

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #8

Filing Date

FILED

MAR 31 2 56 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

April 23, 1998

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: WV Massage Therapy Licensure Bd. TITLE NUMBER: 194

DATE EMERGENCY RULE WAS ORIGINALLY FILED: 12-29-97

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT: 3-31-98

SERIES NUMBER OF RULE: Series 1

TITLE OF RULE: Massage Therapy Licensure Rule

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE.
THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY
SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE
AS FOLLOWS:

see Attached

Use additional sheets if necessary

Anna Pika
Signature

\$3.60

FORM # 8 attachment

Both new language and amended regulations for licensing has necessitated this filing for an emergency amendment rule. Previous rules filed were 'new rules' created as a result of the amendment to WV Code 30, Article 37.

Also,

It is most critical that these emergency amended rules be filed because of the fast approaching deadline as stated in Article 37 requiring licensing of massage therapist after the thirtieth day of June, 1998. The changes made in the new law are reflective in this emergency amended rule and without which the Massage Therapy Board would not be able to license massage therapist who have been currently practicing and would have *not met the previous regulations* in the former law, whose rules we filed previously reflecting that law. This filing will enable them to continue to practice *without losing their livelihood* or chosen profession that they have been trained or presently practicing. We have been told that 50 to 100 people's jobs are at stake here.

Date: 3-31-98

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Massage Therapy Licensure Board

EMERGENCY RULE TITLE : Title 194- Massage Therapy Licensure Rules

1. Date of Filing: 3-31-98
 2. Statutory authority for promulgating emergency rule: 30-37-6
 3. Date of filing of proposed legislative rule: First filing under emergency rule procedures was 12-29-97. We are filing an emergency amendment rule 3-31-98.
 4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Both new language and amended regulations for licensing have necessitated this filing for an emergency amendment rule. Previous rules filed were 'new rules' created as a result of the amendment to WV Code 30, Article 37.
 5. Has the same or similar emergency rule previously been filed and expired?
There are some similarities, but the language and regulation changes made to the previous law require filing to reflect the new changed law. The rules filed for 12-29-97 are still in effect.
 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.
It is most critical that these emergency amended rules be filed because of the fast approaching deadline as stated in Article 37 requiring licensing of massage therapist after the thirtieth day of June, 1998. The changes made in the new law are reflective in this emergency amended rule and without which the Massage Therapy Board would not be able to license massage therapist who have been *currently* practicing and would have *not met the previous regulations* in the former law, whose rules we filed previously reflecting that law. This filing will enable them to continue to practice *without losing their livelihood* or chosen profession that they have been trained or presently practicing.
 7. If the emergency rule was promulgated in order to comply with the time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.
WV Code 30-37-1 requires that those engaging in the practice of massage therapy be licensed by June 30, 1998 and this rule will establish the amended regulations in order to meet this timeline.
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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

About 50 to 100 people would LOSE their jobs, income and livelihood if this rule is not filed at this time. The board is attempting to meet the deadline for mailing out and processing license applications and to that end we must file these emergency amendment rules to reflect the changes made to the original law and enable these massage therapist to practice, who otherwise would NOT be able to do so. It is *necessary* that these rules be in place in order to meet the Code's deadline.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Massage Therapy Licensure Rule - Emergency Amendment
 Type of Rule: Legislative Interpretive Procedural
 Agency: WV Massage Therapy Licensure Board
 Address: P.O. Box 8038
South Charleston, WV
25303

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$	\$	\$ 14,105	\$ 25,450	\$ 26,500
PERSONAL SERVICES			3,505	14,000	14,500
CURRENT EXPENSE			7,600	9,950	10,500
REPAIRS & ALTERNATIONS					
EQUIPMENT			3,000	1,500	1,500
OTHER					

2. Explanation of above estimates:

Personal services include - board meetings, attorney and accounting fees, secretarial services
 Current expenses include - expenses incurred by the Board to conduct business, printing, mailing, etc. cost involved with licensing application process, data processing fees, phone expenses, office space rent, miscellaneous/contingency fund expenses.

