

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

**FILED**

MAY 21 10 25 AM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
Effective Date

Form #7

**NOTICE OF AN EMERGENCY RULE**

AGENCY: WV Nursing Home Administrators TITLE NUMBER: 21

Licensing Board

CITE AUTHORITY: \_\_\_\_\_

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Legislative Rules for the Nursing Home Administrators  
Licensing Board

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

TITLE OF RULE BEING FILED AS AN EMERGENCY: Title 21, Legislative Rules

21-1-10. Fees

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

ATTACHMENT:

Use additional sheets if necessary

*Alberta Slack*  
Signature

6.80

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Nursing Home Administrators Licensing Board

EMERGENCY RULE TITLE: Title 21, Legislative Rule

1. Date of Filing May 21, 1996

2. Statutory authority for promulgating emergency rule:

30-25-7

3. Date of filing of proposed legislative rule: April 17, 1996

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

Fees are changed and Section 10.2 is added

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 Board must increase fees in order to become solvent and fulfill  
it's responsibilities according to the statute. The Board has been  
operating at a deficit and currently owes the State \$24,000.00.

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.

**SUMMARY OF PROPOSED LEGISLATIVE RULE**

21 C.S.R. 1

TITLE 21

WEST VIRGINIA NURSING HOME ADMINISTRATORS LICENSING BOARD

SERIES 1

**FEES**

West Virginia Code § 30-25-7 amended by the West Virginia Legislature in 1996, states that the Board may promulgate reasonable rules for the proper performance of its duties and to establish fees for examinations, fees, permits, licenses and renewals as may be necessary to cover the cost of the administration of this article. The following rule establishes a schedule of fees for the services provided by the Board.

The Board has been operating for (amount of time) at a deficit and currently owes the State \$ 24,000.00. The Board must increase its fees in order to become solvent and fulfill its responsibilities according to the statute. If the Board would have to wait until the 1997 legislative session to have a legislative rule promulgated to increase its fees, it would continue to operate at a deficit for another entire year and increase the amount of debt to the State.

LEGISLATIVE RULES

21 C.S.R. 1

TITLE 21

WEST VIRGINIA NURSING HOME ADMINISTRATORS LICENSING BOARD

SERIES 1

FEES

10.2 The Board shall charge and collect the following fees for their services:--

1. Renewal fee	___	<u>\$200.00</u>
2. Emergency permit fee	___	<u>\$200.00</u>
3. Temporary permit fee	--	<u>\$200.00</u>
4. AIT application	--	<u>\$200.00</u>
5. Licensure application	--	<u>\$400.00</u>
6. Reciprocity application	--	<u>\$400.00</u>
7. Endorsement verification	--	<u>\$50.00</u>
8. NHA's listings	--	<u>\$25.00</u>

TITLE 21  
LEGISLATIVE RULE  
NURSING HOME ADMINISTRATORS LICENSING BOARD

SERIES 1  
NURSING HOME ADMINISTRATORS

§21-1-1. General.

1.1. Scope. -- This rule establishes the requirements for licensing as a Nursing Home Administrator.

1.2. Authority. -- W. Va. Code §30-25-7.

1.3. Filing Date. -- April 5, 1994 .

1.4. Effective Date. -- April 5, 1994

1.5. Repeal and Replace. -- This rule repeals and replaces Nursing Home Administrators Rule 21 CSR 1 which became effective May 10, 1986.

§21-1-2. Definitions.

Whenever used in this Rule, unless context or subject matter requires a different meaning, the following terms have their respective meanings:

2.1. "Applicant" means the person who submits an application for license or permit pursuant to this Rule.

2.2. "Board" means the West Virginia Nursing Home Administrators Licensing Board as created in W. Va. Code §30-25-2.

2.3. "Nursing Home Administrator" means an individual responsible for planning, organizing, directing and controlling a nursing home, or who in fact performs such functions, whether or not the individual has an ownership interest in the nursing home and whether or not the functions are shared with one or more persons, and who has been licensed as a Nursing Home Administrator by the Board in accordance with the provisions of this Rule. No person shall be or act as a nursing home administrator, except as provided by W. Va. Code §30-25-9 unless he or she holds a currently valid license or permit issued pursuant to this Rule.

2.4. "Person" means an individual and does not include any firm, partnership, corporation or association.

