



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

Form #7

Do not mark in this box
Filing Date

FILED

JUL 19 9 25 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

August 29, 1996

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Board of Medicine TITLE NUMBER: 11

CITE AUTHORITY: West Virginia Code §31B-13-1304, §29A-3-15

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: Series 7

TITLE OF RULE BEING FILED AS AN EMERGENCY: Formation and approval of
Professional Limited Liability Companies

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR ~~30th~~ 42nd DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

(See attachment)

Signature

Use additional sheets if necessary

4.00



R. Curtis Arnold, D.P.M.
South Charleston

Bruce L. Berry, M.D.
Charleston

H. Darrel Darby, D.P.M.
Huntington

Ahmed D. Faheem, M.D.
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Mr. Stephen P. Goodwin
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Michael Grome, P.A.-C.
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Mr. George G. Guthrie
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Mrs. Mary Boyd Kears
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State of West Virginia

WEST VIRGINIA BOARD OF MEDICINE

101 Dee Drive

Charleston, West Virginia 25311

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The facts and circumstances constituting the emergency are as follows. The filing of the rules on an emergency basis is necessitated by several factors:

1. The Board of Medicine has unanimously determined at its regular meeting on July 15, 1996, that the rule should be filed on an emergency basis.

2. The benefits of professional limited liability companies for professionals whose formation is now authorized by SB 338 are seen by some of those under the Board's jurisdiction to be so substantial that some physician groups have requested that the Board act expeditiously with respect to this matter so that professional limited liability companies made up of physicians may be formed immediately to take advantage of the benefits, rather than wait an additional six months for the rules to be effective.

3. There may be groups of physicians who have formed limited liability companies in the past who must be required to re-form and re-file now in accordance with the requirements of West Virginia Code §31B-13-1301 et seq. and the Board's rules, and such companies are not currently in compliance with those requirements and the public will not be protected in the absence of approval of the proposed rule on an emergency basis.

PRESIDENT

A. Paul Brooks, Jr., M.D.
Parkersburg

VICE PRESIDENT

Sarjit Singh, M.D.
Weirton

SECRETARY

Henry G. Taylor, M.D., M.P.H.
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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Formation and approval of Professional Limited Liability Companies

Type of Rule: X Legislative Interpretive Procedural

Agency West Virginia Board of Medicine

Address 101 Dee Drive
Charleston, WV 25311

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

No increase in state funding will be needed.

3. Objectives of these rules:

To carry out the requirements imposed by Senate Bill 338, signed by the Governor on March 25, 1996, West Virginia Code §31B-13-1301 et seq., in order that professional limited liability companies consisting of physicians or podiatrists licensed under West Virginia Code §30-3-1 et seq. may be formed in a manner consistent with the requirements of Senate Bill 338 and with the public interest and safety, and to recoup the costs to the Board of processing filings by the professional limited liability companies.

Rule Title: Formation and approval of Professional Limited Liability Companies

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Not aware that there will be any

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

Professional limited liability companies apparently have financial advantages for professionals

C. Economic Impact on Citizens/Public at Large.

Not aware that there will be any

Date: July 18, 1996

Signature of Agency Head or Authorized Representative

Ronald A. Walt

DATE: July 19, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Board of Medicine

EMERGENCY RULE TITLE: Formation and Approval of Professional
Limited Liability Companies

1. Date of Filing July 19, 1996

2. Statutory authority for promulgating emergency rule:

West Virginia Code §31B-13-1304, §29A-3-15

3. Date of filing of proposed legislative rule: July 19, 1996

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.

The benefits of professional limited liability companies require that professional licensing boards move rapidly to permit the formation and approval of such entities. Various groups of physicians have requested that the Board of Medicine act expeditiously with respect to this matter. In addition, there may be groups of professionals who have formed limited liability companies in the past who must be required to re-form and re-file in accordance with the requirements of SB 338, and such companies are not currently in compliance with the requirements of SB 338 and the public is thus not protected in the absence of approval of the proposed rule on an emergency basis.

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.

N/A

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

The benefits of professional limited liability companies require that professional licensing boards move rapidly to permit the formation and approval of such entities. Various groups of physicians have requested that the Board of Medicine act expeditiously with respect to this matter. In addition, there may be groups of professionals who have formed limited liability companies in the past who must be required to re-form and re-file in accordance with the requirements of SB 338, and such companies are not currently in compliance with the requirements of SB 338 and the public is thus not protected in the absence of approval of the proposed rule on an emergency basis.



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STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE SUMMARY OF CONTENT OF RULE

This rule is promulgated pursuant to provisions in S.B. 338, pertaining to limited liability companies, enacted during the 1996 Legislative Session and signed by the Governor on March 25, 1996.

A portion of S.B. 338 addresses professional limited liability companies (PLLC's), authorizing their formation and requiring each licensing board for each of the professions authorized to form such companies to propose legislative rules providing for the implementation of Article 13 of Chapter 31B and for the formation and approval of professional limited liability companies for the particular profession under the jurisdiction of each licensing board.

This rule specifies the simple procedures for the formation and approval of such companies for physicians and podiatrists who are under the jurisdiction of the West Virginia Board of Medicine, requiring the filing of certain information with the Board at the time of formation and on an annual basis thereafter, and the payment of an initial filing fee and an annual renewal fee.

The rule provides for notification from the Board to the PLLC to cease rendering professional services in the State in the event of non-compliance with the rule.

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TITLE II
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF MEDICINE

FILED

JUL 19 9 25 AM '96

SERIES 7
FORMATION AND APPROVAL OF PROFESSIONAL
LIMITED LIABILITY COMPANIES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§11-7-1. General.

