



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

8/7/2018 1:54:59 PM

Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Medicine TITLE-SERIES: 11-12

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: Permitting and Disciplinary Procedures:
Educational Permits for Graduate Medical Interns,
Residents and Fellows

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

§30-3-16(f)

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

§30-3-16(f)(1) implementation prior to July 1, 2019

DATE EMERGENCY RULE WAS ORIGINALLY FILED: 06/22/2018

DATE(S) OF PREVIOUS EMERGENCY AMENDMENT(S)

July 25, 2018

PRIMARY CONTACT:

NAME: Mark A Spangler Executive Director

ADDRESS: 101 Dee Drive Suite 103

Charleston, WV 25311

EMAIL: mark.a.spangler@wv.gov

PHONE NUMBER: 304-558-2921

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

House Bill 4027 was enacted in the 2018 regular session. This bill establishes a requirement that all participants in medical residency and fellowships in West Virginia hold a training permit issued by the West Virginia Board of Medicine. All residents and fellows must comply with this requirement by July 1, 2019, but the statute authorizes the Board to promulgate emergency rules to implement the provisions of HB 4027 prior to that date. An emergency rule is needed for the Board to implement the educational permit requirement. The original emergency rule proposed by the Board included an October 1, 2018 implementation date for the issuance of permits. However, the Board has been notified that there is a need to begin issuing educational permits prior to October 1, 2018 to accommodate certain graduate medical training programs in the state and to resolve an ongoing conflict with regard to billing services provided in whole or in part by residents and fellows. To accommodate this immediate need, the Emergency Amendment Second filing changes the date that the Board will begin issuing education permits to qualified applicants from October 1, 2018 to September 1, 2018 or as soon thereafter as this amendment may be approved.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Board anticipates that the impact of this rule upon the revenues of state government will be neutral. The proposed rule sets a permit fee of \$100. It is anticipated that the cost of implementing the educational permit by the Board will be equivalent to the revenue generated by the permit fee.

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The Board does not anticipate that this rule will have an economic impact on the state or its residents. Participants in graduate medical training in West Virginia will be required to pay a \$100 permit fee.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	49000	49000
Personal Services	0	22000	22000
Current Expenses	0	0	0
Repairs and Alterations	0	7000	7000
Assets	0	0	0
Other	0	20000	20000
2. Estimated Total Revenues	0	60000	60000

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

Based upon the estimated average of 600 Resident Permits and 10 medical fellowship permits multiplied by \$100 (the cost of the permit, mirroring the osteopathic charges) we estimate an increase in revenue of \$60,000.00 annually. The agency would need to hire at least a part time employee to assist with data base design and maintenance in order to develop on-line applications. We estimate this cost to be \$22,000.00 initially and approximately \$3,500.00 maintenance each year thereafter. I have this listed in the "other" category above. The Board will also need to purchase office equipment and supplies in order to accommodate the employee assigned to the project at an estimated cost of \$7,000.00.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jamie C Frame -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 11
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF MEDICINE

SERIES 12
PERMITTING AND DISCIPLINARY PROCEDURES: EDUCATIONAL
PERMITS FOR GRADUATE MEDICAL INTERNS, RESIDENTS AND FELLOWS

§11-12-1. General.

1.1. Scope. -- W. Va. Code § 30-3-7(1)(a) authorizes the Board of Medicine to promulgate rules which are necessary to perform the duties and responsibilities of the Board, and W. Va. Code § 30-3-16(f) authorizes the Board to promulgate rules to implement this section of the West Virginia Medical Practice Act.

1.2. Authority. -- W. Va. Code § 30-3-7(a)(1) and §30-3-16(f).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

§11-12-2. Definitions.

2.1. For purposes of this rule, the following words and terms mean:

2.1.1. "ACGME" means the Accreditation Council for Graduate Medical Education.

2.1.2. "Board" means the West Virginia Board of Medicine, established in W. Va. Code §30-3-5.

2.1.3. "ECFMG" means the Educational Commission for Foreign Medical Graduates.

2.1.4. Educational permit means an authorization issued to a physician by the Board to practice medicine and surgery under the auspices of ACGME approved graduate medical training or a fellowship in an approved program of post-graduate clinical training sponsored by an institution that is accredited to provide graduate medical education.

2.1.5. Fellowship means a period of additional specialized training for a physician who has completed a specialty training program/residency which is sponsored by an institution that is accredited to provide graduate medical education.

2.1.6. Good standing means that a participant in graduate medical training is not under suspension or otherwise prohibited from current participation in his or her training program.

2.1.7. Graduate medical training means formal medical training pursued after the receipt of a medical degree and includes internship, residency and fellowship programs.

2.1.8. "LCME" means the Liaison Committee on Medical Education.

2.1.9. Program Director means the director of an accredited or approved graduate medical education training program.

2.1.10. Reciprocal educational permit means an authorization issued to a physician by the Board to practice medicine and surgery under the auspices of ACGME approved graduate medical training domiciled outside of West Virginia during a temporary residency rotation within West Virginia.

§11-12-3. Permit Required for Participation in Graduate Medical Training.

