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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 AMENDMENT: June 12, 2014

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: April 30, 2014

DECISION NO. 12-14

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 cursive script that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 12-14)

AGENCY: West Virginia Board of Medicine
RULE: 11-1B, Amendment, Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants
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- par. 1 The West Virginia Board of Medicine (Board) has filed the above amendments to an existing rule as an emergency amendment to an 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 June 12, 2014 and with the LRMRC June 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:

This Emergency Rule implements the provisions of the of the West Virginia Physician Assistants Practice Act, W. Va. Code §3B-3E-1 et seq. In response to the West Virginia Board of Medicines simultaneously submitted a Notice of Comment on a Proposed Rule, it has received several comments regarding the identical proposed legislative rule. The Board has carefully considered these comments, and has determined that certain modifications are necessary to the appropriate implementation of the Physician Assistants Practice Act. The Emergency Amendment modifies six provisions of the Emergency Rule: 11-1B-2.bb is amended to revise the definition of protocol in response to comments received, and to clarify the term to mean written treatment instructions established rather than prepared by the supervising physician. The amendment permits wider collaboration regarding the creation of protocols. 11-1B-9.5 is amended to clarify that if a supervising physician intends to delegate the signing of orders (where permitted by the place of practice), this delegation and protocols related thereto must be incorporated into the terms of an authorized practice agreement. 11-1B-10.5.d is amended to clarify the meeting requirements for supervising physicians and physician assistants. Substantial and persuasive commentary was received on this provision of the Emergency Rule. The amendment requires that an authorized practice agreement shall establish manner and frequency with which periodic, in person, education and rev1ew sessions shall occur for experienced physician assistants. For physician assistants in their first year of practice, the rule requires that face to face meetings occur for the first six months of a practice agreement. This modification more accurately reflects the intention of the Board that practice agreements establish customized supervision standards that are specific to the type practice, the practice location and the education, training and experience of the physician assistant. The amended provision continues to set forth a minimum standard for new practitioners. 11-1B-18.7 is amended to require supervising physicians to establish protocols within the practice agreement for when a patient being treated regularly for a life-threatening, chronic, degenerative, or disabling condition shall be seen by the supervising physician. By incorporating these protocols into an authorized practice

agreement, flexibility exists to customize protocols that are specific to the type practice, the practice location and the education, training and experience of the physician assistant. 11-1B-11.5.d.1 is amended for clarity. Practice agreements, in any practice setting, which seek to delegate core duties only, may be approved by the staff on behalf of the Board if all other conditions of 11-1B-11.5 are met. The previous wording created unintended confusion. No substantive change was made regarding this section. 11-1B-12.1.a is amended to reflect the modern pedagogical practices at accredited programs for physician assistant education. Prior to 1990, when programs for physician assistant education were accredited under less rigorous standards, the Board developed the four semester hours of clinical pharmacology requirement for eligibility for prescriptive privileges. Baccalaureate and masters degree programs for physician assistant education, consistent with current accreditation requirements, incorporate pharmacologic instruction throughout the curriculum in a manner that far exceeds the equivalence of four semester hours. Because the current pedagogical model incorporates pharmacology throughout the curriculum, receipt of the necessary pharmacology instruction is demonstrated by graduation. The Board has retained the four semester hours of clinical pharmacology requirement for all physician assistants who have not graduated with a baccalaureate or masters degree from an approved program of instruction for physician assistants.

- 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 12-14 or ERD 12-14 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 E. TENNANT
Secretary of State

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