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July 27, 2012

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Osteopathic Medicine

RULE: New Rule, 24CSR7, Practitioner Requirements for controlled Substances
Licensor and Accessing the West Virginia Controlled Substances Database

DATE FILED AS AN EMERGENCY RULE: June 29, 2012

DECISION NO. 12-12

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, reading "Natalie E. Tennant", written over a horizontal line.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 12-12)

AGENCY: West Virginia Board of Osteopathic Medicine

RULE: New Rule, 24CSR7, Practitioner Requirements for Controlled Substances Licensors and Accessing the West Virginia Controlled Substances Database

FILED AS AN EMERGENCY RULE: June 29, 2012

- par. 1 The West Virginia Board of Osteopathic Medicine (Board) has filed the above new 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 29, 2012 and with the LRMRC June 29, 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(b) reads:
- (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:

Senate Bill 437 which added provisions to the Uniform Controlled Substances Act now requires practitioners to access the Controlled Substances Monitoring Program for certain patients. This became effective June 8 2012. This proposed rule has been promulgated to conform to this legislation and to give effect to the policy underlying the bill. The bill specifically authorized the West Virginia Board of Osteopathic Medicine to promulgate emergency rules to carry out the legislation.

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

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



NATALIE E. TENNANT
Secretary of State

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