Equipment include - computer and software with maintenance agreements)
 Estimated initial income is \$45,000 Carry over into "next" Fiscal year **VITAL** to stay in black

3. Objectives of these rules:

Meet the regulations set forth in WV Code 30-37-6 to License massage therapists by June 30, 1988 and to regularly administrate the licensing process as per the rules and regulations set forth in such Code.

Rule Title: Massage Therapy Licensure Rule - Emergency Amendment

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE, unless there are fines received through violation of Code, in which case monies received through such violations will be deposited into the general revenue fund of the state treasury as per stated in WO Code 30-1-10.

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

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: 3-31-98

Signature of Agency Head or Authorized Representative

Anna Pelan

MESSAGE THERAPY LICENSURE RULES**SUMMARY****TITLE 194**

These rules establish procedures for conducting the business of the Massage Therapy Licensure Board and establish licensing procedures as required in WV Code 30-37. These licensing procedures, rules and regulations contained therein are necessary in order to proceed to license massage therapist by June 30, 1998 as set by the Code. Fees, requirements to practice, hearing procedures, professional ethics and continuing education requirements, as well as standards of practice for competency are herein described to help protect the health, safety and welfare of the public.

Title 194
Legislative Rules
Massage Therapy Licensure Board

Series 1
GENERAL PROVISIONS

194-1-1. General

- 1.1. Scope These rules establish procedures for conducting the business of the Licensure Board, as well as establishing licensing procedures.
- 1.2 Authority. WV Code 30-37-6
- 1.3 Filing Date - _____
- 1.4 Effective Date - _____

194-1-2. **Massage Therapy Board fund; fees; expenses; disposition of funds.**

- 2.1 All fees collected by the Board shall be deposited into the Massage Therapy Licensure Board account established in the state treasurer's office.
- 2.2 Members of the board shall receive the following compensation for their administration of the Board:
 - (a) Each member shall receive \$100 for each meeting attended to conduct the business of the Board.
 - (b) Each member shall receive expenses for travel to conduct the business of the Board, meeting the requirements for such travel as set down in the provisions of section ten, article one, chapter thirty.
 - (c) Each member shall receive reimbursements for all expenses incurred in conducting the business of the Board

194-1-3 **Duties of board; authorization to propose rules and fees.**

- 3.1 The Board shall grant a license to any applicant who meets all the requirements as set forth in these rules.
 - a. A license shall include at least the following information: full name, date of issuance, seal of WV, license number, signature of Chairperson or Secretary of Board.
 - b. Each licensed massage therapist shall publicly display their current valid license at their worksite (or copy thereof).
- 3.2 Massage therapists applying for renewal, reciprocal, or provisional license must meet the current standards for continuing education hours required under the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) guidelines. Failure to comply with the current standards for continuing education as required by NCBTMB, shall be grounds for discipline under W.Va. Code 30-37-8. These guidelines and a list of approved providers for continuing education are available from NCBTMB on the internet at: <http://www.ncbtmb.com> or by calling 1-800-296-0664 or 1-703-610-9015. NCBTMB's address is 8201 Greensboro Dr., Suite 300, McLean, VA 22102. Their fax number is 1-703-610-9005.