3.1. Beginning July 1, 2019, no person shall participate in a program of graduate medical education training in West Virginia unless he or she:

3.1.1. Holds a license to practice medicine and surgery in this state issued by the Board pursuant to W. Va. Code § 30-3-10; or

3.1.2. Holds an educational permit or reciprocal educational permit issued by the Board pursuant to W. Va. Code § 30-3-16 and this rule.

3.2. An educational permit authorizes the holder to participate in:

3.2.1. An ACGME approved training program; or

3.2.2. A fellowship in an approved program of post-graduate clinical training sponsored by an institution that is accredited to provide graduate medical education.

3.3. An educational permit holder may only practice medicine and surgery within the auspices of his or her training program. If a permit holder leaves the training program for which an educational permit was issued, the permit becomes invalid.

3.4. An educational permit is not a license to practice medicine and surgery in West Virginia, and an educational permit holder may not practice medicine and surgery outside the scope of his or her training program or fellowship.

3.5. Receipt of an educational permit does not entitle an applicant to receive a license to practice medicine and surgery in West Virginia upon completion of graduate medical training or any portion thereof. An individual who seeks to be licensed to practice medicine and surgery must apply and meet the qualifications and criteria for licensure set forth in W. Va. Code § 30-3-10 and 11 CSR 1A.

3.6. A permit holder may apply for a medical license when he or she becomes eligible. In the event that a West Virginia medical license is granted to the holder of an educational permit, the permit shall expire upon licensure.

3.7. The Board shall begin issuing educational permits to qualified applicants on September 1, 2018.

3.8. Reciprocal educational permits shall be issued beginning July 1, 2019.

§11-12-4. Educational Permit Eligibility and Application.

4.1. Minimum qualifications for receipt of an educational permit are set forth in West Virginia Code §30-3-16.

4.2. An application for an educational permit to participate in graduate medical training shall be completed on a Board-approved application.

11CSR12

4.3. The Board will not consider an application or decide upon the issuance of a permit to an applicant until the complete application, including all third-party documentation and/or verification, is on file with the Board and the Board has had at least fifteen business days to review the application.

4.4. An application for an educational permit must be accompanied by payment of a nonrefundable application fee in an amount established by 11 CSR 4. Until such time as 11 CSR 4 is modified to reflect a fee for permits, the fee shall be \$100.

4.5. Applicants must provide the following information in association with an application for an educational permit:

4.5.1. The applicants legal name, e-mail address, home address, preferred mailing address and telephone numbers;

4.5.2. Demographic information of the applicant, such as date of birth, place of birth, sex, etc.;

4.5.3. Satisfactory proof that prior to commencing graduate medical training pursuant to a permit issued by the Board, the applicant:

4.5.3.a. Is a graduate of an allopathic medical school approved by the LCME;

4.5.3.b. Is a graduate of a medical college that meets the requirements for certification by the ECFMG; or

4.5.3.c. Has completed an alternate pathway for initial entry or transfer requirements by the ACGME.

4.5.4. Primary source verification from the Program Director of the proposed graduate medical training, or his or her designee, that the applicant:

4.5.4.a. Is under contract as a resident in a program of post-graduate clinical training approved by the ACGME; or

4.5.4.b. Has completed an ACGME-approved residency program or a residency program recognized by the ECFMG and is under contract as a fellow in an approved program of post-graduate clinical training sponsored by an institution that is accredited to provide graduate medical education.

4.5.5. Satisfactory proof of legal name, identity and date of birth;

4.5.6. A copy of legal documentation satisfactory to the Board which verifies any name change the applicant has experienced;

4.6. Board staff is authorized to issue permits without presentation to the Board if the application is complete and there is no derogatory or conflicting information regarding an applicant's qualifications and eligibility for a permit.

4.7. If Board staff receives or discovers derogatory or conflicting information regarding an applicant's qualifications or eligibility for an educational permit, the information may be presented to the Board for review.

4.8. A complete application, including all associated documentation submitted to the Board, becomes the property of the Board and will not be returned.

4.9. The applicant has the burden of demonstrating that he or she is qualified to receive an educational permit.

§11-12-5. Permit Renewal.

5.1. An educational permit is valid for a period of up to one year and, except as otherwise provided in this rule, expires on the last day of June following the issuance date of the permit.

5.2. An educational permit may be renewed annually during the renewal period established by the Board if the permit holder remains eligible to receive a permit.

5.3. An educational permit holder may renew a permit by:

5.3.1. Completing and submitting the Board's renewal application;

5.3.2. Having the applicant's Program Director to submit verification that the applicant remains under contract as set forth in subdivision 4.5.4. of this rule; and

5.3.3. Submitting a nonrefundable renewal fee in the amount of \$100.

5.4. Communications and notifications regarding the permit renewal process will be provided to the permit holder via e-mail. Failure of the permit holder to receive a renewal notification does not justify participation in graduate medical training without a valid educational permit.

§11-12-6. Permit Requirements.

6.1. An educational permit holder shall maintain current contact information on file with the Board including: a preferred mailing address; a home address; and a current e-mail address. He or she shall notify the Board of any changes to such contact information, and any legal name change, within fifteen days of the change.

