified nurse-midwife shall not prescribe controlled substances for his or her personal use or for the use of members of his or her immediate family.

6.9.10. An advanced nurse practitioner ~~and~~/or certified nurse-midwife shall not provide controlled substances or prescription drugs for other than therapeutic purposes.

6.10.11. An advanced nurse practitioner and/or certified nurse-midwife with prescriptive authority ~~shall~~ may not delegate the prescribing of drugs to any other person.

~~§19-8-7. Adoption/Revision of Rules/Policies.~~

~~7.1. The Board has the authority may subject to legislative approval to adopt and revise such rules and/or policies as may be necessary to enable it to carry into effect the provisions of W. Va. Code §30-6-1 et seq.~~