



Office of the Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

**Natalie E. Tennant**  
Secretary of State  
State of West Virginia

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Telephone: (304) 558-6000  
Toll Free: 1-866-SOS-VOTE  
Fax: (304) 558-0900  
www.wvsos.com

April 23, 2012

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Speech Pathology and Audiology

RULE: Amendment, 29CSR1, Licensure of Speech Pathology and Audiology

DATE FILED AS AN EMERGENCY RULE: April 2, 2012

DECISION NO. 4-12

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 that reads "Natalie E. Tennant".

NATALIE E. TENNANT  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 4-12)

AGENCY: Board of Speech Pathology and Audiology  
RULE: Amendment, 29CSR1, Licensure of Speech Pathology and Audiology  
FILED AS AN EMERGENCY RULE: April 2, 2012

- par. 1 The Board of Speech Pathology and Audiology (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 April 2, 2012 and with the LRMRC April 2, 2012.
- 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 §30-32-10(a)(3) reads:  
  
*(3) Promulgate reasonable rules, in accordance with chapter twenty-nine-a of this code, including, but not limited to, rules that delineate qualifications for licensure; specify requirements for the renewal of licensure; set forth procedures for registering speech-language pathology and audiology assistants; and establish standards of professional conduct. Following their adoption, the rules shall govern and control the professional conduct of every person who holds a license to practice speech-language pathology or audiology or who is registered as a speech-language pathology and audiology assistant in*

*this state*

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 Educational Testing Service (ETS) is recognized by the Board as the only specialty area examination (Praxis Exam) for Speech Pathology and Audiology for licensure examination. The Board has been notified by the ETS of a change in the scoring format of the examination for Audiology. The present passing score is 600 or better and the new passing score, effective January 1, 2013, will be 170 or better.

The Board's Rule, 29-1-3.1.g., reads, "Obtain a passing score of at least 600 on the national examination in the area for which licensure is sought." The change to Rule, 29-1-3.1.g., will read, "Obtain a passing score on the national examination in the area for which licensure is sought."

Praxis scores are one criterion required to certify the qualifications of license applicants. Without this rules change, the Board could not legally accept the passing score of 170 for Audiology applicants and, therefore, would be unable to issue a license to practice to qualified applicants.

The Board will not be able to process and license Audiology applicants without the Praxis examination scores and therefore, causing substantial harm to the public interest. Audiologists provide valuable services to all age groups of the hearing impaired in all parts of the state.

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). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 4-12 or ERD 4-12 and

may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Speech Pathology and Audiology, the Attorney General and the Legislative Rule Making Review Committee.

  
NATALIE E. TENNANT  
Secretary of State

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