



FILED

2014 JUN -6 A 8:32

Office of the Secretary of State  
Building I, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

**Natalie E. Tennant**  
Secretary of State  
State of West Virginia

OFFICE WEST VIRGINIA  
SECRETARY OF STATE  
Telephone: (304) 558-6000  
Toll Free: 1-866-SOS-VOTE  
Fax: (304) 558-0900  
www.wvsos.com

June 3, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Board of Osteopathic Medicine

RULE: 24-2, Amendment, Osteopathic Physician Assistants

DATE FILED AS AN EMERGENCY RULE: May 12, 2014

DECISION NO. 9-14

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.

A handwritten signature in black ink that reads "Natalie E. Tennant".

NATALIE E. TENNANT  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 9-14)

AGENCY: West Virginia Board of Osteopathic Medicine  
RULE: 24-2, Amendments, Osteopathic Physician Assistants  
FILED AS AN EMERGENCY RULE: May 12, 2014

- par. 1 The West Virginia Board of Osteopathic 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 May 12, 2014 and with the LRMRC May 12, 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.

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:

West Virginia Code § 29A-3-15(f) mandates that an emergency rule may only be promulgated under the following circumstances: (1) for the immediate preservation of public peace, health safety or welfare; (2) to comply with a time limitation established by West Virginia Code or a federal statute or regulation or (3) to prevent substantial harm to the public interest.

Senate Bill 425, creating the Physician Assistants Practice Act, which becomes effective on June 6, 2014, creates an entirely new procedural system that must be utilized for a physician assistant to obtain authorization to practice in West Virginia. See WV Code § 30-3E-1 et seq. The Act establishes criteria for licensure. The statute mandates that a physician assistant may not practice until (1) the supervising physician and physician assistant submit a practice agreement to the Board. The practice agreement establishes the activities within the physician assistant's scope of practice, including limited prescriptive authority; and (2) the Board authorizes the physician assistant's practice pursuant to the agreement. The Physician Assistants Practice Act authorizes the Board to promulgate legislative rules to implement the provisions of the new statute. See WV Code § 30-3D-3(a). WV Code § 30-3D-3(b) authorizes this board to propose emergency rules to ensure conformity with the requirements of the Act.

The emergency rule is necessary to ensure that mechanisms are in place for the continued licensure and authorization to practice of physician assistants after June 5, 2014. The board's emergency rule addresses the new requirements. The current version of 24 CSR 2 does not conform with the requirements of the Physician Assistants Practice Act, and is procedurally incompatible with the Act. Additionally, the current version was promulgated pursuant to authority set forth in WV Code § 30-14A-3 which is repealed in Senate Bill 425 and will not be effective law after June 5, 2014. The proposed emergency rule is necessary for the immediate preservation of the public health, safety and welfare and to prevent substantial harm to the public interest. Without the promulgation of the emergency rule, the new law and the board's current rule are incompatible. There will be no requirements for practice agreements, and no mechanism in place for the submission, review and authorization of physician assistant practice after June 6,

2014, resulting in a regulatory crisis which would substantially impact the health, safety and welfare of the public. The continued practice of current physician assistants and the entry of new physician assistants into the workforce in West Virginia will be endangered, diminishing the availability of quality health care practitioners to the people in the state of West Virginia.

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 9-14 or ERD 9-14 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 Osteopathic Medicine, the Attorney General and the Legislative Rule Making Review Committee.



---

NATALIE E. TENNANT  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF THE SECRETARY OF STATE

2014 JUN - 6 A 8: 32

FILED