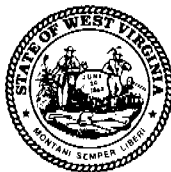


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## STATE OF WEST VIRGINIA

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(Plus all the volunteer  
help we can get)

July 6, 1998

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

AGENCY: Division of Health

RULE: New Rule, Series 60 Medication Administration by Unlicensed Personnel

DATE FILED AS AN EMERGENCY RULE: May 26, 1998

### DECISION NO. 3-98

Following review under WV 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.

  
KEN HECHLER  
Secretary of State

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
JUL 6 3 23 PM '98  
FILED

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**EMERGENCY RULE DECISION**  
**(ERD 3-98)**

**AGENCY:** Division of Health  
**RULE:** New Rule, Series 60 Medication Administration by Unlicensed Personnel

**FILED AS AN EMERGENCY RULE:** May 26, 1998

- par. 1 The Division of Health (Division) has filed the above new rule as an emergency rule.
- par. 2 West Virginia 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: WV 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 Division filed this emergency rule with supporting documents with the Secretary of State May 26, 1998 and with the LRMRC May 26, 1998.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-50-11 reads:

*The department shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as may be necessary to implement the provisions of this article. Subsequently, the department may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code.*

par. 9 It is the determination of the Secretary of State that the division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV 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 division are as follows:

W. Va. Code §16-50-11 directs the Department of Health and Human Resources to promulgate emergency rules to implement §16-50.

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 the West Virginia Legislature.

par. 14 This decision shall be cited as Emergency Rule Decision 3-98 or ERD 3-98 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Commission.

  
\_\_\_\_\_  
KEN HECHLER  
Secretary of State

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

JUL 6 3 23 PM '98

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