2.5. "Nursing Home" means a facility licensed as such by the West Virginia Department of Health and Human Resources.

2.6. "Practice of Nursing Home Administrators" means that performance of any act or the making of any decision involved in the planning, organizing, directing and/or control of the operation of a nursing home.

2.7. "Nursing Home Administrator-in-Training" means an individual registered as such with the Board, under Section 4.3 of this Rule.

2.8. "License" means the document issued by the Board which authorizes a person to perform the functions of a nursing home administrator as defined and directed in this Rule.

2.9. "Violation" means a failure to comply with W. Va. Code §30-25-1, et seq., or any provision of this Rule.

2.10. "Examination" means both the national test and the state test that applicants are required to pass, unless specified otherwise.

#### §21-1-3. Examinations.

##### 3.1. Scheduling of examinations and reexaminations.

a. The Board may recommend the subjects of examination of applicants for licensure as a nursing home administrator and the scope, content, form and character of the examination.

b. Examinations shall be held at least twice a year in April and October. Applicants for examination shall meet all pre-requirements for taking the examination as specified in this Rule. The Board will notify applicants by mail of the date, time and place of examination. Applicants may take the national test three (3) times. If failed on the third national examination, the applicant must appear before the Board and present evidence of further education before the Board will consider him or her eligible for reexamination. Applicants may take the state test as many times as needed in order to pass.

c. A record stating in detail the results of the examination for each candidate shall be kept by the Board as a permanent record.

d. The cost of the initial examination and reexamination for licensure as a nursing home administrator shall be included in the license fee set forth in section 5.2.a of this rule.

##### 3.2. Pre-examination requirements:

a. The pre-examination requirements do not apply to any person licensed as a nursing home administrator prior to May 10, 1986 who has maintained continuous licensure since that time.

b. The Board will not admit or permit any person to take an examination for licensure as a nursing home administrator unless that person has first submitted thirty (30) days prior to the examination day, an application for Board approval; the application shall be considered an application for licensure and also for examination and qualification. The application shall be in writing on forms provided by the Board and shall furnish evidence satisfactory to the Board that the applicant is:

A. Over twenty-one (21) years of age;

B. A citizen of the United States;

C. Of good moral character; and

D. Suitable and fit to be licensed and to practice as a nursing home administrator. A licensed physician shall submit evidence of fitness and suitability directly to the Board on forms provided by the Board and shall include, among other things, evidence of the:

(a) Absence of physical impairments to perform the duties of a nursing home administrator, which include good health and freedom from contagious disease; and

(b) Absence of any mental impairment that would appear to the Board to be likely to interfere with the performance of the duties of a nursing home administrator.

E. The Board shall obtain letters of satisfactory performance covering at least the calendar year preceding the date of application from the Department of Health and Human Resources and/or appropriate professional societies relating to the applicants ability to:

(a) Understand and communicate general and technical information necessary to the administration and operation of a nursing home (i.e., applicable health and safety regulations);

(b) Assume responsibilities for the administration of a nursing home as evidenced by prior accredited activities and evaluations of prior services; and

(c) Relate physical, psychological, spiritual, emotional and social needs of ill and/or aged individuals to nursing home administration and create the compassionate climate necessary to meet the needs of the patients in the nursing home.

F. In addition to the completion of high school or secondary school education, the applicant shall have successfully completed a course of study in and been awarded a baccalaureate degree in:

(a) A non-health administration field. The applicant shall also complete a one (1) year Administrator-In-Training (AIT) program as specified in Section 4.3 of this rule. The Board may waive the AIT program and approve the applicant to take the examinations (national and state) if:

(A) the applicant possesses a baccalaureate degree in a non-related health care field (i.e., secondary education, accounting, marketing, etc.) but has worked in long-term care in the role of an assistant administrator or an equivalent position such as Director of Nursing, Assistant Director of Nursing, Social Services Director, etc., for a period of three (3) years; or

(B) the applicant has worked in a related long-term health care field such as a state regulatory department for a minimum of five (5) years; or

