

# West Virginia Board of Medicine Quarterly Newsletter



## 2009 LEGISLATIVE UPDATE

**Committee Substitute for S.B. 293** was enacted during the 2009 Legislative Session and it took effect on July 10, 2009. Penalties for persons practicing with an expired, lapsed or terminated license for less than ninety (90) days remain a misdemeanor, but the fine for doing so is reduced from \$10,000 to \$5,000. The possible period of confinement in jail remains the same, up to twelve (12) months. The unauthorized practice of medicine and surgery, podiatry, or as a physician assistant when the license is not obtained or is expired, lapsed or terminated for more than ninety (90) days, or when the license is inactive, revoked, suspended or surrendered, is a felony, with a penalty of up to \$10,000 and/or imprisonment in a state correctional facility for between one (1) and five (5) years.

**House Bill 2801** also was enacted during the recent Legislative Session and took effect on July 1, 2009. It clarifies that the Board of Medicine is not a part of the Department of Health and Human Resources, but is autonomous. This bill benefits the Board by increasing efficiency of its operations and the overall management of its funds.

**Committee Substitute for H.B. 2819** was enacted and is in effect. Therefore, as of June 1, 2009, the Physician Assistant rule (11 CSR 1B) has been updated extensively and is effective, and the rule authorizing licensure in extraordinary circumstances is effective as well (11 CSR 2). The emergency rule on licensure in extraordinary circumstances is no longer in place as of June 1, 2009.

- In 11 CSR 1B, in addition to minor changes throughout, look for new language at 7.6 and at the end of 10.1(h) relating to unprofessional conduct, as well as five (5) new sections at 10.2. and 10.3. Under Physician Assistant Utilization, additions are at 13.2 m., as well as at p., q., and r. Look also at 13.6 and 14.7 relating to electronic prescribing and more. Familiarize yourself with new 15.4. The rule is on the Board's website, easily accessible, at [www.wvdhhr.org/wvbom](http://www.wvdhhr.org/wvbom). Our recommendation is that you carefully review the entire rule.
- 11 CSR 2 is substantially similar to the rule adopted on an emergency basis, but it is arranged differently. The rule is on the Board's website.

**Committee Substitute for H.B. 2839** was enacted during the 2009 Legislative Session and was effective as of July 7, 2009. It amends the Management of Pain Act (W. Va. Code § 30-3A-1 et seq.) by eliminating the definition of "intractable pain" and providing a definition of "pain" as "an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage." This definition is identical to the one in the Board's Policy for the Use of Controlled Substances for the Treatment of Pain which has been in effect for more than four (4) years, simply as a policy. Also, the definition in the law of "pain-relieving controlled substance" is now expanded in the law as follows: it "includes, but is not limited to, an opioid or other drug classified as a Schedule II through V controlled substance and recognized as effective for pain relief, and excludes any drug that has no accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision including, but not limited to, any drug classified as a Schedule I controlled substance." To avoid any problems in this regard, now would be a good time for anyone prescribing pain medication to acquaint yourself with the changes in the Management of Pain Act as well as with the Board's Policy for the Use of Controlled Substances for the Treatment of Pain.

### INSIDE THIS ISSUE

2009 Legislative Update	1
Board Actions	2-3
DID YOU KNOW???	3
New Staff Member Explanation of Proposed Fee Mailing	4
Access to Child's Records	5
License Renewal 2009 Board Website Address Board Staff	6
Change of Address Form	7
Change of Address Info Board Meeting Dates	8



## BOARD ACTIONS

### April 2009 — June 2009



BENDY, ROBERT HAROLD, JR., M.D. – Fayetteville, WV (05/27/2009) WV License No. 16475

Board Conclusion: Relating to unprofessional, unethical, and dishonorable conduct.

Board Action: License SURRENDERED effective May 20, 2009. Dr. Bendy will not apply to the Board for licensure in the future, and if he does, his application will be denied.