1.1. Scope. - This legislative rule addresses procedures for the formation and approval of professional limited liability companies for physicians and podiatrists.

1.2. Authority. - W. Va. Code §31B-13-1304.

1.3. Filing Date. -

1.4. Effective Date. -

§11-7-2. Definitions.

2.1. Board. - The West Virginia Board of Medicine, established in W. Va. Code §30-3-5.

2.2. Professional limited liability company. - a limited liability company organized under Chapter 31B of the W. Va. Code for the purpose of rendering a professional service.

2.3. Professional services. - The services rendered under W. Va. Code §30-3-1 et seq., by physicians and podiatrists.

§11-7-3. Procedures for Formation and Approval of Professional Limited Liability Companies for Physicians and Podiatrists; Fees.

3.1. Physicians licensed to practice medicine and surgery in an active status in this State who desire to render medical professional services as a limited liability company shall comply with the provisions of West Virginia Code §31B-13-1 et seq. No professional limited liability company shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.

3.2. Podiatrists licensed to practice podiatry in an active status in this State who desire to render podiatric professional services as a limited liability company shall comply with the provisions of West Virginia Code §31B-13-1 et seq. No professional limited liability company shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.

3.3. The name of a professional limited liability company

shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or "Professional L.L.C."

3.4. Every professional limited liability company shall file with the Board at the time of formation, and on an annual basis on or before the first day of July, the names of its two or more members, and written documentation that the professional limited liability company carries at least one million dollars of professional liability insurance, together with an initial filing fee of \$100 and an annual renewal fee of \$100.

3.4.a. The requirement of carrying one million dollars of professional liability insurance is satisfied if the professional limited liability company provides one million dollars of funds specifically designated and segregated for the satisfaction of judgements against the company members or any of its professional or nonprofessional managers or employees arising out of the performance of professional services to patients or clients of the company, by:

(1) Deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or

(2) A bank letter of credit or insurance company bond.

3.5. Every limited liability company formed prior to the effective date of this rule whose members are physicians or podiatrists licensed under the provisions of West Virginia Code §30-3-1 et seq. shall re-form and re-file pursuant to the provisions of West Virginia Code §31B-13-1 et seq. and of this rule.

3.6. Every professional limited liability company shall file with the Board a copy of the annual report required to be filed with the secretary of state under West Virginia Code §31B-2-211. The copy of the annual report, and a copy of any corrected annual report filed with the secretary of state, shall be filed with the Board on or before the first day of July on an annual basis.

3.7. Every professional limited liability company in compliance with all the provisions of this rule shall be approved by and remain approved by the Board.

3.8. If any person ceases to be a member of any professional limited liability company, the Board shall be so notified in writing within twenty days therefrom that such person has ceased to be a member of such professional limited liability company. The fact that a person ceases to be a member of a professional limited liability company shall not affect the approval of such professional limited liability company by the Board, provided that the Board determines that the professional limited liability company remains in compliance with all the provisions of this rule.

§11-7-4. Notification of Non-compliance, Cessation of Rendering Professional Services.

3.9. Should the Board determine that a professional limited liability company is not in compliance with all the provisions of this rule and should cease rendering professional services in the State, the Board shall so notify the professional limited liability company in writing, and upon receipt of such written notice, said professional limited liability company shall cease rendering professional services in the State.

§11-7-5. Physician-Patient and Podiatrist-Patient Relationship.

3.10. The provisions of this rule shall not be construed to alter or affect the physician-patient or podiatrist-patient relationship.

KEN HECHLER
Secretary of State

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Deputy Secretary of State

STEPHEN N. REED
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(Plus all the volunteer
help we can get)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 29 3 29 PM '96

FILED

August 29, 1996

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Medicine

RULE: New Rule, Series 7 Formation & Approval of Professional Limited Liability Companies

DATE FILED AS AN EMERGENCY RULE: July 19, 1996

DECISION NO. 14-96

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.



KEN HECHLER
Secretary of State



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EMERGENCY RULE DECISION (ERD 14-96)

AGENCY: West Virginia Board of Medicine
RULE: New Rule, Series 7, Formation and Approval of Professional Limited Liability Companies

FILED AS AN EMERGENCY RULE: July 19, 1996

- par. 1 The West Virginia Board of Medicine (Board) has filed the above 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(b))].
- 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 19, 1996 and with the LRMRC July 19, 1996.
- 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 §31B-13-1304 reads:

The licensing board for each of the professions authorized to form professional liability companies under this article shall propose legislative rules for promulgation, in accordance with the provisions of §29A-3-1 et seq, providing for the implementation of this article and the procedures for the formation and approval of professional limited liability companies for the particular profession under the jurisdiction of each licensing 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 (C) 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 needs 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:

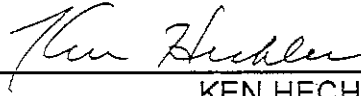
1. The Board of Medicine has unanimously determined at its regular meeting on July 15, 1996 that the rule should be filed on an emergency basis.
2. The benefits of professional limited liability companies for professionals whose formation is now authorized by SB 338 are seen by some of those under the Board's jurisdiction to be so substantial that some physician groups have requested that the Board act expeditiously with respect to this matter so that professional limited liability companies made up of physicians may be formed immediately to take advantage of the benefits, rather than wait an additional 6 months for the rules to be effective.
3. There may be groups of physicians who have formed limited liability companies in the past who must be required to reform and refile now in accordance with the requirements of W. Va. Code §31B-13-1301 et seq. and the Board's rules and such companies are not currently in compliance with those requirements and the public will not be protected in the absence of approval of the proposed rule 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(f)

par. 14

This decision shall be cited as Emergency Rule Decision 14-96 or ERD 14-96 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 _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 29 3 29 PM 1996

FILED