(b) Nursing Home Administration, Hospital Administration, or in a related health administration field. The applicant shall also have at least (1000) hours experience in an administrative position in a long term care setting. Related health administration fields include nursing, pharmacology, medicine, osteopathy, social work with a concentration in gerontology, psychology, sociology, etc. When an applicant has an approved degree, he or she must verify with the Board that a minimum of twelve (12) college hours were earned in subjects specifically designated as health care management and/or administration; which allows the Board flexibility to consider waiver of part or all of the AIT program prior to approval of the applicant to take the examinations (national/state) leading to licensure as a Nursing Home Administrator. If the applicant fails to produce documentation he or she will be required to complete an Administrator-In-Training program as specified in Section 4.3 of these regulations.

c. The Board will not permit an applicant for examination who has been convicted of a felony by any court in West Virginia, or by any court of the United States, to take the licensure examination. A criminal identification Bureau Report will be requested by the Board from the State Department of Public Safety on all applicants for Administrator licensing.

d. The basic requirements for suitability set forth in this section are to be considered minimal and may not be waived.

e. The Board may designate a time and place at which an applicant may be required to present himself or herself for inquiry as to his or her suitability for licensure.

### 3.3. Disqualification: Reexamination.

a. An applicant for examination who does not meet pre-examination requirements shall be given written notification by the Board by certified mail return receipt requested, of his or her disqualification and the reasons for the disqualification and of his or her right to a hearing within thirty (30) days.

b. An applicant for examination who does not meet pre-examination requirements may petition the Board in writing for a hearing and a review of his or her application within thirty (30) days of receipt of the notification of disqualification.

c. Where an applicant for examination has not met pre-examination requirements, he or she may submit a new application for qualification for examination: provided, that he or she is required to meet the requirements for licensing as shall be in force at the time of the reapplication.

### 3.4. Subjects for national examination.

a. Every applicant for licensure as a nursing home administrator, after meeting the requirements for qualification for licensure and examination as set forth in this Rule must successfully pass a written national examination which may include, but not be limited to, the following subjects:

#### A. Resident Care Management

The applicant shall plan, implement and evaluate:

(a) Nursing services to maximize residents' health potential.

(b) Social service programs to meet residents' psychological and social needs and residents' rights;

(c) The food service program to meet the nutritional needs of patients;

(d) Medical services to meet residents' medical care needs;

(e) Therapeutic recreational and activity programs to meet the needs, wants and interest of residents;

(f) A medical records program for resident care to meet documentation requirements;

(g) A pharmaceutical program to support medical care for residents;

(h) A pharmaceutical program to support medical care for residents; and

(i) Monitor and evaluate residents' satisfaction with quality of care and quality of life through communications with residents and/or their representatives.

#### B. Personnel Management

The applicant shall:

(a) Establish a work environment to foster communication between management and all staff;

(b) Recruit, train, evaluate and retain individuals to provide resident care and services;

(c) Plan, implement; and evaluate personnel policies;

(d) Plan, implement, and evaluate employee health and safety programs.

#### C. Financial Management

The applicant shall develop:

(a) And manage a budget for the facility to allocate fiscal resources.

(b) Systems to monitor financial performance.

(c) And manage a financial audit and reporting system.

#### D. Environmental Management

The applicant shall plan, implement, and evaluate:

(a) A system for maintaining and improving buildings, grounds and equipment;

(b) A program that provides a clean, attractive and homelike environment for residents, staff and visitors;

(c) An overall safety program which will ensure the health, welfare and safety of residents, staff and visitors;

(d) Fire, disaster, and emergency programs to protect the safety and welfare of residents, staff and property.

E. Regulatory Management

The applicant shall:

(a) Plan, implement, and evaluate policies and procedures to maintain compliance with laws and regulations; and

(b) Plan, implement, monitor and evaluate policies and procedures to maintain compliance with directives of governing entities (e.g. Board of Directors).

F. Organizational Management The applicant shall:

(a) Observe, monitor and evaluate outcomes of all programs, policies and procedures of the facility to ensure effectiveness.

(b) Develop and monitor a process for communicating with residents, families, staff, volunteers and governing entities;

(c) Implement, monitor and ensure the integration of residents' rights with all aspects of the facility's operations;

(d) Plan, implement, and evaluate a risk management program;

(e) Plan, implement, and evaluate a program that informs residents and community of the services offered;

(f) Plan, implement, and promote integration between the facility and other community resources including educational institutions.

