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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: 24-5, Amendment, Fees for Services Rendered by the Board of Osteopathy

DATE FILED AS AN EMERGENCY RULE: May 12, 2014

## DECISION NO. 10-14

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 10-14)

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:

24 C.S.R. 5 establishes the fees for services rendered by this board. The current version of the rule is similarly incompatible with the new requirements of the Act. The current rule has no provision for practice agreement fees. Without the emergency amendment of the rule, the board will be unable to comply with the requirements of the Act, which will, in turn, prevent current physician assistants and new physician assistants from practicing in the state of West Virginia. Without physician assistants in the health care workforce, the availability of health care to the people of the state will be severely diminished.

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 10-14 or ERD 10-14 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

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