6.2. If an educational permit holder leaves his or her training program at any time other than the end of the training contract, he or she shall notify the Board, in writing, within five business days. Such notice must provide an explanation of the facts and circumstances surrounding the cessation of training.

6.3. Prior to prescribing any controlled substances pursuant to an educational permit issued pursuant to section 4 of this rule, a permit holder shall complete of a minimum of three hours of drug diversion training and best practice prescribing of controlled substances training through a Board approved course. The Board shall maintain a list of approved courses on its website.

§11-12-7. Permit Denial, Complaint and Disciplinary Procedures.

7.1. The application denial, complaint and disciplinary process and procedures and appeal rights set forth in the contested case hearing procedure, W. Va. Code §29A-5-1 et seq., W. Va. Code §30-3-14(h) and (i), and in the Board's procedural rule, 11 CSR 3, Board Organization and Meeting Procedure; Complaint and Contested Case Hearing Procedure, also apply to educational permit holders.

7.2. If the Board determines the evidence in its possession indicates that an educational permit holders continuation in practice or unrestricted practice as part of a graduate medical training program constitutes an immediate danger to the public, the Board may take any of the actions provided in W. Va. Code §30-3-14(j) on a temporary basis and without a hearing if institution of proceedings for a hearing

before the Board are initiated simultaneously with the temporary action and begin within fifteen days of the action. The Board shall render its decision within five days of the conclusion of a hearing under this subsection.

§11-12-8. Denial of Permit and Discipline.

8.1. If an educational permit applicant or holder is found guilty of, or pleads guilty or nolo contendere to, any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance for other than generally accepted therapeutic purposes under state or federal law and in a state or federal court of competent jurisdiction, the Board shall deny the permit application or revoke the physician's permit without resort to the procedures set forth in section 8 of this rule. A certified copy of the guilty verdict or plea rendered is sufficient proof for permit denial or revocation.

8.2. The Board shall deny an application for an educational permit if the applicant:

8.2.1. Is ineligible based upon the criteria set forth in W. Va. Code § 30-3-16 or this rule;

8.2.2. Has ever held a license to practice medicine and surgery in West Virginia; or

8.2.3. Has ever had an educational permit or a license to practice medicine and surgery revoked, suspended or surrendered in any jurisdiction unless such action is no longer in effect and the authorization to practice has been restored.

8.3. The Board may deny an application for an educational permit and/or may discipline a permit holder who, after a hearing, has been adjudged by the Board as unqualified due to any of the following reasons:

8.3.1. Conduct by a permit holder which is equivalent to any of the grounds cited for the discipline in W. Va. Code §30-3-14(c) or section 12 of the Board's rule 11 CSR 1A;

8.3.2. Failure to comply with any portion of this rule;

8.3.3. Practicing medicine or surgery outside of or beyond the scope of the permit holder's graduate medical training program; or

8.3.4. Prescribing any controlled substance to or for himself or herself, his or her spouse, or for any other member of his or her immediate family including parents, siblings, children and their spouses.

8.4. If the Board determines that a physician is unqualified to hold an educational permit, the Board may enter an order denying an application or imposing any limitation, restriction or other disciplinary measure set forth in W. Va. Code §30-3-14(j) and/or 11 CSR 1A.

§11-12-9. Reciprocal Educational Permit Eligibility and Application.

9.1. A participant in ACGME-approved medical residency program outside of West Virginia who holds an educational permit, current license or other authorization to practice medicine and surgery in the state where the residency program is domiciled and who seeks to participate in a temporary residency rotation within West Virginia shall, at least thirty days in advance of the rotation, apply for a reciprocal educational permit from the Board.

9.2. Pursuant to a reciprocal educational permit, a physician's practice is limited to the location and scope of his or her temporary West Virginia residency rotation.

9.3. A reciprocal educational permit shall be limited to a period of sixty concurrent days and is nonrenewable. The Board may issue a reciprocal educational permit to a physician once each academic year.

9.4. Applicants must provide the following information in association with an application for a reciprocal educational permit:

9.4.1. The applicants legal name, e-mail address, home address, preferred mailing address and telephone numbers;

9.4.2. Demographic information of the applicant, such as date of birth, place of birth, sex, etc.;

9.4.3. Satisfactory proof that the applicant holds the appropriate authorization to practice medicine and surgery in the state where the applicant's residency program is domiciled;

9.4.4. Primary source verification from the program director of the proposed graduate medical training, or his or her designee, which establishes:

9.4.4.a. The applicant is under contract as a resident in a program of post-graduate clinical training approved by the ACGME;

9.4.4.b. The applicant is in good standing with the residency program; and

9.4.4.c. The dates the applicant is scheduled to participate in a temporary residency rotation in West Virginia and the location of the training; and

9.4.5. An application fee of \$50.

§11-12-10. Required Reports from Graduate Medical Education Programs.

10.1. Every graduate medical education program providing graduate medical education to residents or fellows in West Virginia shall notify the Board within five days of the termination of any graduate medical education contract with a physician who holds an educational permit issued by the Board.