BOYLE, MICHAEL FRANCIS, M.D. – Oak Hill, VA (06/10/2009) WV License No. 22456

Board Conclusion: Relating to unprofessional conduct and the renewal of a license to practice medicine and surgery by making an incorrect statement in connection with a licensure application.

Board Action: Dr. Boyle paid to the Board a CIVIL FINE in the amount of \$100 per credit hour for his prior deficiency of two (2) hours of continuing medical education for the licensure renewal period from July 1, 2006, to June 30, 2008, together with a one (1) time ADMINISTRATIVE FEE in the amount of \$100, for a total of \$300.

BRAGG, BILLY JOE, P.A.-C. – Mt. Clare, WV (06/29/2009) WV License No. 554

Board Conclusion: Misconduct in his practice as a physician assistant.

Board Action: License SURRENDERED effective June 29, 2009, and Mr. Bragg requests the withdrawal of any and all pending applications before the Physician Assistant Committee of the Board. Mr. Bragg will not apply to the Board for licensure in the future, and if he does, his application will be denied.

DODSON, JEFFREY A., M.D. – Bridgeport, WV (06/23/2009) WV License No. 21906

Board Conclusion: Relating to unprofessional conduct and the renewal of a license to practice medicine and surgery by making an incorrect statement in connection with a licensure application.

Board Action: Dr. Dodson paid to the Board a CIVIL FINE in the amount of \$100 per credit hour for his prior deficiency of three and one-half (3.5) hours of continuing medical education for the licensure renewal period from July 1, 2006, to June 30, 2008, together with a one (1) time ADMINISTRATIVE FEE in the amount of \$100, for a total of \$450.

FAKIER, DAVID RICHARD, M.D. – Coeur D'Alene, ID (06/15/2009) WV License No. 22607

Board Conclusion: Relating to unprofessional conduct, making a false statement in connection with a licensure application, and having his license acted against in other states.

Board Action: PUBLICLY REPRIMANDED for unprofessional and unethical conduct in relation to his making false statements in connection with licensure applications in other states and for having his license acted upon by the states of Kentucky and Arizona.

HARPOLD, ROBERT MORRIS, M.D. – Charleston, WV (06/23/2009) WV License No. 21529

Board Conclusion: Relating to unprofessional conduct and the renewal of a license to practice medicine and surgery by making an incorrect statement in connection with a licensure application.

Board Action: Dr. Harpold paid to the Board a CIVIL FINE in the amount of \$100 per credit hour for his prior deficiency of two (2) hours of continuing medical education for the licensure renewal period from July 1, 2006, to June 30, 2008, together with a one (1) time ADMINISTRATIVE FEE in the amount of \$100, for a total of \$300.

KOH, YUNG HIE, M.D. – Princeton, WV (06/15/2009) WV License No. 09585

Board Conclusion: Relating to unprofessional conduct and the renewal of a license to practice medicine and surgery by making an incorrect statement in connection with a licensure application.

Board Action: Dr. Koh paid to the Board a CIVIL FINE in the amount of \$100 per credit hour for his prior deficiency of two (2) hours of continuing medical education for the licensure renewal period from July 1, 2006, to June 30, 2008, together with a one (1) time ADMINISTRATIVE FEE in the amount of \$100, for a total of \$300.



**BOARD ACTIONS**  
**April 2009 — June 2009**  
*continued from page 2*



MERRIFIELD, JOHN VINCENT, M.D. – Dunbar, WV (05/11/2009)

WV License No. 09156

Board Conclusion: Found guilty of a crime which is a felony.

Board Action: License SURRENDERED effective May 15, 2009. Dr. Merrifield will not apply to the Board for licensure in the future, and if he does, his application will be denied.

SCHEMENAUER, STEPHEN, P.A.-C. – Triadelphia, WV (05/20/2009)

WV License No. 01309

Board Conclusion: Non-compliance with his agreement as a participant in the West Virginia Medical Professionals Health Program, Inc., as stipulated in the November, 2008, Consent Order he entered into with the Board.

Board Action: License changed to EXPIRED status effective May 20, 2009.

