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December 16, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Examiners in Counseling

RULE: 27CSR2, Amendments, Fees

DATE FILED AS AN EMERGENCY RULE: December 4, 2002

DECISION NO. 25-02

FILED
2002 DEC 17 A 10:21
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.


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**EMERGENCY RULE DECISION
(ERD 25-02)**

AGENCY: West Virginia Board of Examiners in Counseling
RULE: 27CSR2, Amendments, Fees
FILED AS AN EMERGENCY RULE: December 4, 2002

- par. 1 The West Virginia Board of Examiners in Counseling (Board) has filed the above amendments to an existing 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 December 4, 2002 and with the LRMRC December 4, 2002.

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 §30-31-5(a)(2) reads:

(2) Promulgate reasonable rules pursuant to article three, chapter twenty-nine-a of this code, implementing the provisions of this article and the powers and duties conferred upon the board hereby including, but not limited to, rules setting forth:

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 -- 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. 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:

Renewal fees supply the majority of the funds through which the Board operates. Licenses are renewed every odd-numbered year and these funds are to be utilized over a 24-month period. Even-numbered years have always been troublesome financially

Over the last year the Board has significantly expanded the services offered to maximize the purpose of the Board which is to protect the citizens of West Virginia.

- A new procedure for handling complaints. Complaints have increased significantly.
- A continuing education approval program
- A website which provides the general public & Licensed Professional Counselors current information about professional counseling in West Virginia
- A new program for supervising applicants for licensure
- A restricted licensure program & monitoring thereof
- Plus all the other functions to be carried out on a daily, weekly & yearly basis

The Board does not have enough money to operate through the end of December

2002. The hours of the one staff person have been cut. Bills are being paid selectively. Actually, the one staff member has been purchasing needed items and is awaiting reimbursement in 2003 once funds are available. She has done this many times during the even years.

Upon approval of this emergency rule, renewal applications will immediately be mailed to the Licensed Professional Counselors. If the board sends out the renewal applications at the current rate of \$75.00, the financial problems will appear again in the year 2004.

The rule will state: The fee for biennial license shall be an amount up to \$250.00. The board is using the amount of \$250.00 to try to anticipate financial needs over the next ten years & therefore will not have to resort to an emergency rule again. During the comment period ending December 2, 2002, the board suggested the renewal amount of \$150.00 for the upcoming 2003 renewal cycle. The renewal amount of \$150.00 based on at least 900 counselors renewing their license will provide the board with the appropriate amount of revenue in which to operate for a 24-month period. Other fees received throughout the year will complete the needed budget amount.

- Forty-eight comment letters were received supporting the \$150.00 renewal amount & many suggested the board raise the fee to \$200.00 this cycle.
- 3 comment letters received stated that the fee should be raised gradually.
- One letter complained about the cost of everything professionally.
- One letter stated that the fee should remain \$75.00 & obtain supplementary volunteer help as needed
- 70+ individuals attended the November 14, 2002 board meeting at which the fee increase was the main topic. After a thorough discussion about the financial problems the board is experiencing, it appeared through a show of hands that everyone in the room was in agreement that the fee needed to be raised to at least \$150.00 in the 2003 renewal cycle.

Prior to filing this emergency rule, attempts were made to obtain money from the Budget Digest fund & the Governor's Contingency Fund. The Board was informed that those monies were not for agencies like ours.

Other states were surveyed concerning renewal fees. This comparison is just to show that the WVBECC is not out of line with the \$150.00 renewal fee.

State	Biennial Amount	Late Fee	# of Counselors	Amount of Revenue Generated Fee X Number of Counselors
AK	\$530.00			
AL	\$300.00			
AR	\$250.00	\$50.00		
DC	85.00		1488	\$126,480.00
FL	\$250.00	\$150.00		

ID	\$120.00	25.00		
KS	\$150.00	\$150.00		
KY	\$150.00		1337	\$200,550.00
M&F	\$220.00			
MD	\$200.00	\$50.00		
ME	\$200.00		1231	\$246,200.00
MO	\$100.00			
MS	\$180.00			
MT	\$140.00	\$150.00		
NC	\$100.00			
ND	\$150.00	\$100.00		
OH	\$67.50		6500	\$438,750.00
OR	\$250.00	\$50.00		
PA (PROPOSED)	\$120.00		1700	\$204,000.00
RI	\$250.00			
SC	\$150.00		1400	\$210,000.00
TN	\$190.00			
TX	\$100.00	\$75.00	10,175	\$763,125.00
UT	\$75.00	\$50.00		
VT	\$270.00			
WI	\$76.00		2406	\$182,856.00

As you can see above, the number of counselors in the state makes a big difference in the amount of revenue generated.

- Effective June 30, 2001, there were 1036 Licensed Professional Counselors eligible to renew their licenses
- As of this date, 96 out of the 1036 Licensed Professional Counselors have chosen not to renew
- Since July 1, 2001, the WVBECC has credentialed 78 Licensed Professional Counselors
- As of this date, there are 1018 Licensed Professional Counselors eligible to renew their license.


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 to the public interest"

- As of this date, there are 1018 Licensed Professional Counselors eligible to renew their license.

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 to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 25-02 or ERD 25-02 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 Examiners in Counseling, the Attorney General and the Legislative Rule Making Review Committee.


JOE MANCHIN, III
Secretary of State

Entered _____

FILED
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SECRETARY OF STATE