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July 12, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Optometry

RULE: New Rule, 14CSR5, Schedule of Fees

DATE FILED AS AN EMERGENCY RULE: June 11, 2001

DECISION NO. 5-01

Following review under W. Va. 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.

JOE MANCHIN, III
Secretary of State

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EMERGENCY RULE DECISION
(ERD 5-01)

AGENCY: West Virginia Board of Optometry
RULE: New Rule, 14CSR5, Schedule of Fees
FILED AS AN EMERGENCY RULE: June 11, 2001

- par. 1 The West Virginia Board of Optometry (Board) has filed the above new rule as an emergency rule.
- par. 2 W. Va. 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].
- par. 4 (A) Procedural Compliance: W. Va. 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 June 11, 2001 and with the LRMRC June 11, 2001.
- par. 7 It is the determination of the Secretary of State that the Board has complied with the

par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §30-8-3A reads in part:

When one or more optometrists duly registered to practice optometry in the state of West Virginia wish to form an optometric corporation, such optometrist or optometrists shall file a written application with the board of optometry, on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer is a duly registered optometrist, or if there be more than one that all the signers of such application are such duly registered optometrists. A fee as determined by legislative rule shall accompany each such application, no part of which may be refundable.

par. 9 W. Va. Code §30-8-7 further states:

When one or more optometrists duly registered to practice optometry in the state of West Virginia wish to form an optometric corporation, such optometrist or optometrists shall file a written application with the board of optometry, on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer is a duly registered optometrist, or if there be more than one that all the signers of such application are such duly registered optometrists. A fee as determined by legislative rule shall accompany each such application, no part of which may be refundable.

par. 10 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency -- W. Va. 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. 12 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. 13 The facts and circumstances as presented by the Board are as follows:

This rule is necessary to provide a basis and specificity for the Board of Optometry to collect necessary fees to operate. With the passage of rewritten and amended §30-8, fees have been transferred to this rule. Without a specification of fees, the Board will not be able to collect license and other fees to allow the Board to operate.

par. 14 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). . . “substantial harm to the public interest”

par. 15 This decision shall be cited as Emergency Rule Decision 5-01 or ERD 5-01 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 Optometry, the Attorney General and the Legislative Rule Making Review Committee.

JOE MANCHIN, III
Secretary of State

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