



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

6/24/2020 2:34:18 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Medicine TITLE-SERIES: 11-14  
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: 11-14 Registration to Practice During Declared State of Emergency

**PRIMARY CONTACT**

NAME: Mark A Spangler Executive Director  
ADDRESS: West Virginia Board Of Medicine  
101 Dee Drive Suite 103  
Charleston, WestVirginia 25311  
EMAIL: mark.a.spangler@wv.gov  
PHONE NUMBER: 304-558-2921

CITE STATUTORY AUTHORITY: W. Va. Code §§ 30-3-7(a)(1) and 30-3E-3(a)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §§30-3-7(a)(1) and 30-3E-3(a)

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 4/23/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 5/23/2020

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

The Board publicized notice of the proposed rule by including a notice of the proposed rule and comment period on the Board of Medicine website with a link to the proposed rule. Additionally, email notification was sent to Board of Medicine licensees with a link to the proposed rule.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The Board promulgates this rule to create an emergency registration process: (a) to allow physicians and physician assistants licensed in another state to provide medical care in West Virginia under special provisions during the period of a declared state of emergency; and (b) to allow physicians and physician assistants who currently hold either an inactive or expired status West Virginia license to provide medical care in West Virginia under special provisions during the period of a declared emergency. The rule establishes a registration process, articulates eligibility criteria, and authorizes practice for registrants during a declared state of emergency. There is no fee for registration under the emergency rule.

Section two sets forth the eligibility criteria and registration process for out-of-state physicians and physician assistants to practice in West Virginia during a declared state of emergency.

Section three sets forth the eligibility criteria and registration process for inactive and retired West Virginia physicians and physician assistants to practice in West Virginia during a declared state of emergency.

Section four identifies the emergency registration records that will be issued and maintained by the Board of Medicine.

Section five sets forth professional conduct standards, registration denial and complaint and disciplinary procedures.

No changes were made to the proposed rule based upon the comments that were received.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Board of Medicine is the state agency charged with protecting the health and safety of the public through licensure, regulation, and oversight of medical doctors (MDs), podiatric physicians (DPMs), and collaborating physician assistants (PAs).

On March 16, 2020, Governor Justice declared a State of Emergency to address the COVID-19 pandemic. On March 19, 2020, Governor Justice issued Executive Order 7-20, authorizing the suspension of certain regulations codified in the West Virginia Medical Practice Act, W. Va. Code § 30-3-1 et seq. and the West Virginia Physician Assistants Act, W. Va. Code § 30-3E-1 et seq. to suspend certain statutory provisions relative to the regulation of physician and physician assistant practice in West Virginia. On March 23, 2020, by way of Executive Order 10-20, Governor Justice amended the provisions of Executive Order 7-20, relating to the suspension of certain regulations related to physician practice in West Virginia. On March 25, 2020, by way of Executive Order 11-20, Governor Justice further amended the provisions of Executive Order 7-20, relating to the suspension of certain regulations related to physician assistant practice in West Virginia. The goal of these Executive Orders was, in part, to facilitate the surge provider availability to respond to the COVID-19 emergency.

Consistent with direction from the Governor, and the Board's general rulemaking authority pursuant to W. Va. Code § 30-3-7(a)(1) and § 30-3E-3(a), the Board promulgates this rule to create an emergency registration process.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

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

N/A

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			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			

Other			
2. Estimated Total Revenues			

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

In relation to the fiscal impact related to this rule, there are several unknowable variables such as the projected length of a declared state of emergency and the number of medical doctor and physician assistant authorizations that staff will process as part of the medical provider surge.

The Board cannot predict how many out-of-state providers will seek to become authorized to practice in West Virginia during a state of emergency, nor can the Board predict the number of West Virginia licensees whose licenses are in an expired or inactive status and who will desire to return to active practice during a state of emergency.

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

**Yes**

**Mark A Spangler -- 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 14  
REGISTRATION TO PRACTICE DURING DECLARED STATE OF  
EMERGENCY

§11-14-1. General.

1.1. Scope. -- This rule establishes procedures for authorizing physicians and physician assistants who do not hold an active status medical license to practice in West Virginia during a declared state of emergency.

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

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.

§11-14-2. Registration for Out-Of-State Physicians and Physician Assistants to Practice in West Virginia During Declared State of Emergency.

2.1. In the event of an emergency declared by the Governor of West Virginia, the Board shall allow physicians and/or physician assistants licensed in another state to provide medical care in West Virginia under special provisions during the period of the declared emergency, subject to such limitations and conditions as the Governor may prescribe. To be eligible to practice pursuant to this rule, the physician or physician assistant must register with the Board.

