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July 22, 2011

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Examiners of Psychologists

RULE: Amendments, 17CSR3, Requirements for Licensure as a Psychologist and/or a School Psychologist

DATE FILED AS AN EMERGENCY RULE: June 10, 2011

DECISION NO. 8-11

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 black ink, reading "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 8-11)

AGENCY: Board of Examiners of Psychologists
RULE: Amendments, 17CSR3, Requirements for Licensure as a Psychologist and/or a School Psychologist
FILED AS AN EMERGENCY RULE: June 10, 2011

- par. 1 The Board of Examiners of Psychologists (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 June 10, 2011 and with the LRMRC June 10, 2011.
- 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 §30-21-6 reads:

§30-21-6. Powers and duties of board; funds of board.
(a) The board shall:
(1) Examine applicants and determine their eligibility for a license or temporary permit to engage in the practice of psychology;
(2) Examine applicants and determine their eligibility for a license or temporary permit to engage in the practice of school psychology as a licensed school psychologist and/or

licensed school psychologist independent practitioner.

(3) Prepare, conduct and grade an apt and proper written, oral or written and oral examination of applicants for a license and determine the satisfactory passing score thereon;

(4) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, including, but not limited to, reasonable rules and regulations establishing standards to insure the proper supervision of all persons working under the direct and regular supervision of a licensee under the provisions of this article, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty- nine-a of this code, set reasonable fees and record them in legislative rules, Title 17, Series 1.

(5) Issue, renew, deny, suspend or revoke licenses and temporary permits to engage in the practice of psychology in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

(6) Investigate alleged violations of the provisions of this article, reasonable rules and regulations promulgated hereunder and orders and final decisions of the board and take appropriate disciplinary action against any licensee for the violation thereof or institute appropriate legal action for the enforcement of the provisions of this article, reasonable rules and regulations promulgated hereunder and orders and final decisions of the board or take such disciplinary action and institute such legal action;

(7) Employ, direct, discharge and define the duties of full or part-time professional, clerical or other personnel necessary to effectuate the provisions of this article;

(8) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(9) Whenever it deems it appropriate, confer with the attorney general or his assistants in connection with all legal matters and questions; and

(10) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

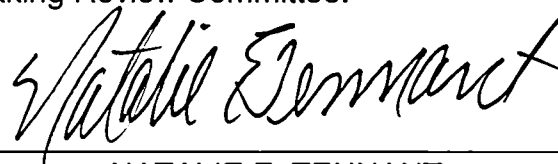
(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "board of examiners of psychologists fund." All of the reasonable compensation of the members of the board, the reimbursement of all reasonable and necessary expenses actually incurred by such members and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund, and no part of the state's general revenue fund shall be expended for this purpose.

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:
- The Board of Examiners of Psychologists voted to submit an emergency rule for Title 17, Series 3, when we became aware of individuals practicing psychology without a license or supervision. The enclosed revisions include language specific to these individuals in order to provide the necessary safety mechanisms that will ensure public safety. Further elaboration is included in the statement of concern.
- 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). . . "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 8-11 or ERD 8-11 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Examiners of Psychologists, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

Entered _____

CLERK
SECRETARY OF STATE

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