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June 3, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Medicine

RULE: 11-1B, Amendments, Licensure, Disciplinary and Complaint procedures,
Continuing Education, Physician Assistants

DATE FILED AS AN EMERGENCY RULE: April 30, 2014

DECISION NO. 8-14

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 8-14)

AGENCY: West Virginia Board of Medicine
RULE: 11-1B, Amendment, Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants
FILED AS AN EMERGENCY RULE: April 30, 2014

- par. 1 The West Virginia Board of Medicine (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 April 30, 2014 and with the LRMRC April 30, 2014.
- 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 §30-3E-2(3) reads:

(3) 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;
- 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.

(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:

The Physician Assistants Practice Act, W. Va. Code §30-3E-1 et seq., becomes effective on June 6, 2014. This statute creates an entirely new procedural system that must be utilized for a physician assistant to obtain authorization to practice in West Virginia. It also establishes criteria for licensure, summer camp and community event endorsements and collaborative complaint, investigation and disciplinary processes between the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine where appropriate. This emergency rule is necessary for the immediate preservation of public health, safety and welfare as it ensures that the appropriate mechanisms are in place for the continued regulation, licensure and authorization to practice of physician assistants subsequent to June 5, 2014. See also "Brief Summary of the Emergency Rule and Statement of Circumstances Constituting the Emergency."

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 8-14 or ERD 8-14 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 Medicine, the Attorney General and the Legislative Rule Making Review Committee.

Natalie Tennant

NATALIE E. TENNANT
Secretary of State

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