- 3.3. The holder of a massage therapy license shall comply with the following requirements. Failure to comply with these requirements shall be grounds for discipline under W.Va. Code 30-37-8:
- a. Maintain documentation of compliance with all applicable state or local government regulations.
 - b. Massage therapy shall be conducted only in rooms which are adequately lighted and ventilated, and which are kept clean. Rest room facilities with toilet, sink with hot and cold running water, soap, and clean towels and adequate toilet tissue must be available.
 - c. Reasonable effort for sanitation shall be maintained for temporary locations such as athletic events or public service fund raisers in temporary venues.
 - d. All equipment and supplies used to perform massage services must be maintained in a safe and sanitary condition. Lotions, creams, and oils must be kept free of possible bacterial contamination.
 - e. All licensees shall wash their hands in hot, soapy water or other antibacterial substance before and after each massage therapy treatment.
 - f. All licensees shall launder, before reuse, all materials furnished for the personal use of the massage therapy client, such as towels, linens and any draping materials.
 - g. Before proceeding with the massage of a client, each massage therapist shall have explained expected draping techniques and provide the client a clean drape or drapes for the purpose of covering the body in accordance with generally-accepted standards of practice.
- 3.4 All licensed massage therapists must acknowledge and sign an agreement to uphold the Code of Ethics adopted by the National Certification Board for Therapeutic Massage and Bodywork. Failure to adhere to the Code of Ethics shall be grounds for discipline under W.Va. Code 30-37-8.
- 3.5 Each applicant for licensure is responsible for paying the appropriate fees as adopted by the Board.
- 3.6 The fees authorized to be established by the board and necessary to the operation of the board are as follows:
- a. \$25 Application fee- a non-refundable fee to be paid by all applicants for a massage therapy license including those seeking reciprocal or provisional license.
 - b. \$100 Two year licensure renewal fee- a fee to be paid prior to the issuance of the license. This fee must be received by April 30 of the renewal year. This fee is non refundable after issuance of license.
 - c. \$200 Two year license fee- a fee to be paid at the time of application for initial OR reciprocal license. This fee does not include the \$25 application fee. This fee is nonrefundable after issuance of license.
 - d. \$25 Late fee- a non-refundable fee to be paid when a licensee fails to submit application and fees on or before April 30. This is in addition to the other required fees.
 - e. \$10 Duplicate or replacement license fee- a non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed license, renewal or duplicate license.
 - f. \$225 Two year-provisional license fee- a fee to be paid at the time of application for a provisional license. This fee is non-refundable after issuance of license.
 - g. \$10 Certified statement fee - a fee to be paid at the time of request that a licensee is licensed in West Virginia.
 - h. \$10 Failure to report change of address fee in writing fee- a fee that is to be paid by the applicant when they have failed to notify the Board in writing within 30 days of changing their address.
 - i. \$10 Failure to report name change in writing fee - a fee that is to be paid by the applicant when they have failed to notify the Board in writing within 30 days of changing their name.
 - j. \$25 Roster fee- a fee that is to be paid by at the time of the request for a copy of the roster of current licensed massage therapist.

- k \$100 Prorated license fee- a fee that is to be paid by the applicant when license is issued for a year or less for initial or reciprocal license. This fee is nonrefundable after issuance of license.
- l Photocopy per page fee- a \$.025 per page photocopying fee shall be paid at the time information is requested.

3.7 All fees shall be made payable to the West Virginia Massage Therapy Licensure Board and deposited by the Board in their account.

3.8 All licenses will expire on July 1st every two years.

194-1-4 Requirements for licensure.

4.1 The applicant must complete the application forms provided by the Board and supply the following information:

- (a) personal information, and
- (b) payment of fees required by Board and one (1) of the following:
 - (1) official letter proving graduation from a program of massage therapy education approved by a state agency in another state, the District of Columbia or a United States territory which approves educational programs, and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork or the West Virginia state college system board approved massage education both requiring a diploma from an accredited high school or the equivalent and completion of at least five hundred hours of supervised academic training, or completion of the educational and testing requirements of the American Massage Therapy Association (AMTA) prior to the first day of December, one thousand nine hundred ninety-four or,
 - (2) signed and notarized affidavits from at least five (5) different clients *unrelated* to the applicant and who received massage therapy from the applicant prior to the first day of December, one thousand nine hundred ninety-four, and other evidence acceptable to the board, which may include a photocopy of tax return for 1994, or
 - (3) photocopy of current certificate of the National Certification Board for Therapeutic Massage and Bodywork (NCTMB) exam.

4.2 Licensed massage therapists applying for renewal must complete the application form provided by the Board with the following information:

- (a) personal information, and
- (b) payment of fees required by the Board, and
- (c) photocopy of current certificate of the National Certification Board for Therapeutic Massage and Bodywork, and
- (d) documentation of completion of continuing education requirements that adhere to the NCTMB guidelines.

