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August 12, 2013

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Pharmacy

RULE: Amendments, 15CSR3, Board of Pharmacy Rules for Continuing Education for Licensure of Pharmacists

DATE FILED AS AN EMERGENCY RULE: July 16, 2013 .

DECISION NO. 3-13

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 3-13)

AGENCY: West Virginia Board of Pharmacy
RULE: Amendments, 15CSR3, Board of Pharmacy Rules for Continuing Education for Licensure of Pharmacists
FILED AS AN EMERGENCY RULE: July 16, 2013

- par. 1 The West Virginia Board of Pharmacy (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 July 16, 2013 and with the LRMRC July 16, 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 §30-5-7(a) and §30-5-7(a)(8) reads:

(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 2, 3, 8, 9 and 10 of Chapter sixty-A including:
(8) Continuing education requirements.

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:

House Bill 437 (2012 Regular Session) requires the Board (BOP) to require certain continuing education for controlled substances dispensing. The other practitioner licensing boards did theirs as emergency rules the same as here, due to the problems with drug diversion. The BOP reviewed the other boards' draft rules at the same time (Fall, 2012), and drafted very similar rules. However, at the same time, the BOP was fanning a newly constituted Continuing Pharmacy Education Committee, due to changes in the rules also passed in the 2012 Regular Session. The new committee was not fully appointed until January, 2013, when the last of the appointing bodies responsible for selecting their members was able to provide its appointment. The BOP felt it needed to follow the 2012 CPE rules changes and have the new CPE Committee review these rules prior to filing. The new committee reviewed them in February, and recommended them to the Board in March, 2013. Further clarifications were needed to accommodate a new CPE reporting system. Nonetheless, the rules need to be in place due to the ongoing drug diversion problems, and as required for pro ice for pharmacists renewing licenses on July 1, 2014.

House Bill 437 (2012 Regular Legislative Session) requires the Board to require certain continuing pharmacy education for the dispensing of controlled substances designed to reduce and prevent drug diversion. The other practitioner licensing boards required by the new law to provide this continuing education requirement promulgated theirs by emergency rule in the Fall of 2013, citing the ongoing drug diversion problems for the immediate need to put the rules in place. It is this same reason which the Board of Pharmacy cites for the need to do this by emergency rule. Pharmacists need to have proper notice of the requirement prior to the 2014 biennial license renewal period in order to comply. Thus, the rule seeks to implement the new training for "drug diversion training and best practice prescribing of controlled substances training" In addition, the changes implement the use of the

new CPE Monitor, the service for electronic reporting of CPE hours earned. The rule then clarifies what a "live" program is. Finally, the Board sought to clean up and make minor clarifications throughout.

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). . . "time limitation"

par. 14 This decision shall be cited as Emergency Rule Decision 3-13 or ERD 3-13 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

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