

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #7

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FILED

1991 MAY 29 AM 11:08

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: West Virginia Board of Medicine TITLE NUMBER: 11

CITE AUTHORITY: West Virginia Code §30-3-12

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

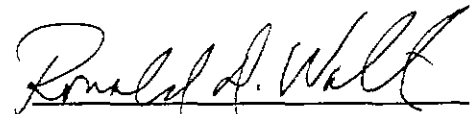
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 6

TITLE OF RULE BEING FILED AS AN EMERGENCY: Continuing Education  
for Physicians and Podiatrists

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:  
A provision of Engrossed Committee Substitute for House Bill 2478, enacted during the 1991 Legislative Session and effective May 29, 1991, states that the Board of Medicine shall file emergency rules no later than June 1, 1991, in order to provide adequate notice to physicians and podiatrists of the types of continuing education which will be considered satisfactory to the Board. As the physicians and podiatrists must complete 50 hours of education during the next two years, they need to know now what types of continuing education will satisfy the requirement. These rules must be filed on an emergency basis to comply with a time limitation established by the Code §30-3-12.

Use Additional Sheets If Necessary.



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1991 MAY 29 AM 11

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SUMMARY OF CONTENT OF LEGISLATIVE RULE AND STATEMENT  
OF CIRCUMSTANCES WHICH REQUIRE THE RULE:  
CONTINUING EDUCATION FOR PHYSICIANS AND PODIATRISTS

This rule requires that beginning July 1, 1993, successful completion of a minimum of fifty (50) hours of continuing education satisfactory to the Board during the preceding two (2) year period is required for license renewal for physicians and podiatrists. Continuing education considered satisfactory to the Board is specified in the rule for both physicians and podiatrists.

The procedure for providing timely information and certification to the Board pertaining to continuing education is set forth, as is permission for the Board to conduct compliance audits and to require written documentation. Licenses are automatically suspended for failure to comply with continuing education requirements and remain suspended until all required material is supplied to the Board. Inactive licensees who wish to change to active status must supply documentation of successful completion of the continuing education hours required.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

1991 MAY 29 AM 11:08

Rule Title: Continuing Education for Physicians and Podiatrists

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency West Virginia Board of Medicine Address 101 Dee Drive,  
Charleston, West Virginia 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

No increase in state funding will be needed.

3. Objectives of these rules:

To provide for successful completion of a minimum of fifty hours of continuing education every two years, as a condition of relicensure for physicians and podiatrists.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

Physicians and podiatrists will pay for attendance at some continuing education classes.

C. Economic Impact on Citizens/Public at Large.

None

Date: May 29, 1991

Signature of Agency Head or Authorized Representative

Ronald J. Walk

FILED

DATE: May 29, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Board of Medicine

1991 MAY 29 AM 11:08

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

EMERGENCY RULE TITLE: Continuing Education for Physicians and Podiatrists

1. Date of filing: May 29, 1991
2. Statutory authority for promulgating the emergency rule: West Virginia Code §30-3-12
3. Date of filing of proposed legislative rule: 5-29-91
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
The emergency rule adopts new language.
5. Has the same or similar emergency rule previously been filed and expired?  
No
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.  
See answer to question 7.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

This emergency rule was promulgated in order to comply with a time limit established in West Virginia Code §30-3-12 specifying that no later than June 1, 1991, the Board shall file rules under Code §29A-3-15.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See answer to question 7.

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TITLE 11  
LEGISLATIVE RULE  
BOARD OF MEDICINE

SERIES 6  
CONTINUING EDUCATION FOR  
PHYSICIANS AND PODIATRISTS

FILE  
1991 MAY 29

OFFICE OF THE  
SECRETARY

§11-6-1. General.

- 1.1. Scope. - These legislative rules address requirements for continuing education satisfactory to the Board for physicians and podiatrists.
- 1.2. Authority. - W.Va. Code §30-3-12.
- 1.3. Filing Date. -
- 1.4. Effective Date. -

§11-6-2. Continuing Education Satisfactory to the Board.