4.3 Massage therapists licensed outside of WV applying for reciprocal WV licensure, must complete the application form(s) provided by the Board with the following information:

- (a) personal information, and
- (b) photocopy of their current or most recent license, and
- (c) any information regarding any pending or prior investigations or disciplinary actions pertaining to such licensure. This shall include statements from any and all states in which the applicant is currently or formerly licensed, and
- (d) documentation of applicant's continuing education units (CEU'S) completed in the last two (2) years, and
- (e) applicants who are Nationally Certified, shall submit a photocopy of their current National Certification Board for Therapeutic Massage and Bodywork certificate

4.4 The board may issue a reciprocal license at it's discretion.

4.5 Applicants who apply for a two year provisional license must complete the application form provided by the Board with the following information:

- (a) personal information and,
- (b) verification of current practice by submitting signed and notarized affidavits from five (5) different clients *unrelated* to the applicant and who received massage therapy from the applicant in 1998 and,
- (c) official letter(s) proving completion of at least 250 hours of massage therapy training, and
- (d) signed and notarized statement that applicant is working towards taking the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork within the next two (2) years, or a photocopy of their application to take an upcoming National Certification Exam, and
- (e) payment of fees required by the Board

4.6 Massage therapists applying for renewal or reciprocal license must meet the current standards for continuing education hours required to conform to the National Certification Board for Therapeutic Massage and Bodywork guidelines.

4.7 The board may issue a provisional license at it's discretion.

4.8 Applicants who apply for a license in WV and who are not licensed in any other state, the District of Columbia or a United States territory or any other country or province must meet the requirements as set forth in rule # 4.1.

4.9 All licensed massage therapist and those applicants who apply for a license in WV are required to keep or have a record of continuing education units (CEU'S) including the title of the class, (workshop, etc.), the date, place, number of hours of instruction, instructor's name, sponsor, and the person to call to verify attendance (sponsoring group or instructor). A certain number of licensed massage therapists may be audited every two (2) years, and applicants may be asked to provide the information listed above.

194-1-5 Hearing for revocation, suspension, nonrenewal.

5.1 **Scope.** - These procedural rules establish procedures for hearings before the Board.

5.2 **Definitions.** - The following words and phrases as used in these rules shall have the following meanings.

- (a) "Board" means the West Virginia Massage Therapy Licensure Board.
- (b) "Demanding party" means an individual who has been denied a license to practice
- (c) massage therapy by the Board and who demands that the Board hold a hearing on the denial.
- (d) "Charged party" means an individual who holds a license to practice massage therapy issued by the Board and who has been charged by the board as described in subsections (c) and (d) of section 5.3 of these rules.
- (e) "Licensee" means an individual who holds a license to practice massage therapy issued by the Board.
- (f) "Chair" means chairperson of the Board.

5.3 Hearing Procedures.

(a) Any person denied a license by the Board who believes the denial was in violation of W. Va. Code §30-1-1 et seq. and/or 30-37-1 et seq. shall be entitled to a hearing on the denial upon presenting a written demand for hearing to the Board.

(b) When a written demand for hearing is received by the Board, the chair of the Board or the chair's authorized designee shall schedule a hearing within forty-five (45) days of receipt of the demand, unless postponed to a later date by mutual agreement of the demanding party and the chair or chair's designee.

(c) The Board may institute charges against any licensee when probable cause exists that the licensee has engaged in conduct that violates W. Va. Code § 30-37-1 et seq. or the Board's legislative rules. Charges may be based upon a verified written complaint filed with the Board and information gathered pursuant to the Board's investigation of the complaint. Charges may also be based on information gained solely through investigation by the Board.

(d) Charges initiated against a licensee as described in subsection (c) of this section shall be set forth in a Complaint and Notice of Hearing issued in the name of the Board as the agency of the state regulating the practice of massage therapy. The complaint and notice of hearing shall designate the Board as "Complainant", and designate the licensee involved as the "Respondent"; shall state the substance of each offense charged with sufficient particularity to reasonably apprise the Respondent of the nature, time and place of the conduct or condition which is the subject of the complaint; shall state the time, date and place of hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

(e) Upon receipt of a demand for a hearing described in subsection (a) and (b) of this section, the Chair of the Board or the chair's designee shall provide the demanding party with a Complaint and Notice Of Hearing issued in the name of the Board as the agency of the state regulating the practice of massage therapy. Such Complaint and Notice of Hearing shall designate the demanding party as the "Complainant", and shall designate the Board as the "Respondent"; shall set out the substance of each and every reason that the Board has denied the demanding party a license with sufficient particularity to reasonably apprise the demanding party of the nature, time and place of the conduct or condition at issue therein; shall state the date, time and place for the hearing; and, shall contain a statement of intention by the Board to appoint a hearing examiner.

