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Legislative Rule-Making Review Committee

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October 23, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: William T. Douglass, Jr.  
Pharmacy, WV Board of  
232 Capitol Street  
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Board of Pharmacy Rule for Pharmacist Recovery Networks, 15CSR10**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Pharmacy

Subject: Board of Pharmacy Rules for Pharmacist Recovery Networks,  
15CSR10

PERTINENT DATES

Filed for public comment: June 11, 2002  
Public comment period ended: July 12, 2002  
Filed following public comment period: July 17, 2002  
Filed LRMRC: July 17, 2002  
Filed as emergency:  
  
Fiscal Impact: \$50,000 cost

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ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to pharmacist recovery network agreements. It sets forth the activities which the Code permits a Pharmacist Recovery Network to perform. It also sets forth requirements for the agreements between the Pharmacist Recovery Network and the Board. Requirements include actions to be taken against a licensee who refuses an assessment; arrangement of treatment; and monitoring of a licensee's transition into the workplace.

Section 4 relates to due process. It requires that any action taken pursuant to the Pharmacist Recovery Network must afford the

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licensee all due process rights numerated in the Administrative Procedures Act.

Section 5 relates to the receipt and use of information of suspected impairment. It states that licensees, family members and other persons may report suspected impairment to the Program, at which time the Program is required to initiate an investigation.

Section 6 relates to intervention and referral. It requires the Program, when it confirms a licensee is impaired, to conduct an intervention. The Program is to decide the methods and objectives of interventions on a case-by-case basis and conduct them as soon as possible.

Section 7 relates to monitoring treatment. It requires a Program to monitor a treatment source to which it refers licensees regarding adequate staffing, appropriate treatment, affordable treatment, adequate facilities and appropriate post-treatment support.

Section 8 relates to monitoring rehabilitation and performance. It requires the Program to designate monitoring requirements for each participating licensee and states that licensees may be required to be tested regularly or randomly on demand of the Program. It also requires the Program to maintain appropriate case records regarding each licensee.

Section 9 relates to monitoring post-treatment support. It states that post-treatment support may include family counseling, advocacy, and other services and programs considered appropriate to improve the licensee's recovery. The Program is to monitor post-treatment support provided by it and other treatment sources.

Section 10 relates to reports of cases of impairment to the Board. It requires the Program to report detailed information to the Board regarding any licensee after investigation and review of the licensee. It requires monthly reports on the status of individual licensees and quarterly reports on the status of all licensees.

Section 11 relates to periodic reporting of statistical information. It requires a Program to compile and annually report comprehensive statistical reports to the Board.

Section 12 relates to confidentiality. It provides for confidentiality of information and provides those circumstances under which the Program may disclose information relative to an impaired licensee.

Section 13 relates to fees. It authorizes the Board to assess additional fees on each licensure renewal application with revenue generated by the assessment dedicated to the operation of the Pharmacist Recovery Network. The additional fees for a pharmacist are \$20 with each biennial renewal; interns \$5, with each annual renewal; and pharmacy technicians, \$10 with each biennial renewal.

#### AUTHORITY

Statutory authority: W.Va. Code, §30-5-7c, which provides, in part, as follows:

(a) The board may, under legislative rules adopted by the board in accordance with article three, chapter twenty-nine-a of this code, enter into agreements with organizations to form pharmacist recovery networks...

...(d) Prior to entering into any agreement with any organization to form a pharmacist recovery network, the board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the operation of any pharmacist recovery network, with provisions for:

- (1) Definitions of impairment;
- (2) Guidelines for program elements;
- (3) Procedures for receipt and use of information of suspected impairment;
- (4) Procedures for intervention and referral;
- (5) Arrangements for mandatory monitoring, treatment, rehabilitation, post-treatment support and performance;
- (6) Reports of individual cases to the board;

(7) Periodic reporting of statistical information;

(8) Assurance of confidentiality of nonpublic information and of the peer review process; and

(9) Assessment of a fee to be added to each licensure renewal application fee payable to the board and dedication of any revenue generated by the assessment for the operation of pharmacist recovery networks developed under this section.

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

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VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.