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June 9, 2015

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV Board of Social Work

RULE: Amendment, 25CSR1, Qualifications for the Profession of Social Work

DATE FILED AS AN EMERGENCY RULE: May 26, 2015

DECISION NO. 4-15

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 cursive script that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 4-15)

AGENCY: WV Board of Social Work
RULE: Amendment, 25CSR1, Qualifications for the Profession of Social Work

FILED AS AN EMERGENCY RULE: May 26, 2015

par. 1 The WV Board of Social Work (Board) has filed the above amendment 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 May 26, 2015 and with the LRMRC May 26, 2015.

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 §9-9-11(d) reads:

(d) The secretary shall promulgate emergency rules and propose for legislative promulgation legislative rules, pursuant to article three, chapter twenty-nine-a of this code, setting forth the schedule of sanctions to be imposed when a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any amendment or addendum to the contract, or any applicable department rule. In developing these rules, the secretary is directed to make those sanctions graduated and sufficiently

stringent, when compared to those of contiguous states, so as to discourage persons from moving from such states to this state to take advantage of lesser sanctions being imposed for the same or similar violations by the secretary. The secretary shall also promulgate legislative rules setting forth what constitutes de minimis violations and those violations subject to sanctions and maximum penalties.

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:

Senate Bill 559 gave the Department of Health and Human Resources the ability to hire individuals with a Bachelor's degree outside the scope of related degrees specified in Legislative Rule. The Board was authorized to file an emergency rule to implement the provisions of this section (WV Code 30-30-16.b). This same legislation has also given the Department authority to satisfy social work education requirements with the Social Work training program with the West Virginia Department of Health and Human Resources. Following legislation passage, the Department notified existing Provisional Licensees that they were no longer requiring them to take the required social work education coursework. The Board has set up a category of Restricted Provisional License to accommodate the Department's ability to utilize a broader range of educational backgrounds and restricting that practice solely to the DHHR. This will also provide a process for existing Provisional Licensees to apply for a Restricted Provisional License and remain in good standing with the Board of Social Work.

During the 2015 Regular Legislative Session, the WV Department of Health and Human Resources presented legislation to exempt their employees from social work licensure on the argument that social work licensure was a barrier to the hiring process, as the pool of applicants in related degrees was insufficient to meet hiring needs for critical positions in the Department. Senate Bill 559 was a compromise in that the legislation permitted the Department to hire individuals with only a Bachelor's degree and still be eligible for a Provisional License. The Department was also given permission to waive the twelve hour course requirement in social

work education by substituting its social work training afforded workers; the Secretary of the WV Department of Health and Human Resources is to file a legislative rule, with the advice of Higher Education, regarding training. The Board was authorized to file an emergency rule to enable it to grant a Provisional License to individuals outside the scope of article 3.3 in Series 1. Lastly, the legislation removed 30-30-16.c which prohibited individuals from reapplying for a Provisional License if they chose not to complete the four years supervised employment. This legislation becomes effective June 9, 2015.

This emergency rule creates another category of Provisional Licensure to accommodate the Department's broader range of eligible degrees and the waiver of the social work education component. It does not negate the Department's obligation to attempt to fill their workforce with degreed social workers when possible. This rule enables the Department to notify the Board of their intent to hire an individual for a position requiring a social work license and the Board in turn will issue an application to the applicant. This category of *Restricted Provisional License* restricts the individual's practice to the Department of Health and Human Resources only. Additionally it enables individuals who wish to practice for the duration of their career within the Departments the option of renewing the Restricted Provisional License in two year cycles without making application to convert to a regular license. It requires the Department to annually certify that individuals with a Restricted Provisional Licenses have fulfilled the Department's training expectations. This emergency rule fulfills the Board's mission to protect the public while also providing the Department flexibility in hiring individuals to fill positions requiring a social work license.

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). . . "prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 4-15 or ERD 4-15 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Board of Social Work.



NATALIE E. TENNANT
Secretary of State

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