

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

August 12, 1993

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Medicine

RULE: Amendments, Series 1A, Licensing, Disciplinary and Complaint Procedures  
Physicians; Podiatrist

DATE FILED AS AN EMERGENCY RULE: July 13, 1993

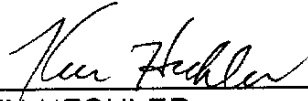
DECISION NO. 15-93

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.

**FILED**

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**OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE**

  
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### DECISION                      EMERGENCY RULE DECISION (ERD 15-93)

AGENCY: West Virginia Board of Medicine  
RULE: Amendments, Series 1A, Licensing, Disciplinary and Complaint  
Procedures, Physicians; Podiatrists  
FILED AS AN EMERGENCY RULE: July 13, 1993

- par. 1      The West Virginia Board of Medicine (Board) has filed the above amendments to an existing 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 thirty-five 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 July 13, 1993 and with the LRMRC July 13, 1993.

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 §30-3-7(a) reads:

*The board, in accordance with the provisions of this article, shall administer and supervise examinations and determine qualifications of applicants for licenses to practice medicine and surgery and to practice podiatry, shall issue licenses to qualified applicants and shall regulate the professional conduct and discipline of such individuals.*

par. 9 §30-3-10(b)(4) of the WV Code further states:

*He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score; Provided, That the said board, or a majority of them, may accept in lieu of an examination of applicants, the certificate of the national board of medical examiners. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of medicine and surgery, before being eligible for reexamination.*

par. 10 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (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. 12 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.

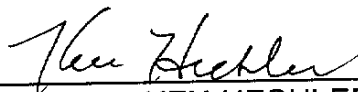
par. 13 The facts and circumstances as presented by the Board are as follows:

The filing of these rules on an emergency basis is necessary because in order to obtain a medical license in West Virginia, an applicant must pass an examination approved by the Board (Code §30-3-10). Present rules specify the FLEX or NBME examination as such an approved exam. Applicants are now presenting themselves for medical licensure who have passed components of a new three part exam, the USMLE (United States Medical Licensing Examination), which will supersede and replace the FLEX and NBME, and it is essential that this USMLE be recognized as an acceptable, approved exam in the Board's rules so that qualified persons may be licensed. West Virginia is in need of qualified medical practitioners, and in order to prevent substantial harm to the public interest and to immediately preserve the public peace, health, safety and welfare, these rules are necessary on an emergency basis to enable the Board to license qualified persons who have passed the components of the USMLE, not only the FLEX or NBME, which are being phased out.

par. 14 In order to be able to keep qualified doctors in the State of West Virginia, the Board of Medicine must provide examinations. The Code mandates that the Board determine passing grades prior to testing. This rule both accepts the new test and sets passing scores.

par. 15 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). . . "prevent substantial harm to the public interest".

par. 16 This decision shall be cited as Emergency Rule Decision 15-93 or ERD 15-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Board of Medicine, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

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