

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

SEP 9 10 19 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Board of Medicine TITLE NUMBER: 11

CITE AUTHORITY Legislative

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

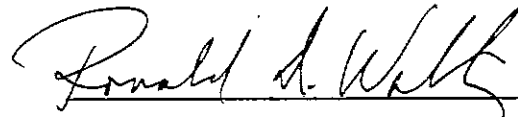
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 7

TITLE OF RULE BEING PROPOSED: Formation and Approval of

Professional Limited Liability Companies

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Formation and approval of Professional Limited Liability Companies

Type of Rule: 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. Wall

DATE: September 9, 1996.

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Board of Medicine

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

1. Authorizing statute(s) citation West Virginia Code §31B-13-1304

2. a. Date filed in State Register with Notice of Hearing ^{Comment Period}

July 19, 1996

b. What other notice, including advertising, did you give of the hearing?

Letters to interested groups and individuals (see attached)

c. Date of Hearing(s) ^{Comment Period}

Comment Period ended August 23, 1996

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following ~~public hearing~~ ^{Comment Period}
(be exact)

September 9, 1996

f. Name and phone number(s) of agency person(s) to contact for additional information:

Ronald D. Walton 558-2921

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

b. Date of hearing: NA

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

d. Attach findings and determinations and reasons:

Attached NA



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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WEST VIRGINIA BOARD OF MEDICINE

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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.

PRESIDENT

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

VICE PRESIDENT

Sarjit Singh, M.D.
Weintou

SECRETARY

Henry G. Taylor, M.D., M.P.H.
Charleston

COUNSEL

Deborah Lewis Rodecker
Charleston

EXECUTIVE DIRECTOR

Ronald D. Walton
Charleston

TITLE II
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF MEDICINE

SERIES 7
FORMATION AND APPROVAL OF PROFESSIONAL
LIMITED LIABILITY COMPANIES

FILED
SEP 9 10 19 AM '56
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.



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.
Beckley

Mr. Stephen P. Goodwin
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State of West Virginia

WEST VIRGINIA BOARD OF MEDICINE

101 Dee Drive

Charleston, West Virginia 25311

Telephone (304) 558-2921

Fax (304) 558-2084

September 9, 1996

Mr. George G. Guthrie
Charleston

Mrs. Mary Boyd Kearse
Martinsburg

Phillip B. Mathias, M.D.
Glen Dale

Carmen R. Rexrode, M.D.
Moorefield

Joseph Smith, M.D.
Dunbar

Lee Elliott Smith, M.D.
Princeton

HAND DELIVERED

Ms. Debra Graham
Legislative Rule-Making Review Committee
Capitol Complex MB47
Charleston, West Virginia 25305

Dear Ms. Graham:

Enclosed for filing please find fifteen copies of the Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee, attached to which is Appendix B, Fiscal Note for Proposed Rules; a Legislative Rule-Making Review Committee completed questionnaire with attachments; a Statement of Circumstances Which Require the Rule and Summary of Content of Rule, and the Rule itself, 11 CSR 7, Formation and Approval of Professional Limited Liability Companies.

This Rule has been approved effective August 29, 1996, as an Emergency Rule by the Secretary of State's Office. As you know, Emergency Rules expire after fifteen months under the provisions of West Virginia Code §29A-3A-16, and I therefore request that if possible, even though I recognize that the Board is ten days past the deadline for filing this Rule with the Committee, the Rule be placed before the Committee so that it may be authorized during the 1997 Legislative Session. If it is not placed before the Legislative Rule-Making Review Committee so that it may be enacted in the 1997 Legislative Session, it will die at the end of fifteen months, in November, 1997.

You were kind enough to go over an earlier draft of the Rule with me, at which time I believe I explained to you that it would not be possible for the Board to file the Rule as approved by the

PRESIDENT

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

VICE PRESIDENT

Sarjit Singh, M.D.
Weinon

SECRETARY

Henry G. Taylor, M.D., M.P.H.
Charleston

COUNSEL

Deborah Lewis Rodecker
Charleston

EXECUTIVE DIRECTOR

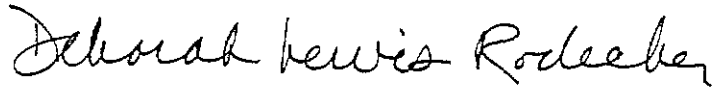
Ronald D. Walton
Charleston

Ms. Debra Graham
Page Two
September 9, 1996

Board until after August 30, 1996, because of the fact that the Board would not meet until today. If there is any further information that I am able to provide you, please let me know.

