

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Filing Date

FILED
1991 JUL -9 PM 1:42
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

July 9, 1991 *ja*

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: West Virginia Code §§ 33-2-10, 33-20D-4

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: Series 30

TITLE OF RULE BEING FILED AS AN EMERGENCY: "Tail" Malpractice

Insurance Covering Certain Medical and Allied Health Care Providers

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

(See attached)

Use Additional Sheets If Necessary.

Stanley C. Clark

Stanley C. Clark
Insurance Commissioner

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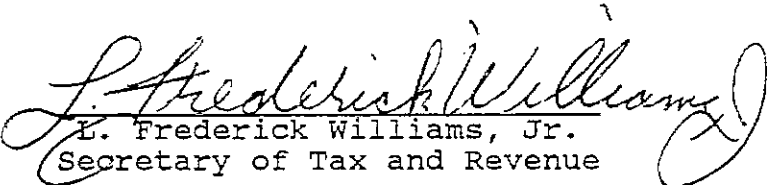
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code §5F-2-2(a)(12), the undersigned hereby grants consent to the proposal of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 30, relating to "Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers.

Signed this 2nd day of July, 1991.


L. Frederick Williams, Jr.
Secretary of Tax and Revenue

Insurance Commissioner
Leg. Rule 33-20D
Title 114
EMERGENCY

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY

On March 9, 1991 the West Virginia Legislature passed House Bill 2789, which took effective June 7, 1991, creating a new Article 20D, Section 33 of the West Virginia Code. West Virginia Code §33-20D-4(a) requires the Insurance Commissioner to promulgate the first set of rules relating to "tail" malpractice insurance as emergency rules within 45 days of the June 7, 1991 effective date of the aforementioned new article. The Commissioner is therefore promulgating the instant rule on an emergency basis to meet the time limit established by West Virginia Code §33-20D-4(a).

FISCAL NOTE FOR PROPOSED RULES

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Rule Title: "Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers

OFFICE OF THE SECRETARY OF STATE

Type of Rule: X Legislative Interpretive Procedural

Agency: Insurance Commissioner Address: 2019 Washington Street, East,
 Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		Current	FISCAL YEAR	
	Increase	Decrease		Next	Thereafter

Estimated Total Cost	NONE				
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Personal Services

Current Expense

Repairs & Alterations NONE

Equipment

Other

2. Explanation of above estimates:

The rule will have no fiscal impact upon state, local or federal government.

3. Objectives of these rules:

The objectives of these rules are: (1) to require professional malpractice insurers to offer "tail" malpractice insurance to medical doctors, osteopathic physicians, podiatrists, chiropractors, dentists, midwives and nurse practitioners upon cancellation, nonrenewal or termination of their "claims made" malpractice insurance that had been in effect for at least 60 days; and (2) to provide such professionals an opportunity to amortize the payment of premiums for "tail" insurance over not more than 36 months, so long as each quarterly premium payment equals at least \$750.00.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

The rule will afford the medical and allied health care providers enumerated in it the opportunity to pay premiums for "tail" malpractice insurance on the installment plan, by amortizing those premiums over no more than 36 months.

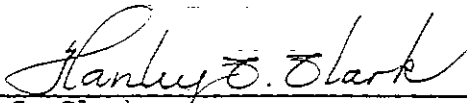
The insurance industry should suffer no unfavorable impact of this rule, which provides for amortization of "tail" malpractice insurance premiums at an interest rate which is fair to the affected insurers.

C. Economic Impact on Citizens/Public at Large.

NONE

Date: July 9, 1991

Signature of Agency Head or Authorized Representative



Hanley C. Clark
Insurance Commissioner

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TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: OFFICE OF THE INSURANCE COMMISSIONER
DATE: July 9, 1991

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY RULE TITLE: "Tail" Malpractice Insurance Covering
Certain Medical and Allied Health Care
Providers

(Title 114, Series 30)

1. Date of filing: July 9, 1991

2. Statutory authority for promulgating the emergency rule:
West Virginia Code §§ 33-20D-4(a), 33-2-10

3. Date of filing of proposed legislative rule: July 9, 1991

4. Does the emergency rule adopt new language or does it amend
or repeal a current legislative rule?
Adopts new language.

5. Has the same or similar emergency rule previously been
filed and expired?
No

6. State, with particularity, those facts and circumstances
which make the emergency rule necessary for the immediate
preservation of public peace, health, safety or welfare.
See next question.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

West Virginia Code § 33-20D-4(a) as created by H. B. 2789
requires that these rules shall be promulgated as emergency
rules within forty-five days of the June 7, 1991 effective
date of new Article 20D, Chapter 33 of the West Virginia
Code.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See previous question.

