



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Osteopathic Medicine TITLE-SERIES: 24-09

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: EMERGENCY TEMPORARY PERMITS TO
PRACTICE DURING STATES OF EMERGENCY
OR STATES OF PREPAREDNESS

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

30-1-4

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:

N/A

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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:

On March 16, 2020, Governor Justice proclaimed a State of Emergency regarding the COVID-19 pandemic. Pursuant to his emergency powers under W. Va. Code § 15-5-6(c)(7), the Governor granted state agencies the authority to suspend certain rules that would hinder or delay necessary action in coping with the emergency. In a subsequent Executive Order, the Governor also suspended certain statutory provisions regarding medical licensing.

The United States Department of Health and Human Services has also distributed guidance encouraging states to take measures to facilitate the provision of healthcare during the COVID-19 pandemic. For example, states are encouraged to grant temporary authorization to practice medicine in this state to certain classes of providers, including providers licensed, registered, or certified in good standing with another state.

Consistent with the aforementioned orders and guidance, the West Virginia Board of Osteopathic Medicine seeks to promulgate this emergency rule to maximize the number of healthcare providers available during the State of Emergency. This emergency rule will allow the following categories of providers to assist during the State of Emergency:

- 1) Out-of-State Practitioners: DOs and PAs who have no pending complaints, investigations, consent orders, board orders, or pending disciplinary proceedings and who possess valid, unrestricted medical licensure in another state, district, or territory of the United States; and
- 2) Retired or Inactive Practitioners: DOs and PAs who, at one time, possessed a license issued by the West Virginia Board of Osteopathic Medicine which was not revoked by the Board, but who are now retired or in inactive status.

The Board asserts that this emergency rule is necessary for the immediate preservation of the public peace, health, safety or welfare, as well as to prevent substantial harm to the public interest.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR 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:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

N/A

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

Yes

Jonathan Osborne--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 24
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF OSTEOPATHIC MEDICINE

SERIES 9
EMERGENCY TEMPORARY PERMITS TO PRACTICE DURING
STATES OF EMERGENCY OR STATES OF PREPAREDNESS

§24-9-1. General.

1.1. Scope -- The purpose of this rule is to allow the West Virginia Board of Osteopathic Medicine to provide a rapid response to health care and medical needs as a result of disasters or emergencies. In the event the Governor of the State of West Virginia proclaims a State of Emergency or State of Preparedness pursuant to W. Va. Code § 15-5-6, the Governor may temporarily suspend regulatory statutes and rules of agencies if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency. As set forth below and when authorized by a lawful State of Emergency or State of Preparedness proclamation, the Board may waive requirements for licensure and issue emergency temporary permits to allow physicians and physician assistants to assist in addressing the disaster or emergency.

1.2. Authority -- W. Va. Code § 30-14-14 and W. Va. Code § 30-3E-3.

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 five years from its effective date.

§24-9-2. Definitions.

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

2.1.a. “Board” means the West Virginia Board of Osteopathic Medicine.

2.1.b. “Collaboration” means overseeing the activities of the medical services rendered by a physician assistant. Constant physical presence of the collaborating physician is not required as long as the collaborating physician and physician assistant are, or can be, easily in contact with one another by telecommunication. Collaboration does not require the personal presence of the collaborating physician at the place or places where services are rendered.

2.1.c. “Emergency temporary permit” means a temporary authorization by the Board allowing certain physicians and physician assistants to practice in West Virginia during a State of Emergency or State of Preparedness.

2.1.d. “State of Emergency” means a proclamation by the Governor of the State of West Virginia that a State of Emergency exists as set forth in W. Va. Code § 15-5-6.

2.1.e. “State of Preparedness” means a proclamation by the Governor of the State of West Virginia that a State of Preparedness exists as set forth in W. Va. Code § 15-5-6.

§24-9-3. Physician Practice and Emergency Temporary Permit

3.1. A physician who has no pending complaints, investigations, consent orders, board orders, or pending disciplinary proceedings and who possesses a valid, unrestricted license to practice osteopathic medicine and surgery in another state, territory, or district of the United States may qualify for an emergency temporary permit upon the following conditions being met:

3.1.a. The applicant must complete an application approved by the Board; and

3.1.b. The Board shall verify that the physician holds a full, unlimited, and unrestricted license to practice osteopathic medicine and surgery in another state, territory, or district of the United States.

