



FILED

2010 MAY 14 PM 4:09

OFFICE OF THE SECRETARY OF STATE

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

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

May 14, 2010

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Board of Barbers and Cosmetologists

RULE: Amendment, 3CSR6, Schedule of Fees

DATE FILED AS AN EMERGENCY RULE: May 7, 2010

DECISION NO. 5-10

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 5-10)

AGENCY: Board of Barbers and Cosmetologists
RULE: Amendments, 3CSR6, Schedule of Fees
FILED AS AN EMERGENCY RULE: May 7, 2010

- par. 1 The Board of Barbers and Cosmetologists 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 7, 2010 and with the LRMRC May 7, 2010.
- 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 30-27-5 reads in part:

(21) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and
- 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 Barbers and Cosmetologists respectfully requests approval for an emergency rule to be implemented for the execution of a third-party test examiner to administer practical and written exams of all prospective candidates entering the profession of barbering, cosmetology, nail technology, and/or aesthetics through allowing examination fees to be elevated to \$99.00 per exam in lieu of the current \$75.00 per exam.

The reason the Board seeks emergency approval is based on the unrest of licensees and examinees over the current practice of examining these professionals. Many licensees and examinees feel that the Board is the "judge and jury" that administers the exams, hears, and decides on complaints over the examination leaving many with the perceived notion of unfairness. Therefore, it seems necessary for the Board to request the emergency rule to ease the unrest of licensees, examinees, and to promote fairness to the testing process that is perceived as subjective and unfair.

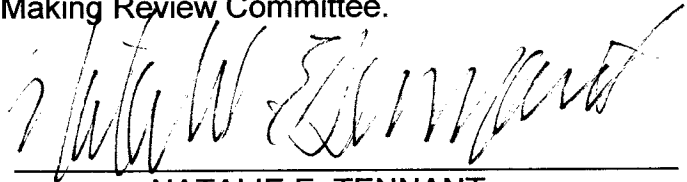
As for the Board's revenue and expenses, please note that the Board will reduce expenses more than the Board will lose in revenue. Therefore, this action will have a positive financial impact for a historically financially strapped board that only had 5,066 cash with the Treasurer's Office in October 2008.

Additionally, the third-party examiners are skillfully trained, certified, and appropriately qualified through national standards to administer practical examinations of the professions mentioned above in the specialty of public safety, sanitation, disinfections, and other items protecting the public that seeks services from these professionals. This will help ensure that the individuals that are examining are knowledgeable and qualified to work on the public.

Finally, the Board has been overcome with testing questions, complaints, and faced accusations that the testing is too subjective and not fair for examinees. Therefore, the Board believes that it is in its best interest to implement the emergency fee for the examination so that a contract with the third-party examiner can be executed to eliminate licensee and examinee unrest, promote more fiscally sound board operations, and to establish a less subjective and fairer examination process.

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" and "immediate preservation of public peace, health, safety or welfare"

par. 14 This decision shall be cited as Emergency Rule Decision 5-10 or ERD 5-10 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Board of Barbers and Cosmetologists, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

Entered _____