Insurance Commissioner
Leg. Rule 33-20D
Title 114
EMERGENCY

**"TAIL" MALPRACTICE INSURANCE COVERING
CERTAIN MEDICAL AND ALLIED HEALTH CARE PROVIDERS**

Chapter 33-20D, Series 30

BRIEF SUMMARY

This proposed emergency rule implements the provisions of newly enacted Article 20D, Chapter 33 of the West Virginia Code which was created by House Bill 2789 [effective date June 7, 1991]. The rule is to provide for the amortization of premium payments for "tail" malpractice insurance for medical doctors, osteopathic physicians, podiatrists, chiropractors, dentists, midwives and nurse practitioners. The rule provides these professionals an opportunity to amortize the payment of premiums for "tail" insurance for a period of not more than thirty-six months, in quarterly payments that cannot be less than \$750 per quarter.

EMERGENCY

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WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

CHAPTER 33-20D
SERIES 30

"TAIL" MALPRACTICE INSURANCE COVERING CERTAIN
MEDICAL AND ALLIED HEALTH CARE PROVIDERS

Section

- 114-30-1. General
- 114-30-2. Definitions
- 114-30-3. Applicability
- 114-30-4. "Tail" Insurance Offer Mandated
- 114-30-5. Premium Payment Amortization
- 114-30-6. Premium Due Dates; Acceleration of Premium Due upon Payment Default
- 114-30-7. Penalty for Insurer's Non-Compliance
- 114-30-8. Separability

EMERGENCY

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WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

CHAPTER 33-20D
SERIES 30

"TAIL" MALPRACTICE INSURANCE COVERING CERTAIN
MEDICAL AND ALLIED HEALTH CARE PROVIDERS

§114-30-1. General

1.1 Scope -- This legislative rule provides for premium payment amortization, under certain circumstances specified in the rule, for "tail" professional malpractice insurance covering medical physicians, osteopathic physicians, podiatrists, chiropractors, dentists, midwives and nurse practitioners.

1.2 Authority -- West Virginia Code §§ 33-20D-4, 33-2-10.

1.3 Filing Date --

1.4 Effective Date --

§114-30-2. Definitions

As used in this legislative rule:

"'Claims made' malpractice insurance" means a policy which covers claims which are reported during the policy period, meet the provisions specified by the policy, and are for an incident which occurred during the policy period, or occurred prior to the policy period, as is specified by the policy.

"Commissioner" means the Insurance Commissioner of the State of West Virginia.

"'Tail' insurance" means insurance which covers a professional insured once a "claims made" malpractice insurance policy is cancelled, not renewed or terminated and covers claims made after such cancellation or termination for acts occurring during the period the prior malpractice insurance was in effect.

Insurance Commissioner
Leg. Rule 33-20D
Series 30, Sec. 5
EMERGENCY

§114-30-3. Applicability

This rule applies to premium payment amortization for "tail" malpractice insurance offered to the medical and allied health care providers enumerated in Section 1.1 herein whose prior "claims made" malpractice insurance policy had been in effect for at least sixty (60) days: *Provided*, That each quarterly amortized premium paid pursuant to this rule shall not be less than seven hundred fifty (\$750.00) dollars.

§114-30-4. "Tail" Insurance Offer Mandated

4.1 Upon cancellation, nonrenewal or termination of any "claims made" professional malpractice insurance policy to which this rule is applicable as set forth in Section 3 herein, the insurer shall offer to the insured "tail" insurance coverage.

4.2 Such offer of "tail" insurance shall expire forty-five (45) days after the cancellation, nonrenewal, expiration or other termination of the insured's "claims made" professional malpractice insurance policy, unless the "tail" insurance offer is accepted sooner, in writing, by the insured.

§114-30-5. Premium Payment Amortization

5.1 Upon cancellation, nonrenewal or termination of any "claims made" professional malpractice insurance policy to which this rule is applicable, the insurer shall offer to any eligible professional who is licensed and practicing in the State of West Virginia, or who, prior to retirement, last practiced in the State of West Virginia, the opportunity to amortize the payment of quarterly premiums for "tail" insurance over twelve, twenty-four or thirty-six months.

5.2 Such quarterly premium payments for "tail" insurance shall be amortized at a per annum rate of interest equal to two (2) percentage points above the prime interest rate reported in the *Wall Street Journal* on the date when the "tail" insurance policy becomes effective, or on the next publication date of the *Wall Street Journal* following the effective date of the "tail" insurance policy if the *Wall Street Journal* is not published on the effective date of the policy.