3.5. Subjects for State examination.

a. Every applicant for licensure as a nursing home administrator after meeting the requirements for qualification for licensure and examination as set forth in this Rule shall successfully pass a written state examination which may include, but not be limited to, the following subjects:

- A. Physical Equipment and Facilities;
- B. Facility Governance and Management;
- C. General Health and Safety;

D. General Residents Rights, Policies and Procedures;

E. Medical and Dental Service;

F. Nursing Service;

G. Dietetic Service;

H. Pharmaceutical Service;

I. Social Services and Activities; and

J. Plans for Care and Medical Records.

§21-1-4. Education, training and experience.

4.1. Registration of accredited education institutions and courses of study.

a. Any courses of study offered by an accredited educational institution for the purpose of qualifying applicants for licensure as a nursing home administrator shall first be submitted to the Board for approval by the educational institution or by the applicant for licensure. In order for a course of study to be approved it must cover those subjects contained on the written national examination as provided for in section 3.4 of this rule.

b. The Board will make lists and information on all courses of study registered with and approved by the Board for the purpose of qualifying applicants for licensure as nursing home administrator and this information shall be available to all administrators and interested persons.

4.2. Registration of continuing education programs.

a. On and after June 30, 1994, every licensed administrator must receive at least twenty (20) clock hours of continuing education every year.

b. The Board may approve programs for continuing education.

c. Any organization wishing to have a program approved for continuing education credits must submit a description of the program to the Board. An application should be submitted at least forty-five (45) days in advance of the scheduled date of the program. Upon request, program approval forms will be provided by the Board office.

4.3. Practical training and experience (one (1) year Administrator-in-Training program).

a. Every candidate for an Administrator-in-Training permit prior to entering the one (1) year nursing home Administrator-in-Training internship for the purpose of obtaining practical training and experience shall make application for the Administrator-in-Training permit on a form prescribed by the Board, and submit a fee of ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00), payable by certified check or money order to the West Virginia Nursing Home Administrators Licensing Board.

b. The Board shall not approve an application for an Administrator-in-Training permit unless the applicant submits evidence satisfactory to the Board that he or she meets all preexamination requirements under this rule except for the internship and:

A. That such training will be under the full-time supervision of a fully licensed nursing home administrator who has been licensed for at least three (3) years and licensed and practicing in West Virginia for at least the preceding year. The nursing home administrator must be approved by the Board as a preceptor, and accept the responsibility of training the applicant;

B. That such training is of a grade and character satisfactory to the Board;

C. That such training is to be obtained in a duly licensed nursing home which has been approved by the Board;

D. That such training is to be served during eight (8) consecutive hours daily, except for regular days off, with a minimum of forty (40) hours weekly;

E. That the trainee agreement form provided by the Board is signed by the nursing home Administrator-in-Training and the supervising nursing home administrator and submitted to the Board for approval;

F. That the nursing home Administrator-in-Training has no outside employment during training hours or thereafter unless the employment is known of and approved by the preceptor;

G. That alternating and rotating shifts of eight (8) working hours may be approved by the Board as being acceptable upon request by the AIT: Provided, that at least fifty percent (50%) of the training hours will be served between the hours of seven a.m. and ten p.m. in regular steady, full time employment under the personal supervision of the nursing home administrator preceptor at the nursing home in which the nursing home Administrator-in-Training is employed; and

H. That the preceptor provide full-time supervision for the Administrator-in-Training and that the supervision is provided in the nursing home where the trainee is employed.

c. Progress report

A. Every preceptor of every Administrator-in-Training shall file quarterly forms provided by the Board and shall set forth an accurate record of the duties performed by the Administrator-in-Training during the period covered by the report.

B. Every report filed by the preceptor of the nursing home Administrator-in-Training shall be approved and signed by the preceptor and by the Administrator-in-Training.

