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(Plus all the volunteer
help we can get)

February 13, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: Board of Medicine

RULE: Amendments, Series 1A, Licensing, Disciplinary & Complaint
Procedures: Physicians, Podiatrists

DATE FILED AS AN EMERGENCY RULE: January 22, 1992

DECISION NO. 5-92

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

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OFFICE OF THE SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION (ERD 5-92)

AGENCY: Board of Medicine
RULE: Amendments, Series 1A, Licensing, Disciplinary & Complaint Procedures: Physicians, Podiatrists
FILED AS AN EMERGENCY RULE: January 22, 1992

- par. 1 The Board of Medicine (Board) has filed the above amendments 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 January 22, 1992 and with the LRMRC January 22, 1992.

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)(1) reads in part:

In carrying out its functions, the board may:

(1) Adopt such regulations as are necessary to carry out the purposes of this article.

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 (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 Board are as follows:

A rule adopted by the Board in 1991, pertaining to chelation therapy, received no comments of any kind during the procedure for adoption of the rule. After the rule became effective, a medical practitioner previously providing chelation therapy to patients ceased the provision of the therapy due to the rule and many patients have contacted the Board expressing distress that they no longer have the choice of obtaining this treatment from a medical practitioner in this State. Public hearings have been held in December, 1991, and January, 1992. The Board was not aware of the number of West Virginia citizens perceiving benefits from the treatment frowned upon in the rule, many of whom claim their health is steadily deteriorating as a result of the rule. It is to prevent

substantial harm to the public interest and to immediately preserve the public peace, health, safety & welfare that the removal of this rule is enacted on an emergency basis.

The Board has substituted another rule for the removed rule, pertaining to disciplining a practitioner who fails to meet the standard of practice in connection with any supervisory and/or collaborative agreement with any category of health practitioner. The Board must be able to discipline physicians and podiatrists who do not meet their obligations in this regard so that citizens receive proper care and treatment, and at present there is no mechanism for the Board to do this. Again, it is to prevent substantial harm to the public interest and to immediately preserve the public peace, health, safety and welfare that this rule is added and enacted on an emergency basis.

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). . . "prevent substantial harm to the public interest" and "preserve the public peace, health, safety and welfare."

par. 14 This decision shall be cited as Emergency Rule Decision 5-92 or ERD 5-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Medicine, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

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