SHAH, DINESH BABUBHAI, M.D. – North East, MD (05/27/2009)

WV License No. 12341

Board Conclusion: Relating to having a license acted against and disciplined in another jurisdiction, failing to keep adequate written records, and failing to practice medicine acceptably with that level of care, skill, and treatment recognized by a reasonable, prudent physician engaged in the same or similar specialty as being acceptable under similar conditions and circumstances.

Board Action: Effective May 27, 2009, and consistent with the Consent Order between Dr. Shah and the Maryland Board of Physicians, Dr. Shah's license to practice medicine and surgery in the State of West Virginia was placed in a PROBATIONARY STATUS for an indefinite period of time, not to exceed a period of three (3) years, and continuing for the duration of his probation with the Maryland Board. Dr. Shah was PUBLICLY REPRIMANDED for having his license to practice medicine and surgery acted against by the licensing authority in the State of Maryland.



*Copies of Board Orders are  
available on the Board's website.*

[www.wvdhhr.org/wvbom](http://www.wvdhhr.org/wvbom)

**???DID YOU KNOW???**

**§60A-4-410. Prohibited acts -- Withholding information from practitioner; additional controlled substances; penalties.**

(a) It is unlawful for a patient, with the intent to deceive and obtain a prescription for a controlled substance, to withhold information from a practitioner that the patient has obtained a prescription for a controlled substance of a similar therapeutic use in a concurrent time period from another practitioner.

(b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in the county or regional jail for not more than six months, or fined not more than one thousand dollars, or both fined and imprisoned.

(c) The offense established by this section is in addition to and a separate and distinct offense from any other offense set forth in this code.

**For a Notice of the law, which may be downloaded and placed  
in a practitioner's office, go to the Board's homepage at  
[www.wvdhhr.org/wvbom](http://www.wvdhhr.org/wvbom)**

## WELCOME BACK JOHN LOHMANN

As of April 1, 2009, the Board is pleased to announce that the Board's Disciplinary Counsel is John Lohmann. He was the Board's Disciplinary Counsel in 2003, until he left for Wisconsin. While in Wisconsin, John was a Director of Claims for PIC Wisconsin, a regional medical malpractice insurance company and later as a Claim Consultant for CNA HealthPro, a national medical malpractice insurance company. John has returned to the Board enthusiastically, citing the quality of life in West Virginia and the mission of the Board. Prior to his joining the Board staff in 2003, John has worked with the Legal Services Division of the West Virginia Bureau of Employment Programs, OHIC Insurance Company in Columbus, Ohio, and law firms in Charleston and Elkins. He earned his Juris Doctor at the College of William and Mary in Williamsburg, Virginia. John also holds a Bachelor of Philosophy from Miami University in Oxford, Ohio, and a Master in Business Administration from Ashland University in Ashland, Ohio. He is currently pursuing a Ph.D. in organization and management and is the father of five school-aged children.

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## EXPLANATION ABOUT PROPOSED FEE INCREASE MAILING

As we expected, some of you commented about the irony of the Board of Medicine spending money to mail the proposed fee increase rule to all of you. The current law **REQUIRES** the Board of Medicine to mail a copy of any proposed rule regarding fees to those affected, just as we did at the time the proposed rule was filed with the Secretary of State. A bill introduced this past Legislative Session, H.B. 2403, would have changed that requirement to make the notification process less expensive. It passed the House but died in the Senate.