2.2. The out-of-state physician and/or physician assistant shall submit to the Board the following information on a form provided by the Board to establish eligibility for registration to practice during a declared state of emergency:

2.2.1. Verification of a valid, permanent, current, and unrestricted license to practice in another state;

2.2.2. Verification that the physician or physician assistant is not the subject of a pending or active complaint, investigation, Consent Order, Board Order or pending disciplinary proceeding in any jurisdiction;

2.2.3. Verification that the physician or physician assistant has not surrendered a license while under investigation or had a license revoked in any jurisdiction, unless the revocation was subsequently withdrawn or overturned;

2.2.4. Date of birth and current contact information, including home address and valid email address; and

2.2.5. Current federal or state photo identification, i.e., driver license or passport.

2.3. Registration with the Board as an out-of-state physician and/or physician assistant authorized to practice in West Virginia during a declared state of emergency does not require the payment of any fee.

2.4. The out-of-state physician and/or physician assistant shall not practice in West Virginia under the special emergency provisions beyond the termination date of the emergency. Practice in West Virginia beyond the termination date of the declared emergency requires licensure through the Board.

**§11-14-3. Registration for Inactive and Retired West Virginia Physicians and Physician Assistants to Practice in West Virginia During Declared State of Emergency.**

3.1. In the event of an emergency declared by the Governor of West Virginia, the Board shall allow an inactive and/or retired physician or physician assistant who currently holds an inactive or expired status West Virginia medical license or physician assistant license to provide medical care in West Virginia under special provisions during the period of the declared emergency, subject to such limitations and conditions as the Governor may prescribe. To be eligible to practice pursuant to this rule, the physician or physician assistant must register with the Board.

3.2. To be eligible for registration to practice under this section, the physician or physician assistant must:

3.2.1. Have had an active clinical practice within the last five years;

3.2.2. No longer hold an active status medical or physician assistant license in any state;

3.2.3. Not have surrendered a medical license or physician assistant license while under investigation or had a license revoked in any jurisdiction, unless the revocation was subsequently withdrawn or overturned; and

3.2.4. Have been in good standing at the time the physician's West Virginia medical license or the physician assistant's West Virginia physician assistant license became inactive or expired.

3.3. The physician or physician assistant shall submit to the Board the following information on a form provided by the Board:

3.3.1. Verification that the inactive or retired West Virginia physician or physician assistant is not the subject of a pending or active complaint, investigation, Consent Order, Board Order or pending disciplinary proceeding in any jurisdiction;

3.3.2. Verification that the physician or physician assistant has not surrendered a license while under investigation or had a license revoked in any jurisdiction, unless the revocation was subsequently withdrawn or overturned;

3.3.3. Date of birth and current contact information, including home address and valid email address; and

3.3.4. Current federal or state photo identification, i.e., driver license or passport.

3.4. Registration with the Board does not require the payment of any fee.

3.5. The inactive or retired physician or physician assistant shall not practice in West Virginia under the special emergency provisions beyond the termination date of the emergency. Practice in West Virginia beyond the termination date of the declared emergency requires reinstatement or reactivation of licensure through the Board.

**§11-14-4. Required Records.**

4.1. The Board shall provide each physician and physician assistant registered to practice during a declared state of emergency written verification of registration via email.

4.2. The Board shall maintain a list of all physicians and physician assistants who are registered to practice in West Virginia during a declared state of emergency pursuant to the provisions of this rule.

**§11-14-5. Professional Conduct, Authorization Denial, Complaint and Disciplinary Procedures.**

5.1. The Board shall deny a registration to practice during a declared state of emergency to any physician or physician assistant who is ineligible based upon the criteria set forth in this rule or additional criteria established by the Governor during the declared state of emergency.

5.2. All physicians and physician assistants who are registered to practice pursuant to this rule are required to meet the professional conduct standards and requirements required of licensed physicians and licensed physician assistants in West Virginia.

5.3. All physician assistants who are registered to practice pursuant to this rule must practice pursuant to an authorized Practice Agreement or active Practice Notification pursuant to W. Va. Code § 30-3E-1 *et seq.*, an all applicable legislative rules.

5.4. The Board may rescind a registration granted pursuant to this rule for conduct which is equivalent to any of the grounds cited for the discipline in W. Va. Code §30-3-14(c), section 12 of the Board's rule 11 CSR 1A, and/or section 21 of 11 CSR 1B. In its discretion, the Board may also report or refer any complaint or allegation of professional misconduct to a physician or physician assistant's out of state licensing board.