C. If a preceptor of a nursing home Administrator-in-Training fails to file quarterly reports for a period of two (2) years from the date of issuance of the in-training permit, the Board will consider that the Administrator-in-Training has abandoned his or her practical training and experience. In the event he or she shall thereafter seek to qualify for a nursing home administrator license, the Board shall consider him or her a new applicant with no portion of training completed, and he or she is required as a new applicant, to meet requirements for qualification for training, examination and license as may exist at the time of the new application.

d. A nursing home Administrator-in-Training may be allowed two (2) weeks leave for compulsory military training, vacation or sick leave each year without loss of credit for his or her required practical training and experience.

e. Discontinuance of an internship as a nursing home Administrator-in-Training in a nursing home from which he or she is a registered shall be reported to the Board by the nursing home administrator and the trainee with thirty (30) days after the discontinuance.

f. Change of supervision of the nursing home Administrator-in-Training in any nursing home shall be reported to the Board in writing by the preceptor and the AIT within ten (10) days after the change of the supervision. The new administrator of the nursing home, if willing to continue the training program of the Administrator-in-Training, must obtain Board approval for preceptorship.

g. The Board shall allow any person who was a duly authorized nursing home Administrator-in-Training whose training and experience is interrupted by service in the Armed Forces of the United States, to resume his or her training and experience at

any time within one (1) year after the date of his or her honorable discharge from active service.

h. The requirement of an internship as Administrator-in-Training provided in this section shall not apply to any person who has completed a course of study for a master or baccalaureate degree in nursing home administration, hospital administration or in a related health administration field, as approved by the Board and who has been awarded a masters or baccalaureate degree from an accredited institution of higher learning.

i. The period of internship shall last for a period of not more than one (1) year and shall be under the supervision of a preceptor who has been approved by the Board.

j. In the event that the Board determines that a preceptor has failed to provide the trainee with the opportunity to adequately train himself or herself under the proper supervision in the administrative and operating functions of the nursing home, the Board shall cancel the preceptor's authorization to serve as preceptor, for such period of time as the Board prescribes.

k. After an applicant for licensure completes the Administrator-in-Training program, and before he or she sits for the licensing examination, the Board may appoint a committee to determine if the applicant has received training consistent with the guidelines established by the Board.

#### §21-1-5. Licenses.

##### 5.1. Qualifications for licenses

a. To be eligible for a license as a nursing home administrator a person must:

A. Meet all preexamination requirements as set forth in Section 3.2 of this Rules, as well as meet all other applicable Rules; and

B. Pass the examination prescribed by the Board in the subject of nursing home administration.

##### 5.2. Application for and issuance of license, renewal of licenses and display.

a. Any applicant for a nursing home administrator license shall submit an application at such time, in such manner, on such forms and containing such information as the Board may from time to time by reasonable Rule prescribe, and pay to the Board a license fee of ~~Two Hundred Dollars (\$200.00)~~ Four Hundred Dollars (\$400.00) in the form of a certified check or money order which fee, minus any costs incurred by the Board (i.e. processing fee),

shall be returned to the applicant if he or she is denied a license.

b. Whenever the Board finds that an applicant meets all of the requirements of this Rule for a license as a nursing home administrator, it shall forthwith issue to him or her a license. If the Board finds the applicant does not meet the requirements, the Board shall contact the applicant in writing and give reasons for the denial.

c. The license is valid for a period ending on June 30 each year and may be renewed without formal examination upon timely application for renewal on a form prescribed by the Board and payment to the Board of the renewal fee of ~~One Hundred Dollars (\$100.00)~~ Two Hundred Dollars (\$200.00) in the form of a certified check or money order. The Board may deny an application for renewal for any reason which would justify the denial for an original application for a license, or for failure to provide proof of satisfactory attendance and completion of relevant continuing education as specified in Section 4.2 of this rule.

d. The nursing home administrator license certificate shall be conspicuously displayed by the licensee at each nursing home for which he or she is an administrator.

e. Only an individual who has qualified as a licensed nursing home administrator and who holds a valid current license certificate pursuant to the provisions of this Rule has the right and privilege of using the title "Nursing Home Administrator" has the right and privilege of using the abbreviation of "N.H.A." after his or her name. No other person shall use or shall be designated by such title or such abbreviation or any other words, letters, sign card or device tending to, or intended to, indicate that the person is a licensed nursing home administrator.

f. An individual who is a holder of an emergency permit or of an Administrator-in-Training permit shall not be considered as meeting the requirements for licensure as a nursing home administrator and, therefore, shall not have the right and privilege of using the title "Nursing Home Administrator" or the abbreviation of "N.H.A."

