



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 4:06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Telephone: (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 Pharmacy

RULE: Amendments, 15-08, Controlled Substances Monitoring

DATE FILED AS AN EMERGENCY RULE: June 8, 2012

DECISION NO. 9-12

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

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 9-12)

AGENCY: West Virginia Board of Pharmacy
RULE: Amendments, 15CSR8, Controlled Substances Monitoring
FILED AS AN EMERGENCY RULE: June 8, 2012

- par. 1 The West Virginia Board of Pharmacy (Board) has filed the above amendment 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 8, 2012 and with the LRMRC June 8, 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-9-6 reads:

*§60A-9-6. Promulgation of rules.
The state board of pharmacy shall promulgate legislative rules to effectuate the purposes of this article in accordance with the provisions of chapter twenty-nine-a of this code.*
- 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:

SB 437 (2012), effective June 8, 2012. makes changes to the West Virginia Controlled Substances Monitoring Program database (the "CSMP"). Among other things, it requires new fields of information to be reported, requires presentation of government-issued photo identification, and gives the Board authority to require reporting of the required information within 24-hours of dispensing of a controlled substance, rather than within 7 days. As such, these modifications add a definition of "Government-issued photo identification card". clarify reporting requirements for particular information fields provide for "zero" reports and for obtaining appropriate waivers from reporting if no controlled substances are ever dispensed, and increase the frequency of reporting to within 24-hours of dispensing rather than every 7 days. These rules are necessary to clarify the *new* requirements for information that must be reported and make for more timely and accurate information. The ongoing substance abuse issues in this State and our surrounding states require every effort we can reasonably and appropriately make to give prescribers, dispensers, agencies, and law enforcement the appropriate tools they need to fight illegal drug diversion. Without these clarifications, the reporting dispensers have questions about what exactly they must report, and would only be required by rule to report every 7 days, leaving unnecessary time lags for receipt and availability of the information to the users of the CSMP.

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 "prevent substantial harm to the public interest

par. 14 This decision shall be cited as Emergency Rule Decision 9-12 or ERD 9-12 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 Pharmacy, the Attorney General and the Legislative Rule Making Review Committee.


NATALIE E. TENNANT
Secretary of State

Entered _____

FILED
2012 JUL -5 PM 4:06
OFFICE WEST VIRGINIA
SECRETARY OF STATE