Thank you for your courtesies.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Lewis Rodecker".

Deborah Lewis Rodecker

DLR/ks
Enclosures



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

Bruce L. Berry, M.D.
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WEST VIRGINIA BOARD OF MEDICINE

101 Dee Drive

Charleston, West Virginia 25311

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July 19, 1996

Mr. George Rider
Executive Director
West Virginia State Medical Association
Post Office Box 4106
Charleston, West Virginia 25364

RE: Proposed Rule of the West Virginia Board of Medicine
Pertaining to Professional Limited Liability Companies

Dear Mr. Rider:

Enclosed with this letter, please find a copy of a proposed rule filed by the West Virginia Board of Medicine with the Office of the Secretary of State and the Legislative Rule-Making Review Committee this day, with supplementary materials required for such filing. Please note that a comment period has been established by the Board of Medicine to end August 23, 1996. If members of your organization have comments they wish to make on this proposed rule, we do request that the comments are received at the Board on or before August 23, 1996.

Thank you for your cooperation.

Sincerely,

Ronald D. Walton

RDW/ks
Enclosures
pc: Michele Grinberg, Esq., with Enclosures

PRESIDENT

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

VICE PRESIDENT

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WEST VIRGINIA BOARD OF MEDICINE

101 Dee Drive
Charleston, West Virginia 25311
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Fax (304) 558-2084

July 19, 1996

Anthony James Ferrise, Esquire
Post Office Box 553
Charleston, West Virginia 25322

RE: Proposed Rule of the West Virginia Board of Medicine
Pertaining to Professional Limited Liability Companies

Dear Mr. Ferrise:

Enclosed with this letter, please find a copy of a proposed rule filed by the West Virginia Board of Medicine with the Office of the Secretary of State and the Legislative Rule-Making Review Committee this day, with supplementary materials required for such filing. Please note that a comment period has been established by the Board of Medicine to end August 23, 1996. In accordance with your letter request of June 25, 1996, I am forwarding a copy of the proposed rule to you. If you have comments you wish to make regarding this proposed rule, we do request that the comments are received at the Board on or before August 23, 1996.

Thank you for your cooperation.

Sincerely,

Ronald D. Walton

RDW/ks
Enclosures

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

VICE PRESIDENT
Sarjit Singh, M.D.
Weirton

SECRETARY
Henry G. Taylor, M.D., M.P.H.
Charleston

COUNSEL
Deborah Lewis Rodecker
Charleston

EXECUTIVE DIRECTOR
Ronald D. Walton
Charleston



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

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101 Dec Drive

Charleston, West Virginia 25311

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Fax (304) 558-2084

July 19, 1996

Louis S. Southworth, II, Esquire
Post Office Box 553
Charleston, West Virginia 25322

RE: Proposed Rule of the West Virginia Board of Medicine
Pertaining to Professional Limited Liability Companies

Dear Mr. Southworth:

Enclosed with this letter, please find a copy of a proposed rule filed by the West Virginia Board of Medicine with the Office of the Secretary of State and the Legislative Rule-Making Review Committee this day, with supplementary materials required for such filing. Please note that a comment period has been established by the Board of Medicine to end August 23, 1996. If you have comments you wish to make on behalf of practitioners whom you represent, regarding the proposed rule, we do request that the comments are received at this Board on or before August 23, 1996.

Thank you for your cooperation.

Sincerely,

Ronald D. Walton

RDW/ks
Enclosures

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

VICE PRESIDENT
Sarjit Singh, M.D.
Weirton

SECRETARY
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Deborah Lewis Rodecker
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July 19, 1996

Gordon A. Miller, D.P.M.
President, West Virginia Podiatry Association
2000 Hampton Center, Suite B
Morgantown, West Virginia 26505

RE: Proposed Rule of the West Virginia Board of Medicine
Pertaining to Professional Limited Liability Companies

Dear Dr. Miller:

Enclosed with this letter, please find a copy of a proposed rule filed by the West Virginia Board of Medicine with the Office of the Secretary of State and the Legislative Rule-Making Review Committee this day, with supplementary materials required for such filing. Please note that a comment period has been established by the Board of Medicine to end August 23, 1996. If members of your organization have comments they wish to make on this proposed rule, we do request that the comments are received at the Board on or before August 23, 1996.