### 5.3. License Restrictions

a. In order to retain a license as a nursing home administrator the following restrictions apply:

A. A licensed nursing home administrator shall not administer or act to be administrator of more than two (2) nursing homes at one time. An administrator may serve two (2) nursing homes which are within reasonable proximity (reasonable proximity is defined as thirty (30) minutes driving time): Provided, that

such administrator is not administering more than a total combined one hundred twenty (120) beds.

B. The administrator of two (2) nursing homes shall average not less than twenty (20) hours per week at each nursing home provided that the administrator must have a competent and experienced assistant at each nursing home. The nursing home administrator shall document each period of service. Documentation must be available upon Board request;

C. A nursing home administrator who is a registered professional nurse cannot serve the same nursing home both as a director of nursing services and administrator unless the nursing home to be operated has a licensed capacity of thirty (30) beds or less;

D. Any administrator who is also director of nursing services or who has any other dual capacity in any other nursing home regardless of whether or not the second home is within reasonable proximity must have prior Board approval; and

E. The nursing home administrator, upon receipt of a license, is responsible for any nursing home which he or she administers meeting all applicable state and federal laws and rules and regulations.

#### 5.4. Emergency permit

a. If a licensed nursing home administrator dies or is unable to continue as the administrator for an unexpected cause, the owner or governing body or other appropriate person in charge of the nursing home involved may designate an acting authority as administrator. The Board may immediately issue an emergency permit to the acting administrator if it finds the appointment will not endanger the safety of the occupants of the nursing home.

b. An emergency permit shall not exceed six (6) months and is not renewable.

c. The fee for an emergency permit is ~~One Hundred Dollars (\$100.00)~~ Two Hundred Dollars (\$200.00) and shall be submitted in the form of a certified check or money order.

#### 5.5. Temporary Permit.

a. The Board may issue a temporary permit for a period of ninety (90) days, to an applicant for a reciprocity license who has accepted employment in the State of West Virginia, but who must wait for the Board to meet to act on his or her application. The temporary permit may be renewed at the discretion of the Board.

b. The fee for a temporary permit is ~~One Hundred Dollars (\$100.00)~~ Two Hundred Dollars (\$200.00) and shall be submitted in the form of a certified check or money order.

#### 5.6. Administrator-in-Training

a. Administrator-in-Training permits shall be issued by the Board as outlined in Section 4.3 of this Rule.

b. The fee for an Administrator-in-Training permit is ~~One Hundred Dollars (\$100.00)~~ Two Hundred Dollars (\$200.00) and shall be submitted in the form of a certified check or money order.

#### 5.7. Lost, mutilated or destroyed licenses

a. Upon receipt of satisfactory evidence that a license has been lost, mutilated or destroyed, the Board shall issue a duplicate license upon payment of a fee of five dollars (\$5.00).

#### 5.8. Return of license

a. The administrator shall return the license certificate and/or duplicate copies to the Board immediately upon revocation and/or request by the Board.

§21-1-6. Suspension or Revocation, Hearing and Judicial Review.

#### 6.1. Suspension or revocation of license or permits.

a. The Board may at any time upon its own motion and shall upon verified written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or permit issued pursuant to this Rule.

b. The Board shall suspend or revoke any license or permit when it finds the licensee or holder of a temporary permit has:

A. Obtained a license or permit by means of fraud or deceit; or

B. Failed or refused to comply with the provisions of this Rule, or with provisions of W. Va. Code §§16-5C-1, et seq. and 16-5D-1, et seq.

c. The Board shall also suspend or revoke any license or permit if it finds the existence of any grounds which would justify the denial or an application for the license or permit if application were then being made for it.

#### 6.2. Complaints and hearing procedures

a. Complaints

A. Any person, public officer, association or the Board may register a complaint against any licensee, Administrator-in-Training or holder of an emergency or temporary permit for any of the reasons specified in Section 6.1 of this Rule. The complaint shall be in writing and duly verified and shall be submitted to the Board.

b. - Preliminary hearings.

A. The Board, or any person or persons appointed by it, may hold a preliminary hearing to determine whether a formal hearing on the charges is necessary. The Board shall give the person charged written notice of the date, time and place of the preliminary hearing.

B. The Board may dismiss the charges and take no action thereon, by formal hearing or otherwise, in which event the charges and the order dismissing the charges shall be filed and made a part of its record. If the Board does not dismiss the charges, a formal hearing shall be held in accordance with Section 6.3 of this Rule.

