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(Plus all the volunteer
help we can get)

April 23, 1998

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Massage Therapy Licensure Board

RULE: New Rule, Series 1, Massage Therapy Licensure Rules

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: December 29, 1997

DATE FIRST EMERGENCY AMENDMENT FILED: March 31, 1998

FILED
APR 23 3 35 PM '98
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DECISION NO. 2-98

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


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EMERGENCY RULE DECISION
(ERD 2-98)

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- par. 1 The West Virginia Massage Therapy Licensure Board (Board) has filed the above amendments to a new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a 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-3-15a].
- 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 Board filed this emergency rule with supporting documents with the Secretary of State March 31, 1998 and with the LRMRC March 31, 1998.

par. 7 It is the determination of the Secretary of State that the Board 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 §30-37-6 reads:

(a) The board shall be responsible for licensure and continuing education requirements, standards of practice and professional ethics, disciplinary actions and other issues of concern.

(b) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code as are necessary to implement the provisions of this article.

© The board shall adopt reasonable rules regarding personal cleanliness of massage therapists and the sanitary conditions of towels, linens, creams, lotions and other materials, facilities and equipment used in the practice of massage therapy.

(d) All fees for licensure, renewal of licensure and all other related matters shall be set by the board.

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

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

(f) 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 Board are as follows:

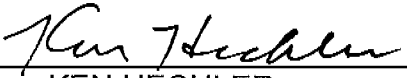
Both new language and amended regulations for licensing has necessitated this filing for an emergency amendment. Previous rules filed were "new rules" created as a result of the amendment to W. Va. Code §30-37.

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 13th 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.

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(f). . . "time limitation"

par. 14 This decision shall be cited as Emergency Rule Decision 2-98 or ERD 2-98 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Therapy Licensure Board, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

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