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(Plus all the volunteer  
help we can get)

June 19, 2000

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

**AGENCY: WEST VIRGINIA BOARD OF EXAMINERS OF PSYCHOLOGISTS**

**RULE: NEW RULE, SERIES 5, CONTESTED CASE HEARING PROCEDURE**

**DATE FILED AS AN EMERGENCY RULE: MAY 19, 2000**

**DECISION NO. 4-00**

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.

FILED  
JUN 21 2 17 PM '00  
OFFICE OF THE SECRETARY OF STATE

**KEN HECHLER**  
Secretary of State

*by Wm. H. Harrington  
Chief of Staff*

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**EMERGENCY RULE DECISION**  
**(ERD 4-00)**

**AGENCY: WEST VIRGINIA BOARD OF EXAMINERS OF PSYCHOLOGISTS**  
**RULE: NEW RULE, SERIES 5, CONTESTED CASE HEARING**  
**PROCEDURE**

**FILED AS AN EMERGENCY RULE: MAY 19, 2000**

- par. 1 The WV Board of Examiners of Psychologists (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 May 19, 2000 and with the LRMRC May 19, 2000.

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(a)(4) reads:

*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 §29A-3-1 of this code...*

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:

On March 30, 2000, the Kanawha County Circuit Court entered an order granting a writ of mandamus against the West Virginia Board of Examiners of Psychologists and its president requiring them to promulgate emergency legislative rules on or before May 22, 2000, establishing a procedure for the investigation and resolution of complaints against psychologists. A copy of the order is attached herein and incorporated by reference.

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). . . "writ of mandamus"

par. 14 This decision shall be cited as Emergency Rule Decision 4-00 or ERD 4-00 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Board of Examiners of Psychologists, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER  
Secretary of State

*by Wm. H. Hays  
Chf of SMU*

Entered \_\_\_\_\_

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

JUN 21 2 17 PM '00

FILED