



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

May 4, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Medicine

RULE: New Rule, Series 3 Fees for Services Rendered by the Board of Medicine

DATE FILED AS AN EMERGENCY RULE: March 25, 1987

DECISION NO. 7-87

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

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE May 4, 1987
ADMINISTRATIVE LAW DIVISION

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DECISION

Emergency Rule Decision (ERD 7-87)

AGENCY: Board of Medicine
RULE: New Rule, Series 3, Fees for Services Rendered by the
Board of Medicine

DATE FILED AS AN EMERGENCY RULE: March 25, 1987

- par. 1 The Board of Medicine has filed the above series 3 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(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 ERD 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 of Medicine has filed this emergency rule with supporting documents with the Secretary of State on March 25, 1987.

par. 7 It is the determination of the Secretary of State that the Board of Medicine has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §30-3-10(b) reads in part (SB 166 passed March 10, 1987 and effective from passage):

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of such reasonable fee to be set by the board.

par. 9 It is the determination of the Secretary of State that the Board of Medicine has not exceeded its statutory authority in the promulgation of these emergency rules

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 of Medicine are as follows:

The West Virginia Board of Medicine files herewith on an emergency basis Legislative Rules establishing fees to be charged by the Board as a result of the passage during the 1987 legislative session of Committee Substitute for S.B. 166, effective March 10, 1987, authorizing the Board of Medicine to establish reasonable fees.

The filing of the rules on a emergency basis is necessitated by the dramatic and ever-increasing depletion of the Board funds as a result of inadequate fees charged hereto in accordance with statutory requirements. Were the new fees not to be authorized on an emergency basis at this time, the Board would be unable to offer two medical examinations for prospective

physicians this year, as is the custom and practice, because fees owed by the West Virginia Board to national medical examination boards have steadily increased and are far in excess of what the West Virginia Board has been authorized to charge applicants. The offering of only one examination in 1987 would create substantial harm to the public interest in that physicians would be discouraged thereby from practicing in West Virginia.

Further, as licensed physicians pay a biennial renewal fee and 1987 is the year of such biennial payment to the Board, if the fees were not raised now, the Board would be unable to recoup its additional losses for a two year period, thereby rendering it increasingly difficult to carry out its purpose. In order to prevent substantial harm to the public interest and to immediately preserve the public peace, health, safety and welfare, these rules are enacted on an emergency basis to keep the Board of Medicine solvent and able to carry out its duties of protecting the public interest pursuant to §30-3-1, et seq., West Virginia Code.

- par. 13 It is the decision of the Secretary of State that this proposal by the Board of Medicine is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Board of Medicine; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 14 This decision shall be cited as Emergency Rule Decision 7-87 or ERD 7-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Board of Medicine, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

PAID BY THE OFFICE OF
THE SECRETARY OF STATE
MAY 4 1987
ADMINISTRATIVE DIVISION

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