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August 13, 2013

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Denistry

RULE: New Rule, 5CSR12, Administration of Anesthesia By Dentists

DATE FILED AS AN EMERGENCY RULE: July 23, 2013

DECISION NO. 4-13

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 4-13)

AGENCY: West Virginia Board of Dentistry
RULE: New Rule, 5CSR12, Administration of anesthesia by Dentists
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- par. 1 The West Virginia Board of Dentistry (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 July 23, 2013 and with the LRMRC July 23, 2013.
- 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 §30-4-6 reads:

§30-4-6. Rule-making authority.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article and articles four-a and four-b of this chapter including:

(1) Standards and requirements for licenses, certifications and permits;

(2) Requirements for third parties to prepare and/or administer examinations and reexaminations;

- (3) Educational and experience requirements;*
- (4) Continuing education requirements and approval of continuing education courses;*
- (5) Procedures for the issuance and renewal of licenses, certifications and permits;*
- (6) Establish a fee schedule;*
- (7) Regulate dental specialties;*
- (8) Delegate procedures to be performed by a dental hygienist;*
- (9) Delegate procedures to be performed by a dental assistant;*
- (10) Designate the services and procedures performed under direct supervision, general supervision in public health practice;*
- (11) Designate additional public health settings;*
- (12) Regulate the use of firm or trade names;*
- (13) Regulate dental corporations;*
- (14) Regulate mobile dental facilities;*
- (15) Regulate portable dental units;*
- (16) Regulate professional limited liability companies;*
- (17) Establish professional conduct requirements;*
- (18) Establish the procedures for denying, suspending, revoking, reinstating or limiting the practice of licensees, certifications and permittees;*
- (19) Establish requirements for inactive or revoked licenses, certifications and permits;*
- (20) Regulate dental anesthesia, including:*
 - (A) Fees;*
 - (B) Evaluations;*
 - (C) Equipment;*
 - (D) Emergency drugs;*
 - (E) Definitions;*
 - (F) Qualified monitor requirements; and*
 - (G) Education;*
- (21) Any other rules necessary to implement this article.*
- (b) All of the board's rules in effect and not in conflict with these provisions shall remain in effect until they are amended or rescinded.*

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.

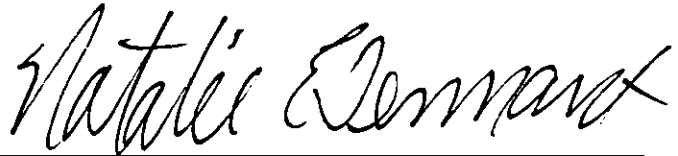
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the 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:

There are currently no rules associated with the dental anesthesia law. The passage of Senate Bill 580 during the 2013 Legislative Session, effective July 12, 2013, provides the framework for safe administration and enforcement of dental anesthesia laws, but is not detailed enough to provide direction for dentists who provide the different levels of anesthesia, depending on training. New regulations need to be provided for qualified monitors, integral members of the dental team to ensure patient safety. Emergency equipment and medications need to be available for practitioners. The anesthesia committee will need direction in providing comprehensive evaluations of practitioners who provide conscious sedation and general anesthesia services.

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). . . "to prevent substantial harm to the public interest" and "immediate preservation of the public peace, health, safety or welfare"

par. 14 This decision shall be cited as Emergency Rule Decision 4-13 or ERD 4-13 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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SECRETARY OF STATE