



COLORADO

**Department of
Regulatory Agencies**

Division of Professions and Occupations

STATEMENT OF BASIS, PURPOSE and JUSTIFICATION for EMERGENCY RULES

Colorado Governor Jared Polis (“Governor”) declared a state of emergency on March 10, 2020, through Executive Order D 2020 003, which was subsequently extended through Executive Orders D 2020 018, D 2020 032, D 2020 058, D 2020 076, D 2020 109, D 2020 125, D 2020 152, D 2020 176, D 2020 205, D 2020 234, D 2020 258, D 2020 264, D 2020 268, D 2020 284, D 2020 290, D 2020 296, D 2021 009, D 2021 022, D 2021 028, D 2021 045, D 2021 061, D 2021 068, and D 2021 087 to meet the challenges of the COVID-19 pandemic by mitigating the harm caused by the spread of the disease. Executive Order D 2020 038 was issued on April 15, 2020, extended through Executive Orders D 2020 063, D 2020 097, D 2020 131, D 2020 158, D 2020 182, D 2020 212, D 2020 240, D 2020 271, D 2021 002, D 2021 008, D 2021 036, D 2021 057, and extended through Executive Order D 2021 080 to address the immediate need for trained medical personnel available to provide healthcare services during the COVID-19 pandemic.

Basis

Through Executive Order D 2021 080, the Governor temporarily suspended the rulemaking authorities set forth in C.R.S. § 24-1-122(3)(m)(I) (Colorado Medical Board), C.R.S. § 24-1-122(3)(gg) (State Board of Nursing), C.R.S. § 24-1-122(3)(h) (Colorado State Board of Chiropractic Examiners, C.R.S. § 24-1-122(3)(k) (Colorado Dental Board), C.R.S. § 24-1-122(3)(m)(II) (Colorado Podiatry Board), C.R.S. § 24-1-122(3)(p) (Colorado State Board of Optometry), C.R.S. § 24-1-122(3)(y) (State Board of Veterinary Medicine), and C.R.S. § 12-285-105(1)(b) (State Physical Therapy Board), and directed the Executive Director of DORA, through the Director of DPO, to promulgate and issue temporary emergency rules consistent with the Executive Order.

The basis for these emergency rules is Executive Order D 2021 080 issued by Governor Jared Polis pursuant to the State of Emergency Declaration found in Executive Orders D 2020 003, D 2020 018, D 2020 032, D 2020 058, D 2020 076, D 2020 109, D 2020 125, D 2020 152, D 2020 176, D 2020 205, D 2020 234, D 2020 258, D 2020 264, D 2020 268, D 2020 284, D 2020 290, D 2020 296, D 2021 009, D 2021 022, D 2021 028, D 2021 045, D 2021 061, D 2021 068, and D 2021 087, Article IV, Section 2 of the Colorado Constitution, and the Colorado Disaster Emergency Act, sections 24-33.5-701, *et. seq.*, C.R.S.

Purpose

The purpose of these emergency rules is to effectuate Executive Order D 2021 080 directing the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Professions and Occupations (Division Director), to promulgate and issue temporary emergency rules to expand the workforce of trained medical personnel available to provide healthcare services within inpatient facilities due to the coronavirus disease 2019 (COVID-19) pandemic in Colorado.

Through this emergency rulemaking, the Executive Director of the Department of Regulatory Agencies, through the Director of the Division of Profession and Occupations (Division Director), is addressing temporary licensure for new graduates in order to expand the

available healthcare workforce while the graduates await examination; and expanded scope of practice for optometrists in order to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Justification

As set forth in Executive Order D 2021 080, the need exists to immediately expand the available healthcare workforce in hospitals and inpatient facilities. The Executive Director of the Department of Regulatory Agencies, through the Division Director, is promulgating these emergency rules governing temporary licensure for new graduate applicants who meet the qualifications for licensures but for the required examination that is not immediately available due to the COVID-19 pandemic; and expanded scope of practice to provide hospitals and inpatient facilities with the flexibility to fill healthcare service gaps with readily available personnel through expanded delegation of services.

Pursuant to section 24-4-103(6)(a), C.R.S., a temporary or emergency rule may be adopted without compliance with section 24-4-103(4), C.R.S., which requires the agency to hold a public hearing “at which it shall afford interested persons an opportunity to submit written data, views, or arguments and to present the same orally”; and with less than the twenty days’ notice set forth in section 24-4-103(3), C.R.S., or without notice where circumstances imperatively require, only if the agency finds that “[i]mmediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for preservation of the public health, safety or welfare and compliance with the requirements of this section would be contrary to the public interest.” Such findings must be made on the record.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, hereby finds the immediate adoption of these emergency rules is imperatively necessary to comply with Executive Order D 2021 080 and, that due to threat posed by the COVID-19 pandemic, the adoption of emergency rules to expand the available healthcare workforce in hospitals and inpatient facilities is imperatively necessary for the preservation of the public health, safety and welfare.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, also finds that given the requirements of Executive Order D 2021 080 and the immediate risk to the health, safety and welfare of Colorado patients, this grant of temporary licensure cannot wait the several months required for permanent rulemaking and therefore emergency rules are appropriate pursuant to the Administrative Procedure Act.

The Executive Director of the Department of Regulatory Agencies, through the Division Director, finds, as required by section 24-4-103(4)(b), C.R.S., that the need for the emergency rulemaking exists; the proper constitutional and/or statutory authority exists for the rules; to the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any required to comply with the rules; the rules do not conflict with other provisions of the law; and any duplication or overlapping of the rules, if any, has been explained.

These temporary/emergency rules take effect April 27, 2021, and remain in effect for the longer of (A) 30 days after adoption, or (B) the duration of the State of Disaster Emergency

declared by the Governor, up to a maximum of 120 days after adoption of these temporary/emergency rules.

Dated this 27th day of April, 2021.

A handwritten signature in cursive script, appearing to read "Ronne Hines".

Ronne Hines, Director Division of Professions and Occupations