- 2.1. Physicians. - Beginning July 1, 1993, successful completion of a minimum of fifty hours of continuing medical education satisfactory to the Board during the preceding two year period is required for medical license biennial renewal.
- 2.2. Continuing medical education satisfactory to the Board means continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians. For physicians, there are no other types or categories of continuing medical education satisfactory to the Board.
- 2.3. Podiatrists. - Beginning July 1, 1993, successful completion of a minimum of fifty hours of continuing podiatric education satisfactory to the Board during the preceding two year period is required for podiatric license biennial renewal.
- 2.4. Continuing podiatric education satisfactory to the Board means:

- A. Continuing podiatric education approved by the council on podiatric education, or
- B. Continuing podiatric education given under the auspices of the podiatry colleges in the United States, or
- C. Continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians.

There are no other types or categories of continuing podiatric education satisfactory to the Board.

- 2.5. Hours; Physicians and Podiatrists - For the purposes of this section, one clock hour of attendance equals one hour of continuing education.

**§11-6-3. Certification of Successful Completion of Continuing Education Requirements.**

- 3.1. Certification. - Every applicant for licensure renewal shall timely submit to the Board a certification of successful completion of a minimum of fifty hours of continuing education during the preceding two year period. Failure of an applicant to submit such certification in a timely fashion shall result in the automatic suspension of license.
- 3.2. Form of Certification. - The Board shall cause to be imprinted on its biennial renewal application forms a certification wherein the applicant places the applicant's signature and the date after an attestation to the truth and correctness of the applicant's statements pertaining to the successful completion of the required continuing education. The certification shall include a statement that any license issued from the application is based on the truth of the applicant's statements and that if false information is submitted in the application, such an act constitutes good cause for the denial or revocation of the applicant's license to practice in the State of West Virginia.
- 3.3. Timely Submission of Certification. - In order for a certification to be submitted to the Board in a timely fashion, the certification must be received in the Board offices before the first day of July of the year of renewal of the license.

§11-6-4. Written Documentation of Successful Completion of Continuing Education Requirements.

- 4.1. Audits - The Board may conduct such audits and investigations as it deems necessary to determine if licensees are complying with continuing education requirements and if the statements made on the Board's renewal application forms as to continuing education are accurate.
- 4.2. When Written Documentation Requested. - Any licensee is required to provide supporting written documentation of successful completion of the continuing education represented as received on the biennial renewal application form, if the Board requests such written documentation in writing. Upon receipt of such a written request for written documentation of the successful completion of the continuing education received, the licensee shall provide to the Board such written documentation so that it is received by the Board within thirty days of the licensee's receipt of the written request.
- 4.3. Automatic Suspension of License. - When a licensee's license is automatically suspended for failure to timely submit to the Board a certification of successful completion of a minimum of fifty hours of continuing education satisfactory to the Board, the license shall remain suspended until such time as the certification is received by the Board as set forth in section three of these regulations, and until such time as all supporting written documentation is submitted to and approved by the Board.
- 4.4. Failure or Refusal to Provide Written Documentation. - Failure or refusal of the licensee to provide written documentation requested by the Board as set forth in section 4.2 is prima facie evidence of renewing a license to practice medicine or podiatry by fraudulent misrepresentation and may subject the licensee to disciplinary proceedings under section fourteen of article three of chapter thirty of the West Virginia Code.
- 4.5. Inactive License. - Beginning July 1, 1993, in the case of a licensee who holds an inactive license and who makes a written request to the Board for active status, the licensee shall submit written documentation of successful completion of a minimum of fifty hours of continuing

education satisfactory to the Board during each preceding two year period. No request for a change from inactive to active license shall be considered by the Board until such written documentation is submitted to and approved by the Board, accompanied by a certification in accordance with section three of these regulations.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
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DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE June 26, 1991  
ADMINISTRATIVE LAW DIVISION

June 26, 1991

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

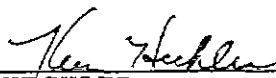
AGENCY: Board of Medicine

RULE: New Rule, Series 6, Continuing Education for Physicians  
and Podiatrists

DATE RULE FILED AS AN EMERGENCY RULE: May 29, 1991

DECISION NO. 33-91

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

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
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(Plus all the volunteer  
help we can get)

