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November 17, 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 AMENDMENT: November 10, 2010

DATE FILED AS AN EMERGENCY RULE: June 14, 2010

DECISION NO. 14-10

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.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 14-10)

AGENCY: West Virginia Board of Osteopathy
RULE: Amendment, 24CSR2, Osteopathic Physician Assistants
DATE FILED AS AN EMERGENCY AMENDMENT: November 10, 2010
DATE FILED AS AN EMERGENCY RULE: June 14, 2010

- par. 1 The West Virginia board of Osteopathy (Board) has filed the above emergency amendments to an existing 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 November 10, 2010 and with the LRMRC November 10, 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 propose emergency and legislative rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code, governing the extent to which osteopathic physician assistants may function in this 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:

Following the original filing of the Emergency Rule, the WV Board of Osteopathy put its proposed Legislative Rule out for public comment. As a result of comments received, the Board amended the rule that it proposed to the Legislature. Since there is a significant difference between the existing Emergency Rule and the proposed Legislative Rule relating to prescription privileges, there is now a time window in which applicants are subject to more stringent application requirements than those that the Legislature is likely to approve.

For this reason, the West Virginia Board of Osteopathy seeks to amend section 24-4-8 of the Rule to conform to the requirements now proposed in the Legislative Rule submitted to the Legislative Rule-Making Review Committee. The principal effects of these amendments is to reduce the amount of classroom instruction in pharmacology that is required to qualify for prescription privileges and to eliminate the requirement for written prescriptions to contain a complete list of authorized pharmaceuticals.

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 14-10 or ERD 14-10 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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