

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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FILED  
1992 MAY 19 AM 2:15  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 30

TITLE OF RULE BEING PROPOSED: "Tail" Malpractice Insurance


Covering Certain Medical and Allied Health Care Providers

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 1

SECTION 64-7-2(o), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: May 19, 1992



Hanley C. Clark  
Insurance Commissioner

2.50

EMERGENCY

FILED

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

JAN 13 PM 3:45

OFFICE OF THE CLERK  
STATE OF WEST VIRGINIA

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

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FILED

JAN 13 PM 3:45

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

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:

2.1 "'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.

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

2.3 "'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~~ the insurer or its agent receives the insured's written request to purchase "tail" insurance, 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~~ date when the insurer or its agent receives the insured's written request to purchase "tail" insurance.

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

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.

**§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~~ not terminate, but the limit of liability will be reduced, pro rata, based on the amount of the total premium paid for the extended reporting coverage.

**§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.



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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Deputy Secretary of State

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**SECRETARY OF STATE**

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WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

TO: Linda Gay

AGENCY: Insurance Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: February 23, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 30 TITLE: 114 Insurance Commission

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Linda Gay

TITLE OF PERSON SIGNING: Associate Counsel

DATE: \_\_\_\_\_

\*\*\*\*\*

\* ★ THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Linda Gay

TITLE OF PERSON SIGNING: Assoc. Counsel, WV Insurance Comm'n

DATE: March 5, 1993

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

Bill Insurance, "Tail" malpractice 114-30

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H. B. 4294

(By Delegate Grubbs)

(Introduced January 27, 1992; referred to the  
Committee on Banking and Insurance then  
the Judiciary)

10 A BILL to amend and reenact section two, article seven, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 insurance commissioner to promulgate legislative rules  
14 relating to "tail" malpractice insurance covering certain  
15 medical and allied health care providers.

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

17 That section two, article seven, chapter sixty-four of the  
18 code of West Virginia, one thousand nine hundred thirty-one, as  
19 amended, be amended and reenacted, to read as follows:

20 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO**  
21 **PROMULGATE LEGISLATIVE RULES.**

22 **§64-7-2. Agency of insurance commissioner.**

23 (a) The legislative rules filed in the state register on the  
24 eighteenth day of October, one thousand nine hundred

1 eighty-three, relating to the insurance commissioner (excess line  
2 brokers), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 eighteenth day of August, one thousand nine hundred eighty-six,  
5 modified by the insurance commissioner to meet the objections of  
6 the legislative rule-making review committee and refiled in the  
7 state register on the twelfth day of December, one thousand nine  
8 hundred eighty-six, relating to the insurance commissioner  
9 (examiners' compensation, qualification and classification), are  
10 authorized.

11 (c) The legislative rules filed in the state register on the  
12 twentieth day of February, one thousand nine hundred  
13 eighty-seven, relating to the insurance commissioner (West  
14 Virginia essential property insurance association), are  
15 authorized.

16 (d) The legislative rules filed in the state register on the  
17 twenty-ninth day of May, one thousand nine hundred eighty-seven,  
18 relating to the insurance commissioner (medical malpractice  
19 annual reporting requirements), are authorized.

20 (e) The legislative rules filed in the state register on the  
21 thirty-first day of July, one thousand nine hundred eighty-seven,  
22 modified by the insurance commissioner to meet the objections of  
23 the legislative rule-making review committee and refiled in the  
24 state register on the seventh day of November, one thousand nine  
25 hundred eighty-seven, relating to the insurance commissioner

1 (medical malpractice loss experience and loss expense reporting  
2 requirements), are authorized.

3 (f) The legislative rules filed in the state register on the  
4 thirtieth day of November, one thousand nine hundred  
5 eighty-eight, modified by the insurance commissioner to meet the  
6 objections of the legislative rule-making review committee and  
7 refiled in the state register on the twenty-first day of  
8 February, one thousand nine hundred eighty-nine, relating to the  
9 insurance commissioner (transitional requirements for the  
10 conversion of Medicare supplement insurance benefits and premiums  
11 to conform to medicare program revisions), are authorized.

12 (g) The legislative rules filed in the state register on the  
13 twenty-sixth day of May, one thousand nine hundred eighty-nine,  
14 modified by the insurance commissioner to meet the objections of  
15 the legislative rule-making review committee and refiled in the  
16 state register on the twenty-eighth day of September, one  
17 thousand nine hundred eighty-nine, relating to the insurance  
18 commissioner (insurance adjusters), are authorized.

19 (h) The legislative rules filed in the state register on the  
20 second day of February, one thousand nine hundred ninety,  
21 modified by the insurance commissioner to meet the objections of  
22 the legislative rule-making review committee and refiled in the  
23 state register on the twenty-ninth day of May, one thousand nine  
24 hundred ninety, relating to the insurance commissioner (accident  
25 and sickness rate filing), are authorized.

1 (i) The legislative rules filed in the state register on the  
2 tenth day of August, one thousand nine hundred ninety, modified  
3 by the insurance commissioner to meet the objections of the  
4 legislative rule-making review committee and refiled in the state  
5 register on the ninth day of October, one thousand nine hundred  
6 ninety, relating to the insurance commissioner (group  
7 coordination of benefits), are authorized.

8 (j) The legislative rules filed in the state register on the  
9 tenth day of August, one thousand nine hundred ninety, modified  
10 by the insurance commissioner to meet the objections of the  
11 legislative rule-making review committee and refiled in the state  
12 register on the seventeenth day of January, one thousand nine  
13 hundred ninety-one, relating to the insurance commissioner (AIDS  
14 regulations), are authorized.

15 (k) The legislative rules filed in the state register on the  
16 third day of December, one thousand nine hundred ninety,  
17 relating to the insurance commissioner (health insurance benefits  
18 for temporomandibular and craniomandibular disorders), are  
19 authorized.

20 (l) The legislative rules filed in the state register on the  
21 twelfth day of August, one thousand nine hundred ninety-one,  
22 modified by the insurance commissioner to meet the objections of  
23 the legislative rule-making review committee and refiled in the  
24 state register on the thirteenth day of January, one thousand  
25 nine hundred ninety-two, relating to the insurance commissioner

1 ("tail" malpractice insurance covering certain medical and allied  
2 health care providers), are authorized.

3

4 NOTE: The purpose of this bill is to authorize the Insurance  
5 Commissioner to promulgate legislative rules relating to "tail"  
6 malpractice insurance covering certain medical and allied health  
7 care providers.

8

9 Strike-throughs indicate language that would be stricken from  
10 the present law, and underscoring indicates new language that  
11 would be added.