(f) The Board may amend the charges set forth in a Complaint and Notice Of Hearing as it deems proper.

(g) A complaint and Notice Of Hearing, original or amended, shall be served on the demanding or charged party at least thirty (30) days prior to the date of hearing.

(h) Upon written motion received by the Board no later than twenty (20) days prior to the date of hearing, a more definite statement of the matters charged or the reasons stated for denial of licensure shall be provided to the demanding or charged party or his or her counsel.

(i) Hearings shall be conducted as follows:

(1) Each party to a hearing shall be entitled to be represented by an attorney-at-law, duly qualified to practice law in the State of West Virginia.

(2) The Board may be represented by counsel from the West Virginia Attorney General's office.

© Upon motion of the Board or any party assigning error or omission in any part of a transcript, the Board or its appointed hearing examiner shall settle all differences arising as to whether the transcript truly discloses what occurred at the hearing, and shall direct that the transcript be corrected and/or revised as appropriate so as to make it conform to the hearing.

(d) A transcript of the hearing shall be provided to all members of the Board for review at least ten (ten) days before the Board's vote is taken on its decision in any licensure or licensure disciplinary matter.

5.5 Submission of Proposed Findings of Fact and Conclusions of Law.

(a) Any party may submit proposed findings of fact and conclusions of law at a time and in a manner designated by the Board or its appointed hearing examiner.

5.6 Hearing Examiner.

(a) The Board may appoint a hearing examiner who shall be empowered to subpoena witnesses and documents, administer oaths and affirmations, examine witnesses under oath, rule on evidentiary matters, hold conferences for the settlement or simplification of issues by consent of the parties, cause to be prepared a record of the hearing so that the Board is able to discharge its functions, and otherwise conduct hearings.

(b) The hearing examiner shall prepare recommended findings of fact and conclusions of law for submission to the Board. The Board may adopt, modify or reject the hearing examiner's findings of fact and conclusions of law.

5.7 Conferences: Informal Disposition of Cases.

(a) At any time prior to the beginning of the hearing or thereafter, the Board, its designee or its appointed hearing examiner may hold conferences with the "demanding" or "charged party" for the following purposes:

- (1) To dispose of procedural requests, prehearing motions or similar matters;
- (2) To narrow or settle issues by consent of the parties; or
- (3) To provide for the informal disposition of cases by stipulation or agreement.

(b) The Board or its appointed hearing examiner may cause such conferences to be held on its own motion or by the request of a party.

© The Board may also initiate or consider stipulation or agreement proposals with regard to the informal disposition of cases and may enter into stipulations and/or consent agreements without conference.

5.8 Depositions.

(a) Evidentiary depositions may be taken and read or otherwise included into evidence as in civil actions in the circuit courts of this State.

5.9 Subpoena.

(a) Subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of documents may be issued by the Board, the Board's designee, or by the hearing examiner appointed by the Board. Subpoenas shall be issued pursuant to W. Va. Code §29A-5-1(b).

(b) Written requests by a party for the issuance of subpoenas or subpoenas duces tecum must be received by the Board no later than ten (10) days before a scheduled hearing. Any party requesting the issuance of subpoenas or subpoenas duces tecum is responsible for having them properly served in accordance with W. Va. Code §29A-5-1(b).

5.10 Orders.

(a) Any final order entered by the Board following a hearing conducted by these rules shall be entered within 45 days following the submission to the Board of all documents and materials necessary for the proper disposition of the case, including transcripts, and shall contain findings of fact and conclusions of law, pursuant to W. Va. Code §§29A-5-3 and 30-1-8(d).

(b) The findings of fact and conclusions of law must be approved by a majority of the Board by vote at a regular meeting, before a final order is entered. A copy of the final order approved by a majority of the Board shall be served upon the demanding or charged party and/or his attorney of record, if any, within five (5) days after entry by the Board by personal service or by registered or certified mail.

5.11 Appeal.

(a) An appeal from any final order entered in accordance with these rules shall comply with W. Va. Code §30-1-9.

5.12 Severability.

(a) If any provision of this rule, or the application thereof, to any person or circumstance is determined to be invalid, the invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provision or application, and to this end, the provisions of this rule are severable.