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July 21, 2009

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

**AGENCY:** WV Board of Occupational Therapy

**RULE:** New Rule, 13CSR3, Fees for Services Rendered by the Board

**DATE FILED AS AN EMERGENCY RULE:** June 12, 2009

**DECISION NO. 11-09**

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.

  
NATALIE E. TENNANT  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 11-09)

AGENCY: WV Board of Occupational Therapy  
RULE: New Rule, 13CSR3, Fees for Services Rendered by the Board  
FILED AS AN EMERGENCY RULE: June 12, 2009

- par. 1 The WV Board of Occupational Therapy (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, 2009 and with the LRMRC June 12, 2009.
- 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 §30-28-6 reads:

***§30-28-6. Powers and duties of the board.***

***(a) The board has all the powers and duties set forth in this article, by legislative rule, in article one of this chapter and elsewhere in law.***

***(b) The board shall:***

***(1) Hold meetings and conduct hearings;***

***(2) Establish requirements for licenses and permits;***

***(3) Establish procedures for submitting, approving and rejecting applications for licenses***

*and permits;*

*(4) Determine the qualifications of any applicant for a license or permit;*

*(5) Propose rules for legislative approval relating to professional conduct and ethical standards of practice;*

*(6) Communicate disciplinary actions to relevant state and federal authorities, the National Board for Certification in Occupational Therapy (NBCOT), the American Occupational Therapy Association (AOTA) and other applicable authorities when public safety is at risk;*

*(7) Maintain an office and hire, discharge, establish the job requirements and fix the compensation of employees and contracted employees necessary to enforce the provisions of this article including, but not limited to, the executive secretary;*

*(8) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;*

*(9) Conduct disciplinary hearings of persons regulated by the board;*

*(10) Determine disciplinary action and issue orders;*

*(11) Institute appropriate legal action for the enforcement of the provisions of this article;*

*(12) Maintain an accurate registry of names and addresses of all persons regulated by the board;*

*(13) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;*

*(14) Establish by legislative rule the continuing education and competency requirements for licensees;*

*(15) Issue, renew, combine, deny, suspend, revoke or reinstate licenses and permits;*

*(16) Establish a fee schedule;*

*(17) Take all other actions necessary and proper to effectuate the purposes of this article; and*

*(18) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.*

*(c) The board may:*

*(1) Approve and contract with third parties to administer the examinations required under the provisions of this article;*

*(2) Sue and be sued in its official name as an agency of this state; and*

*(3) Confer with the Attorney General or his or her assistants in connection with legal matters and questions.*

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:

During the 2009 Legislative Session, House Bill 2309 was passed, amending W. Va. Code §30-28, the West Virginia Occupational Therapy Practice Act. One of the amendments, as provided in 30-28-14, changes the license renewal period for Occupational Therapists and Occupational Therapy Assistants from annually to biennially. On May 15, 2009, the Board filed a Legislative Rule (Title 13, Series 3, Fees for Services Rendered by the Board) to amend the renewal fees for a two-year renewal period, for consideration during the 2010 Legislative Session. Although the proposed fees are being increased for a two-year period, the current annual fees are not being doubled. Based on the sound financial position of the Board, there will actually be a reduction in renewal fees for licensees of 22% and 25% for occupational therapists and occupational therapy assistants, respectively. The Board is not proposing any changes to other fees.

In order to transition from a one-year to two-year renewal period where licensees will be required to renew their license in either odd or even years, based on their year of initial licensure, 2010 will be a transition year. Even year licensees will renew for two years and odd year licensees will renew for one year, with their two year renewal beginning in 2011. The attached Emergency Legislative Rule is needed to set 2010 renewal fees accordingly. This Rule will be replaced after the 2010 Legislative Session with the Title 13, Series 3 Legislative Rule referenced above, at which time all licensees will be on a two-year renewal period. The two-year renewal fee in this Emergency Rule is the same as that proposed in the Legislative Rule. However, there is also a fee in the Emergency Rule for a one-year renewal that is only applicable to 2010, and therefore is not part of the proposed Legislative Rule. This fee is exactly half of the two-year fee.

This Emergency Rule is needed to maintain the financial stability of the Board during this transition period while our Legislative Rules are aligned with our amended Practice Act. If you have any further questions, please do not hesitate to contact the Board at the number above.

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). . . "time limitation" and "prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 11-09 or ERD 11-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Board of Occupational Therapy, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT  
Secretary of State

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