### West Virginia Board of Medicine Board Members

**John A. Wade, Jr., M.D., President**  
Point Pleasant

**J. David Lynch, Jr., M.D., Vice President**  
Morgantown

**Catherine Slep, M.D., M.P.H., Secretary**  
Charleston

**R. Curtis Arnold, D.P.M.**  
South Charleston

**Rev. Richard Bowyer**  
Fairmont

**Michael L. Ferrebee, M.D.**  
Morgantown

**M. Khalid Hasan, M.D.**  
Beckley

**Beth Hays, M.A.**  
Bluefield

**Carlos C. Jimenez, M.D.**  
Glen Dale

**Vettivelu Maheswaran, M.D.**  
Charles Town

**Bill May, D.P.M.**  
Huntington

**Badshah J. Wazir, M.D.**  
South Charleston

**Kenneth Dean Wright, P.A.-C.**  
Huntington

***We last printed West Virginia Code § 48-9-601 in the Newsletter more than three years ago. We continue to receive questions about the subject of children's health care records. Every physician, podiatrist, and physician assistant needs to know this law.***

#### **§48-9-601. Access to a child's records.**

(a) (1) Each parent has full and equal access to a child's educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. Educational records are academic, attendance and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the child's performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to accomplish; school rules, attendance policies, dress codes and procedures for visiting the school; and information about any psychological testing the school does involving the child.

(2) In addition to the right to receive school records, the nonresidential parent has the right to participate as a member of a parent advisory committee or any other organization comprised of parents of children at the school that the child attends.

(3) The nonresidential parent or noncustodial parent has the right to question anything in the child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court order to the contrary. Neither parent can be compelled against their will to exercise this right by attending conferences jointly with the other parent.

(b) (1) Each parent has full and equal access to a child's medical records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either parent is required to authorize medical providers to release to the other parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to either parent.

(2) If the child is in the actual physical custody of one parent, that parent is required to promptly inform the other parent of any illness of the child which requires medical attention.

(3) Each parent is required to consult with the other parent prior to any elective surgery being performed on the child, and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of the emergency medical procedures: *Provided*, That nothing contained herein alters or amends the law of this state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(c) Each parent has full and equal access to a child's juvenile court records, process and pleadings, absent a court order to the contrary. Neither parent may veto any access requested by the other parent. Juvenile court records are limited to those records which are normally available to a parent of a child who is a subject of the juvenile justice system.

## LICENSE RENEWAL - 2009

As of June 30th, the West Virginia Board of Medicine completed its annual license renewal for all medical doctors whose last name ended in M through Z and all podiatrists. A total of 3,025 medical doctors and 121 podiatrists were eligible to renew their licenses this year. From this total, 2,431 medical doctors and 96 podiatrists renewed their licenses in ACTIVE status. An additional 268 medical doctors and 16 podiatrists renewed in INACTIVE status. Further, 324 medical doctors and 9 podiatrists chose to no longer hold a license in West Virginia.

Of those medical doctors and podiatrists who did renew their licenses, 77% renewed online. The Board of Medicine will increase its efforts to improve the online renewal system with the continuing goal of having this system as the primary vehicle for the renewal process.

In order for the Board to communicate to you important notices and relevant information, it is essential that you notify the Board of any change of address. Please note that there is a change of address form on Page 7 of this Newsletter which must be used for a change of address.

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## THE BOARD WILL SOON HAVE A NEW WEBSITE ADDRESS

In conjunction with the Board of Medicine's move from DHHR on July 1, 2009, it was necessary to establish a new website address. Final steps are currently underway to change the Board's website address from [www.wvdhhr.org/wvbom](http://www.wvdhhr.org/wvbom) to the new address which is [www.wvbom.wv.gov](http://www.wvbom.wv.gov). This change will be taking place very soon. Once this change occurs, visitors to the old website address will find a redirect page instructing them to use the new web address to get to our website. Please make note of the new website address [www.wvbom.wv.gov](http://www.wvbom.wv.gov) for future reference.

