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January 23, 2017

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Pharmacy

RULE: Amendment, 15CSR7, Registration of Pharmacy Technicians

DATE FILED AS AN EMERGENCY RULE: January 19, 2017

DECISION NO. 1-17

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 "Mac Warner".

Mac Warner
Secretary of State

EMERGENCY RULE DECISION
(ERD 1-17)

AGENCY: Board of Pharmacy
RULE: Amendments, 15CSR7, Registration of Pharmacy Technicians
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- par. 1 The Board of Pharmacy (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 January 19, 2017 and with the LRMRC January 19, 2017.
- 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 §30-5-7 reads:

§30-5-7. Rule-making authority.

(a) The board shall 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, and articles two, three, eight, nine and ten of chapter sixty-A including:

- (1) Standards and requirements for a license, permit and registration;***
(2) Educational and experience requirements;

- (3) Procedures for examinations and reexaminations;*
- (4) Requirements for third parties to prepare, administer or prepare and administer examinations and reexaminations;*
- (5) The passing grade on the examination;*
- (6) Procedures for the issuance and renewal of a license, permit and registration;*
- (7) A fee schedule;*
- (8) Continuing education requirements;*
- (9) Set standards for professional conduct;*
- (10) Establish equipment and facility standards for pharmacies;*
- (11) Approve courses and standards for training pharmacist technicians;*
- (12) Regulation of charitable clinic pharmacies;*
- (13) Regulation of mail order pharmacies: Provided, That until the board establishes requirements that provide further conditions for pharmacists whom consult with or who provide pharmacist care to patients regarding prescriptions dispensed in this state by a mail order pharmacy, the pharmacist in charge of the out-of-state mail order pharmacy shall be licensed in West Virginia and any other pharmacist providing pharmacist care from the mail order pharmacy shall be licensed in the state where the pharmacy is located.*
- (14) Agreements with organizations to form pharmacist recovery networks;*
- (15) Create an alcohol or chemical dependency treatment program;*
- (16) Establish a ratio of pharmacy technicians to on-duty pharmacist operating in any outpatient, mail order or institutional pharmacy;*
- (17) Regulation of telepharmacy;*
- (18) The minimum standards for a charitable clinic pharmacy and rules regarding the applicable definition of a pharmacist-in-charge, who may be a volunteer, at charitable clinic pharmacies: Provided, That a charitable clinic pharmacy may not be charged any applicable licensing fees and such clinics may receive donated drugs.*
- (19) Establish standards for substituted drug products;*
- (20) Establish the regulations for E-prescribing;*
- (21) Establish the proper use of the automated data processing system;*
- (22) Registration and control of the manufacture and distribution of controlled substances within this state.*
- (23) Regulation of pharmacies;*
- (24) Sanitation and equipment requirements for wholesalers, distributors and pharmacies.*
- (25) Procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee, permittee or registrant;*
- (26) Regulations on prescription paper as provided in section five, article five-w, chapter sixteen;*
- (27) Regulations on controlled substances as provided in article two, chapter sixty-a;*
- (28) Regulations on manufacturing, distributing, or dispensing any controlled substance as provided in article three, chapter sixty-a;*
- (29) Regulations on wholesale drug distribution as provided in article eight, chapter sixty-a;*
- (30) Regulations on controlled substances monitoring as provided in article nine, chapter sixty-a;*
- (31) Regulations on Methamphetamine Laboratory Eradication Act as provided in article ten, chapter sixty-a;*
- (32) Establish and maintain an official prescription paper program; and*
- (33) Any other rules necessary to effectuate 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 minor change will allow high school students enrolled in a high school pharmacy technician training program to be eligible for registration as a pharmacy technician trainee. Current rules would prohibit it to the detriment of the students currently enrolled in these programs.

When rules revisions were made in 2015 implementing certain statutory changes dealing with pharmacy technicians, high school programs were not at all contemplated. This oversight was recently pointed out, and the Board seeks to allow the students enrolled in these longstanding programs the opportunity to get real experiential education as a part of their programs by allowing them to be registered as pharmacy technician trainees. In short, the new rule had unintended consequences, and this change is needed immediately to enhance the ongoing high school training programs for the students currently enrolled in these high school based PTT programs.

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). . . for the 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 1-17 or ERD 1-17 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Pharmacy.

Mac Warner

Mac Warner
Secretary of State

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STATE OF MISSISSIPPI
SECRETARY OF STATE