



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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Betty Ireland
Secretary of State

OFFICE WEST VIRGINIA
SECRETARY OF STATE

August 12, 2008

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV Board of Dental Examiners

RULE: Amendment, 5CSR1, Rule for the West Virginia Board of Dental Examiners

DATE FILED AS AN EMERGENCY AMENDMENT: July 15, 2008

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: June 4, 2008

DECISION NO. 8-08

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.


BETTY IRELAND
Secretary of State

Building 1, Suite 157-K
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Charleston, West Virginia 25305

EMERGENCY RULE DECISION
(ERD 8-08)

AGENCY: WV Board of Dental Examiners
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par. 1 The WB Board of Dental Examiners (Board) has filed the above amendment 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 July 15, 2008 and with the LRMRC July 15, 2008.

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 §30-4-6(a)(9) reads:

(9) Designating the services and procedures requiring or allowing direct supervision, general supervision and public health practice to be completed and filed as an emergency rule no later than the first day of July, two thousand eight ;

1.

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 rule implements provisions of Senate Bill 13, which provides for general supervision of dental hygienists in the private practice setting. Further, the rule implements additional provisions of Senate Bill 13, by providing the provisions and circumstances under which dental hygienists may practice in a public health setting.

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). . . "mandated by WV Code"

par. 14 This decision shall be cited as Emergency Rule Decision 8-08 or ERD 8-08 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Board of Dental Examiners, the Attorney General and the Legislative Rule Making Review Committee.


BETTY IRELAND
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