#### DECISION

#### EMERGENCY RULE DECISION (ERD 33-91)

AGENCY: West Virginia Board of Medicine  
RULE: New Rule, Series 6, Continuing Education for Physicians and Podiatrists  
FILED AS AN EMERGENCY RULE: May 29, 1991

- par. 1 The West Virginia Board of Medicine (Board) has filed the above new rule as an emergency.
- 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 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 May 29, 1991 and with the LRMRC May 29, 1991.

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 §30-2-12 reads:

*(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years and shall be renewed upon a receipt of a reasonable fee, as set by the board, submission of an application on forms provided by the board and, beginning with the biennial renewal application forms completed by licensees and submitted to the board in one thousand nine hundred ninety-three, a certification in accordance with §29A-1-1 et seq. of this code of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during the preceding two-year period. Continuing medical education satisfactory to the board is continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians and continuing podiatric education satisfactory to board is continuing podiatric education approved by the council on podiatric education.*

*In addition, the Legislature hereby finds and declares that it is in the public interest to encourage alternate categories of continuing education satisfactory to the board for physicians and podiatrists. In order to provide adequate notice of the same to physicians and podiatrists, no later than June 1, 1991, the board shall file rules under the provisions of §29A-3-15 of this code, delineating any alternate categories of continuing medical or podiatric education which may be considered satisfactory to the board and procedures for board approval of such continuing education.*

*Notwithstanding any provision of this chapter to the contrary, failure to timely submit to the board a certification in accordance with rules and regulations promulgated by the board in accordance with §29A of this code of successful completion of a minimum of 50 hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, shall, beginning July 1, 1993, result in the automatic suspension of any license to practice medicine and surgery or podiatry until such time as the certification in accordance with rules and regulations, promulgated by the board in accordance with §29A of this code, with all supporting written documentation, is submitted to and approved by the board.*

*Any individual who accepts the privilege of practicing medicine and surgery or podiatry in this state is required to provide supporting written documentation of the continuing education represented as received within 30 days of receipt of a written request to do so by the Board. If a licensee fails or refuses to provide supporting written documentation of the continuing education represented as received as required in this section, such failure or refusal to provide supporting written documentation is prima facie evidence of renewing a license to practice medicine and surgery or podiatry by fraudulent misrepresentation.*

*(b) The board may renew, on an inactive basis, the license of a physician or podiatrist who is currently licensed to practice medicine and surgery or podiatry in, but is not actually practicing, medicine and surgery or podiatry in this state. A physician or podiatrist holding an inactive license shall not practice medicine and surgery or podiatry in this state. His or her inactive license may be converted by the board to an active one upon a written request to the board that accounts for his or her period of inactivity to the satisfaction of the board: Provided, That beginning July 1, 1993, such licensee submits written documentation of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during each preceding two year period. An inactive license may be obtained upon receipt of a reasonable fee, as set by the board, and submission of an application on forms provided by the board on a biennial basis.*

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:

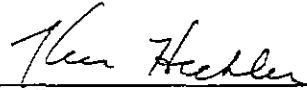
*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent 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 provision of Engrossed Committee Substitute for House Bill 2478, enacted during the 1991 Legislative Session and effective May 29, 1991, states that the Board of Medicine shall file emergency rules no later than June 1, 1991, in order to provide adequate notice to physicians and podiatrists of the types of continuing education which will be considered satisfactory to the Board. As the physicians and podiatrists must complete 50 hours of education during the next two years, they need to know now what types of continuing education will satisfy the requirement. These rules must be filed on an emergency basis to comply with a time limitation established by the Code §30-3-12.

- 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). . . "time limitation" (HB 2478)
- par. 14 This decision shall be cited as Emergency Rule Decision 33-91 or ERD 33-91 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

Entered \_\_\_\_\_

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE June 26, 1991  
ADMINISTRATIVE LAW DIVISION