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July 6, 2010

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Osteopathy

RULE: Amendments, 24CSR2, Osteopathic Physician Assistants

DATE FILED AS AN EMERGENCY RULE: June 14, 2010

DECISION NO. 8-10

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, appearing to read "Natalie E. Tennant", written over a horizontal line.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 8-10)

AGENCY: West Virginia Board of Osteopathy
RULE: Amendment, 24CSR2, Osteopathic Physician Assistants
FILED AS AN EMERGENCY RULE: 8

- par. 1 The West Virginia board of Osteopathy (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 June 14, 2010 and with the LRMRC June 14, 2010.
- 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 §30-14A-1(b) reads:
- (b) The board shall promulgate legislative and emergency rules governing the extent to which osteopathic physician assistants may function in this state. Such rules shall provide that the osteopathic physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of an osteopathic physician permanently licensed in this state, but such supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the osteopathic physician*

assistant's normal place of employment is on the premises of the supervising physician. The supervising physician may send the osteopathic physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the osteopathic physician assistant shall not be established. In promulgating such rules, the board may allow the osteopathic physician assistant to perform those procedures and examinations and in the case of authorized osteopathic physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (o) of this section those categories of drugs submitted to it in the job description required by subsection (e) of this section. The board shall compile and publish an annual report that includes a list of currently certified osteopathic physician assistants and their employers and location in the state.

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:

During the 2010 Regular Session of the Legislature, the West Virginia Code was amended to change the qualifications for authorization to practice as an osteopathic physician assistant, to qualifications for limited prescription-writing privileges, and to the restrictions on substances that a qualified osteopathic physician assistant may prescribe. These rules are proposed pursuant to W. Va. Code §30-14A-1(b) to implement the directives of the Legislature.

The West Virginia Legislature mandated changes, in S.B. 618 (2010 Regular Session) to the qualifications to practice as an osteopathic physician assistant, to the qualifications for limited prescription-writing privileges, and to restrictions on the substances that a qualified osteopathic physician assistant may prescribe. This bill specifically authorized the Board to file Emergency Rules to implement these changes promptly.

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" and "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 8-10 or ERD 8-10 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 Osteopathy, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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