6.3. Procedures for hearing.

a. Whenever the Board denies an application for any original or renewal license or denies an application for an emergency permit or suspends or revokes any license or permit it shall make and enter an order to that effect and serve a copy of the order on the applicant or licensee, as the case may be, by certified mail, return receipt requested. The order shall state grounds for the action taken and shall require that any license or permit suspended or revoked by the order shall be returned to the Board by the holder within twenty (20) days after receipt of the order.

b. The Board will follow its rules 21 CSR 2 in adjudicating contested case hearings.

c. All of the pertinent provisions of W. Va. Code §29-5-1, et seq., shall apply to and govern the hearing and the administrative procedures in connection with and following the hearing.

d. Upon conclusion of the hearing, the Board may revoke the license of the accused, or suspend the license or a permit for a fixed period, or reprimand, or take other disciplinary action or dismiss the charges.

e. An order of suspension made by the Board may contain such provisions as to reinstatement of the license or permit as the Board may direct.

f. The Board, in its discretion, may direct a rehearing or take additional evidence, and may rescind or affirm the prior determination after the rehearing, but nothing in this section shall preclude appropriate relief under and pursuant to the laws providing for the review of an administrative determination by the courts of the state.

g. The decision of the Board is final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of Section 6.4 of this Rule.

#### 6.4. Judicial review; Appeal to Supreme Court of Appeals.

a. Any person adversely affected by a decision of the Board rendered after a hearing held in accordance with the provisions of Section 6.3 of this Rules, is entitled to judicial review of the decision. All of the pertinent provisions of W. Va. Code §29A-5-1, et seq. apply to and govern the judicial review.

b. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of W. Va. Code §29A-6-1, et seq.

#### §21-1-7. Reciprocity.

7.1. The Board in its discretion, and otherwise subject to the law pertaining to the licensing of nursing home administrators prescribing the qualifications for a nursing home administrator license, may endorse a nursing home administrator license issued by the proper authorities of any other state upon payment of a fee of ~~two hundred dollars (\$200.00)~~ four hundred dollars (\$400.00) and upon submission of evidence satisfactory to the Board:

a. That the applicant is a certified administrator in good standing with the American College of Health Care Administrators (ACHCA); or

b. That the following conditions are met:

A. The applicant for reciprocity has obtained a passing scaled score of seventy-five percent (75%) or above on the national examination; and

B. The applicant satisfactorily passes an examination on state law and rules applicable for nursing homes and nursing home administrators; and

C. The other state maintains a system and standard of qualification and examination for a nursing home administrator license, which is at least as great as those required in West Virginia; and

D. The other state gives similar recognition and reciprocity to nursing home administrators licenses of West Virginia; and

E. The applicant for reciprocity holds a current license as a nursing home administrator which has not been revoked or suspended in each state from which he or she has ever received a nursing home administrator license or reciprocal endorsement.

§21-1-8. Restoration.

8.1. Restoration after revocation.

a. A license may be restored after revocation by the Board in its discretion upon submission of evidence satisfactory to the Board that the applicant for the restoration of a license has removed the disability. The requirements of Section 3.2.3 of this Rule is applicable to applicants for licensure who have been convicted of a crime.

b. Upon application for restoration of a license, the Board, in its discretion may grant the applicant a formal hearing upon notice.

c. If a conviction is subsequently reversed on appeal and the accused acquitted or discharged, his or her license may be reissued by the Board.

8.2. Restoration after lapse.

a. A license which has lapsed can be reinstated at the discretion of the Board during the first year immediately following the expiration date of a valid permanent administrator license. The administrator in question must submit a formal request as well as an application for licensure along with the proper fee and meet the requirements for continuing education hours.

b. After one (1) year from the expiration date of his or her license, the Board will consider the administrator in question as new applicant and he or she is subject to all applicable rules.

§21-1-9. Limitations.

9.1. This Rule is supplemental to W. Va. Code §30-25-1, et seq., providing for the licensing of nursing home administrators and has the force and effect of the law.

9.2. Every rule, order and directive adopted by the Board shall state the date on which it takes effect and a copy thereof signed by the chairman of the Board and the secretary of the Board and shall be filed as a public record in the office of the Board as may be required by law.

9.3. This Rule is intended to be consistent with the applicable Federal and State law and shall be modified, whenever necessary, to achieve such consistency.