5.3 The insured shall not be entitled to pay amortized premiums pursuant to this rule unless each quarterly premium payment, as computed applying the amortization rate set forth in subsection 5.2, equals at least seven hundred fifty (\$750.00) dollars.

Insurance Commissioner
Leg. Rule 33-20D
Series 30, Sec. 7
EMERGENCY

§114-30-6. Premium Due Dates; Acceleration of Premium Due upon Payment Default

6.1 The first quarterly payment due for "tail" insurance pursuant to this rule shall be payable contemporaneously with the issuance of the "tail" insurance policy. Subsequent payments shall be due and payable quarterly thereafter.

6.2 Upon the insured's default in making a premium payment when due, the entire balance of the premium for "tail" insurance coverage shall immediately be due and payable in full. If the entire premium is not then paid in full, the "tail" insurance coverage shall terminate.

§114-30-7. Penalty for Insurer's Non-Compliance

Any professional malpractice insurer subject to the provisions of this rule that fails to offer "tail" insurance to an eligible insured, or that violates in any way the provisions of Article 20D, Chapter 33 of the West Virginia Code, shall be assessed a penalty by the Commissioner equal to the total amount of premium due for the "tail" insurance that the insurer is required to offer.

§114-30-8. Separability

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other persons or circumstances shall not be affected thereby.

STATE OF WEST VIRGINIA



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OFFICE OF THE SECRETARY OF STATE

GASTON CAPERTON
GOVERNOR

HANLEY C. CLARK
INSURANCE COMMISSIONER

OFFICES OF THE
INSURANCE COMMISSIONER
2019 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25305

LEGAL DIVISION
304) 348-0401

FACSIMILE
(304) 348-0412

July 9, 1991

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, WV 25305

Dear Ms. Cooper:

Enclosed please find for filing fourteen (14) copies of the following:

- (1) Notice of an Emergency Rule;
- (2) Notice of a Comment Period on a Proposed Rule (only one copy enclosed as required);
- (3) Brief Summary;
- (4) Legislative Rule-Making Review Committee Questionnaire;
- (5) Fiscal Note;
- (6) Consent to Proposed Rule;
- (7) "Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers (Series 30).

Please contact me if further information is required.

Very truly yours,

A handwritten signature in cursive script that reads "Linda Gay".

Linda Gay
Assistant Attorney General

LG/iw
Enclosures

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

July 9, 1991

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 9, 1991
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

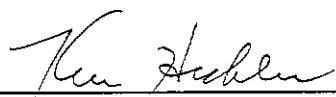
AGENCY: Insurance Commissioner

RULE: New Rule, Series 30, "Tail" Malpractice Insurance Covering
Certain Medical and Allied Health Care Providers

DATE RULE FILED AS AN EMERGENCY RULE: July 9, 1991

DECISION NO. 56-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.



KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE
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(Plus all the volunteer
help we can get)

DECISION EMERGENCY RULE DECISION
(ERD 56-91)

AGENCY: Insurance Commissioner
RULE: New Rule, Series 30, "Tail" Malpractice Insurance Covering
Certain Medical and Allied Health Care Providers
FILED AS EMERGENCY RULE: July 9, 1991

- par. 1 The Insurance Commissioner (Commissioner) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Commissioner filed this emergency rule with supporting documents with the Secretary of State July 9, 1991 and with the LRMRC July 9, 1991.

par. 7 It is the determination of the Secretary of State that the Commissioner has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §33-20D-4 reads:

(a) Pursuant to the provisions of §29A-1-1 et seq. of this code, the insurance commissioner shall promulgate legislative rules establishing procedures necessary to effectuate the provisions of this article. The first set of rules shall be promulgated as emergency rules within 45 days of the effective date of this article.

par. 9 It is the determination of the Secretary of State that the Commissioner has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:


(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commissioner are as follows:

On March 9, 1991, the West Virginia Legislature passed H.B. 2789 which took effect June 7, 1991, creating a new §33-20D of the West Virginia Code. WV Code §33-20D-4(a) requires the Insurance Commissioner to promulgate the first set of rules relating to "tail" malpractice insurance as emergency rules within 45 days of the June 7, 1991 effective date of the aforementioned new article. The Commissioner is therefore promulgating the instant rule on an emergency basis to meet the time limit established by W. Va. Code §33-20D-4(a).

- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation" (45 days (July 22) in law)
- par. 14 This decision shall be cited as Emergency Rule Decision 56-91 or ERD 56-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 9, 1991
ADMINISTRATIVE LAW DIVISION