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June 30, 2015

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

**AGENCY:** West Virginia Board of Medicine

**RULE:** 11CSR11, New Rule, Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities

**DATE FILED AS AN EMERGENCY RULE:** June 12, 2015

**DECISION NO. 5-15**

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.

  
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NATALIE E. TENNANT  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 5-15)

AGENCY: West Virginia Board of Medicine  
RULE: 11CSR11, New Rule, Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities

FILED AS AN EMERGENCY RULE: June 12, 2015

- par. 1 The West Virginia Board of Medicine (Board) has filed the above new 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 June 12, 2015 and with the LRMRC June 12, 2015.
- 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 §30-3-11b(d) reads:  
  
*(d) The board shall propose emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this section.*
- 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:

On June 11, 2015, HB2098 became effective. This bill amended the West Virginia Medical Practice Act to add a new section, W. Va. Code §30-3-11b. The new section authorizes allopathic physicians to provide services to patients or residents of state-run veterans facilities by allowing them to obtain license without the required examination from the appropriate licensing agency of this state. The section limits the scope of practice pursuant to such license and requires the Board of Medicine to propose emergency rules to implement the provisions of this section.

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). . . "prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 5-15 or ERD 5-15 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.



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