9.4. In the event that any provision of this Rule is declared unconstitutional or invalid, or the application thereof to any person or circumstances is held unconstitutional or invalid, the applicability of that provision to other persons and circumstances and the constitutionality or validity of every other provision of this Rule shall not be affected thereby.

9.5. This Rule shall not effect any pending action or proceedings, civil or criminal, but the same may be prosecuted or defended in the same manner and with the same effect as though this Rule had not been promulgated.

9.6. The Board shall amend this Rule in accordance with W. Va. Code §29A-3-1, et seq.

9.7. In addition to the above, the rules of parliamentary procedure as laid down in "Roberts Rules of Order, Revised" shall govern all meetings of the Board.

§21-1-10. Fees.

10.1. All applicants that choose to withdraw will be refunded their entire application fee minus any processing fee. This will be applicable to the following:

- a. Emergency permit
- b. Temporary permit
- c. AIT application
- d. Licensure examination application
- e. Reciprocity application.

10.2 The Board shall charge and collect the following fees for their services:

<u>1.</u>	<u>Renewal fee</u>	<u>--</u>	<u>\$200.00</u>
<u>2.</u>	<u>Emergency permit fee</u>	<u>--</u>	<u>\$200.00</u>
<u>3.</u>	<u>Temporary permit fee</u>	<u>--</u>	<u>\$200.00</u>
<u>4.</u>	<u>AIT application</u>	<u>--</u>	<u>\$200.00</u>
<u>5.</u>	<u>Licensure application</u>	<u>--</u>	<u>\$400.00</u>
<u>6.</u>	<u>Reciprocity application</u>	<u>--</u>	<u>\$400.00</u>
<u>7.</u>	<u>Endorsement verification</u>	<u>--</u>	<u>\$50.00</u>
<u>8.</u>	<u>NHA's listings</u>	<u>--</u>	<u>\$25.00</u>



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(Plus all the volunteer  
help we can get)

July 2, 1996

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

AGENCY: WV Nursing Home Administrators Licensing Board


RULE: Amendments, Series 1, Nursing Home Administrators

DATE FILED AS AN EMERGENCY RULE: May 21, 1996

DECISION NO. 9-96

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.

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE July 2, 1996  
ADMINISTRATIVE LAW DIVISION

  
\_\_\_\_\_  
KEN HECHLER  
Secretary of State



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**EMERGENCY RULE DECISION  
(ERD 9-96)**

AGENCY: WV Nursing Home Administrators Licensing Board  
RULE: Amendments, Series 1, Nursing Home Administrators  
FILED AS AN EMERGENCY RULE: May 21, 1996

- par. 1 The WV Nursing Home Administrators Licensing Board (Board) has filed the above amendments to an existing 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 May 21, 1996 and with the LRMRC May 21, 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 §30-25-7 reads in part:

*(3) Promulgate reasonable rules & regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules & regulations shall be promulgated in accordance with §29A-3-1 et seq. of this code.*

*(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "West Virginia nursing home administrators licensing board fund." Reimbursement of all reasonable and necessary costs and expenses actually incurred by members, and by the board in the administration of this article shall be paid from such fund.*

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 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:

WV Code §30-25-7 amended by the WV Legislature in 1996, states that the Board may promulgate reasonable rates for the proper performance of its duties and to establish fees for examinations, fees, permits, licenses and renewals as may be necessary to cover the cost of the administration of this article. The following rule establishes a schedule of fees for the services provided by the Board.

The Board has been operating at a deficit and currently owes the State \$24,000. The Board must increase its fees in order to become solvent and fulfill its responsibilities. If the Board would have to wait until the 1997 legislative session to have a legislative rule promulgated to increase its fees, it would continue to operate at a deficit for another entire year and increase the amount the debt to the State.

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). . . prevent substantial harm.

par. 14

This decision shall be cited as Emergency Rule Decision 9-96 or ERD 9-96 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Nursing Home Administrators Licensing Board, the Attorney General and the Legislative Rule Making Review Commission.

  
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FILED IN THE OFFICE OF THE SECRETARY OF STATE  
THE SECRETARY OF STATE  
THIS DATE July 2, 1996  
ADMINISTRATIVE LAW DIVISION

Entered \_\_\_\_\_