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October 20, 2017

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Medicine

RULE: Amendment, 11CSR1B, Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants

DATE FILED AS AN EMERGENCY RULE: September 11, 2017

DECISION NO. 11-17

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 11-17)

- par. 1 The Board of Medicine (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 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. 7 (B) Statutory Authority -- W. Va. Code §30-3e-3(b) reads:
(b) The boards may propose emergency rules pursuant to article three, chapter twenty-nine-a of this code to ensure conformity with this article.
- par. 8 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.
- par. 9 (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. 10 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. 11 The facts and circumstances as presented by the Board are as follows:

During the First Special Session of 2017, the Legislature passed SB1014. This bill makes significant changes to the West Virginia Code that relate to physician assistant practice in West Virginia, many of which require rulemaking to implement. Additionally, other significant changes were incorporated which are inconsistent with the Boards current legislative rule, including a change eliminating the provision which automatically terminated a license if a physician assistant lost NCCPA certification. This emergency rule is identical to the agency approved version of 11 CSR 18, filed by the Board on August 29, 2017. It is intended to effectuate implementation of SB1014, which will allow physician assistants to provide health care consistent with their education, training and ability, thus allowing improved access to care by citizens of West Virginia. Without an emergency rule, the expansion of physician assistant prescribing and signature authority cannot be implemented. Additionally, SB1014 implements a reconceptualization of the relationship between a physician and a physician assistant from supervision to collaboration. This change is inconsistent with the Boards current rule) and absent an emergency rule) creates unnecessary confusion and complication in the regulation of the physician assistant profession.

par. 12 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. 13 This decision shall be cited as Emergency Rule Decision 11-17 or ERD 11-17 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Medicine.



Mac Warner
Secretary of State

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