Thank you for your cooperation.

Sincerely,

Ronald D. Walton

RDW/ks
Enclosures

PRESIDENT

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

VICE PRESIDENT

Sarjit Singh, M.D.
Weirton

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Henry G. Taylor, M.D., M.P.H.
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Deborah Lewis Rodecker
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July 22, 1996

West Virginia Board of Osteopathy
334 Penco Road
Weirton, West Virginia 26062

RE: Proposed Rule of the West Virginia Board of Medicine
Pertaining to Professional Limited Liability Companies

Ladies and Gentlemen:

Enclosed with this letter, please find a copy of a proposed rule filed by the West Virginia Board of Medicine with the Office of the Secretary of State and the Legislative Rule Making Review Committee on July 19, 1996, with supplementary materials required for such filing. Please note that a comment period has been established by the Board of Medicine to end August 23, 1996. If members of the West Virginia Board of Osteopathy have comments they wish to make on this proposed rule, we do request that the comments are received at these offices on or before August 23, 1996. Inasmuch as M.D.'s and D.O.'s often work side by side, it seems to the Board of Medicine that it would be in the interests of those that both board's regulate for each board to have an identical rule. Thus, your comments are of particular importance.

Thank you for your cooperation.

Sincerely,

Ronald D. Walton

RDW/ks
Enclosures

PRESIDENT

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

VICE PRESIDENT

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Weirton

SECRETARY

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WEST VIRGINIA BOARD OF MEDICINE

101 Dee Drive

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Telephone (304) 558-2921

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August 5, 1996

Charles O. Lorensen, Esquire
950 One Valley Square
Charleston, West Virginia 25301

RE: Proposed Rule, Formation and Approval of
Professional Limited Liability Companies

Dear Charlie:

I appreciated very much your talking with me the other day about the above referenced rule. As always, you were most helpful. I am enclosing for your information a copy of the proposed rule which the Board has filed with the Office of the Secretary of State, requesting that it be adopted on an emergency basis. If you have any comments on the rule, I certainly would be pleased to receive them. The comment period on the rule ends August 23, 1996, at 4:30 p.m.

Best wishes and many thanks.

Sincerely,

Deborah Lewis Rodecker
Deborah Lewis Rodecker

DLR/ks
Enclosure

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

VICE PRESIDENT
Sarjit Singh, M.D.
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Ronald D. Walton
Charleston

JACKSON & KELLY

ATTORNEYS AT LAW

1600 LAIDLAY TOWER

P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

304-340-1231

August 5, 1996

1660 LINCOLN STREET
DENVER, COLORADO 80264
TELEPHONE 303-837-0003

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40595
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20037
TELEPHONE 202-973-0200

1000 TECHNOLOGY DRIVE
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300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
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256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-485-1751

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-9000

700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-8068

800 GARFIELD AVENUE
PARKERSBURG, WEST VIRGINIA 26102
TELEPHONE 304-422-1419

Mr. Ronald D. Walton
Executive Director
West Virginia Board of Medicine
101 Dee Drive
Charleston, WV 25311

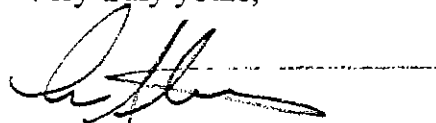
Re: Proposed Rule of West Virginia Board of Medicine
Regarding Professional Limited Liability Companies

Dear Mr. Walton:

Thank you for providing me with a copy of the proposed rules (the "Proposed Rules") of the West Virginia Board of Medicine pertaining to professional limited liability companies. Your prompt action in issuing this rule is greatly appreciated.

I would like to take this opportunity to express my support for the need to issue emergency rules. Physicians and podiatrists could not enjoy the benefits of operating as limited liability companies until the Medical Board acted to permit their formation. Additionally, it is my understanding that some medical groups had formed limited liability companies under prior law, necessitating the issuance of guidance on this issue. Because of the need for relatively expeditious guidance on these issues, it was necessary to promulgate emergency rules.

Very truly yours,



Louis S. Southworth, II

LSS:mr

cc: Ms. Deborah L. Rodecker, Esq.

C/M: 2754/301
CHASFS3:45749