3.2. The Board shall have jurisdiction over all physicians practicing under this rule for all purposes set forth in applicable federal or state law, including the Board’s rules and Chapter 30 of the West Virginia Code, and such jurisdiction shall continue in effect even after such physician has stopped practicing medicine under this rule or the emergency temporary permit has expired.

3.3. During the State of Emergency or State of Preparedness, physicians holding an emergency temporary permit shall have the same rights and privileges as those physicians granted a full license by the Board. However, in order to best serve the public interest, the Board may limit the scope of practice of the physician practicing under this rule.

3.4. Emergency temporary permits shall automatically terminate when the State of Emergency or State of Preparedness is lifted.

3.5. Physicians holding emergency temporary permits shall not receive any compensation outside of their customary compensation for the provision of medical services during a disaster or emergency.

§24-9-4. Physician Assistant Practice and Emergency Temporary Permit

4.1. A physician assistant who has no pending complaints, investigations, consent orders, board orders, or pending disciplinary proceedings and who possesses a valid, unrestricted license to practice as a physician assistant in another state, territory, or district of the United States may qualify for an emergency temporary permit upon the following conditions being met:

4.1.a. The applicant must complete an application approved by the Board; and

4.1.b. The Board shall verify that the physician assistant holds a full, unlimited, and unrestricted license to practice in another state, territory, or district of the United States.

4.2. A physician assistant practicing under this rule must practice in collaboration with a physician authorized to practice in West Virginia.

4.3. The Board shall have jurisdiction over all physician assistants practicing under this rule for all purposes set forth in applicable federal or state law, including the Board's rules and Chapter 30 of the West Virginia Code, and such jurisdiction shall continue in effect even after such physician assistant has stopped practicing medicine under this rule or the emergency temporary permit has expired.

4.4. During the State of Emergency or State of Preparedness, physician assistants holding an emergency temporary permit shall have the same rights and privileges as those physician assistants granted a full license by the Board. However, in order to best serve the public interest, the Board may limit the scope of practice of the physician assistant practicing under this rule.

4.5. Emergency temporary permits shall automatically terminate when the State of Emergency or State of Preparedness is lifted.

4.6. Physician assistants holding emergency temporary permits shall not receive any compensation outside of their customary compensation for the provision of medical services during a disaster or emergency.

§24-9-5. Practice and Emergency Temporary Permits for Physicians and Physician Assistants with Inactive West Virginia Licenses.

5.1. Physicians and physician assistants who, at one time, possessed a license issued by the Board which was not revoked, but who are now retired or in inactive status, may qualify for an emergency temporary permit upon the following conditions being met:

5.1.a. The applicant must complete an application approved by the Board;

5.1.b. The Board shall verify that the applicant at one time had a full and unrestricted license issued in West Virginia by the Board;

5.1.c. The applicant must certify that he or she has practiced clinical medicine within the past five years;

5.1.d. The applicant must have maintained an active and unrestricted license continuously for the five-year period prior to going inactive; and

5.1.e. The applicant shall not have received any public discipline or inactivated his or her license while under investigation with such inactivation being reported to the National Practitioner Data Bank.

5.2. A physician or physician assistant practicing under this rule shall limit his or her medical practice to the area of practice that he or she engaged in prior to going inactive or another area in which he or she is competent to provide medical care.

5.3. A physician assistant practicing under this rule must practice in collaboration with a physician authorized to practice in West Virginia.

5.4. The Board shall have jurisdiction over all physicians and physician assistants practicing under this rule for all purposes set forth in applicable federal or state law, including the Board's rules and Chapter 30 of the West Virginia Code, and such jurisdiction shall continue in effect even after such physician or physician assistant has stopped practicing medicine under this rule or the emergency temporary permit has expired.

5.5. During the State of Emergency or State of Preparedness, physicians holding an emergency temporary permit shall have the same rights and privileges as those physicians granted a full license by the Board. However, in order to best serve the public interest, the Board may limit the scope of practice of the physician practicing under this rule.

5.6. During the State of Emergency or State of Preparedness, physician assistants holding an emergency temporary permit shall have the same rights and privileges as those physician assistants granted a full license by the Board. However, in order to best serve the public interest, the Board may limit the scope of practice of the physician assistant practicing under this rule.

5.7. Emergency temporary permits shall automatically terminate when the State of Emergency or State of Preparedness is lifted.

5.8. Physicians and physician assistants holding emergency temporary permits under this section shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.