Staff of the West Virginia Board of Medicine 304.558.2921		
Ext #		
227	Robert C. Knittle, M.S.	Executive Director
214	Deborah Lewis Rodecker, J.D.	Counsel
215	John A. Lohmann, J.D., M.B.A.	Disciplinary Counsel
211	Lori Blaney	Paralegal
212	M. Ellen Briggs	Administrative Assistant to the Executive Director
224	Wendy L. Greene	Receptionist/Certification and Verification Coordinator
222	Leslie A. Higginbotham	Investigator, CMBI
210	Charlotte A. Jewell	Physician Assistant Coordinator
216	Michael R. Lilly	Information Systems Coordinator
213	Charlotte Ann Pulliam	Complaint Coordinator
220	Deborah D. Scott	Fiscal Officer
221	Sheree J. Thompson	Licensure Analyst

CHANGE OF ADDRESS FORM

NAME: \_\_\_\_\_ LICENSE#: \_\_\_\_\_
(Last) (First) (Middle) (Suffix)

By law, you must keep this office apprised of any and all address changes. If not currently practicing, check here [ ]

PREFERRED MAILING ADDRESS (Required):

(This address is public information, except phone & email)

HOME ADDRESS:

[ ] Check here if same as preferred mailing address

Address 1 \_\_\_\_\_
Address 2 \_\_\_\_\_
City, State, Zip, County \_\_\_\_\_
Phone \_\_\_\_\_
Email \_\_\_\_\_

MAIN WORK ADDRESS:

[ ] Check here if same as preferred mailing address

Enter average weekly on call hours for ALL locations: \_\_\_\_\_

Address 1 \_\_\_\_\_
Address 2 \_\_\_\_\_
City, State, Zip, County \_\_\_\_\_
Phone \_\_\_\_\_ Fax \_\_\_\_\_
Email \_\_\_\_\_

List AVERAGE HOURS worked per week (not on call) at this location:

Direct Patient Care: \_\_\_\_\_
Administration: \_\_\_\_\_
Formal Teaching: \_\_\_\_\_
Research: \_\_\_\_\_
Other Medical/Podiatric Activities: \_\_\_\_\_

SECOND WORK ADDRESS:

Address 1 \_\_\_\_\_
Address 2 \_\_\_\_\_
City, State, Zip, County \_\_\_\_\_
Phone \_\_\_\_\_

List AVERAGE HOURS worked per week (not on call) at this location:

Direct Patient Care: \_\_\_\_\_
Administration: \_\_\_\_\_
Formal Teaching: \_\_\_\_\_
Research: \_\_\_\_\_
Other Medical/Podiatric Activities: \_\_\_\_\_

THIRD WORK ADDRESS:

Address 1 \_\_\_\_\_
Address 2 \_\_\_\_\_
City, State, Zip, County \_\_\_\_\_
Phone \_\_\_\_\_

List AVERAGE HOURS worked per week (not on call) at this location:

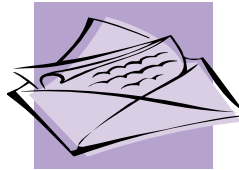
Direct Patient Care: \_\_\_\_\_
Administration: \_\_\_\_\_
Formal Teaching: \_\_\_\_\_
Research: \_\_\_\_\_
Other Medical/Podiatric Activities: \_\_\_\_\_

Enter your self-designated primary and secondary SPECIALTY here: (M.D.'s and D.P.M.'s ONLY)
Primary Specialty: \_\_\_\_\_ Secondary Specialty: \_\_\_\_\_

LICENSEE'S ORIGINAL SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

RETURN FORM TO: West Virginia Board of Medicine, 101 Dee Drive, Suite 103, Charleston, WV 25311

## CHANGE OF ADDRESS INFORMATION



**NOTE:** There is a Change of Address Form located on Page 7 of this Newsletter. You may also visit the Board’s website at [www.wvdhhr.org/wvbom](http://www.wvdhhr.org/wvbom) for a Change of Address Form. By law, a licensee of the Board of Medicine must keep this office apprised of any and all address changes. The preferred mailing address of a licensee is the licensee’s address of record, which is public information, with the exception of the telephone number and e-mail address.

### WEST VIRGINIA BOARD OF MEDICINE 2009 MEETINGS

July 13  
September 14  
November 9

**ALL BOARD MEETINGS BEGIN AT 9:00 A.M.**

### WV Board of Medicine



101 Dee Drive, Suite 103  
Charleston, WV 25311

Phone: 304.558.2921  
Fax: 304.558.2084

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