



Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Natalie E. Tennant
Secretary of State
State of West Virginia

FILED
2012 JUL -5 PM 1:39

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Phone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

July 5, 2012

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Medicine

RULE: New Rule, 11CSR10, Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database

DATE FILED AS AN EMERGENCY AMENDMENT: June 26, 2012

DATE ORIGINALLY FILED AS AN EMERGENCY: June 8, 2012

DECISION NO. 8-12

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.

A handwritten signature in black ink that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 8-12)

AGENCY: West Virginia Board of Medicine

RULE: New Rule, 11CSR10, Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database

DATE FILED AS AN EMERGENCY AMENDMENT: June 26, 2012

DATE ORIGINALLY FILED AS AN EMERGENCY: June 8, 2012

- par. 1 The West Virginia Board of Medicine (Board) has filed the above rule as an emergency amendment.
- 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 26, 2012 and with the LRMRC June 26, 2012.
- 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 §60A-9-5a reads:

§60A-9-5a. Practitioner requirements to conduct annual search of the database; required rulemaking.

(a) Upon initially prescribing or dispensing any pain-relieving controlled substance for a patient and at least annually thereafter should the prescriber or dispenser continue to treat the patient with controlled substances, all persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement Administration registration identification number and, who are licensed by the Board of Medicine as set forth in article three, chapter thirty of this code, the Board of Registered Professional Nurses as set forth in article seven, chapter thirty of this code, the Board of Dental Examiners as set forth in article four, chapter thirty of this code and the Board of Osteopathy as set forth in article fourteen, chapter thirty of this code shall access the West Virginia Controlled Substances Monitoring Program database for information regarding specific patients for whom they are providing pain-relieving controlled substances as part of a course of treatment for chronic, nonmalignant pain but who are not suffering from a terminal illness. The information obtained from accessing the West Virginia Controlled Substances Monitoring Program database for the patient shall be documented in the patient's medical record. A pain-relieving controlled substance shall be defined as set forth in section one, article three-a, chapter thirty of this code.

(b) The various boards mentioned in subsection (a) above shall promulgate both emergency and legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

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:

In accordance with the provisions of West Virginia Code § 60A-9-5a, the Rule provides that upon initially prescribing or dispensing any pain-relieving substance for a patient and at least annually thereafter if the prescriber or dispenser continues to treat the patient with controlled substances, all persons with prescribing or dispensing authority and in possession of valid Drug Enforcement Administration

registration identification number and licensed by the Board of Medicine, must access the West Virginia Controlled Substances Monitoring Program database for information regarding specific patients for whom they are providing pain-relieving controlled substances as part of a course of treatment for chronic, nonmalignant pain but who are not suffering from a terminal illness. The information obtained must be documented in the patient's medical record.

The Rule contains multiple definitions and explains that failure to comply with provisions of the Rule subjects the practitioner to Board of Medicine discipline for unprofessional, unethical and dishonorable conduct. West Virginia leads the nation in drug overdose death.

Drug abuse and diversion is an epidemic in West Virginia.* If practitioners who prescribe/dispense pain-relieving controlled substances are required to check, have the ability to check, and do check, the controlled substance history of a patient, the practitioners will be better informed of the facts and the knowledge obtained may cause fewer controlled substances which are diverted to be prescribed/dispensed. Lowering the death rate in West Virginia from overdoses as a result of diverted drugs is a priority and in everyone's interests. Further delay benefits no one.

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). . . "immediate preservation of public peace, health, safety or welfare", "comply with West Virginia Code: and "prevent substantial harm to the public interest.

par. 14 This decision shall be cited as Emergency Rule Decision 8-12 or ERD 8-12 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 Medicine, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

Entered _____

CHIEF CLERK
SECRETARY OF STATE

2012 JUL -5 PM 1:39

FILED