

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III**

**ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box  
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**FILED**

2002 APR 23 P 1:38

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: West Virginia Board of Pharmacy TITLE NUMBER: 15

CITE AUTHORITY: WV Code 30-5-7c(d) -HB 4277

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 10

TITLE OF RULE BEING PROPOSED: Board of Pharmacy Rules for Pharmacist Recovery Networks

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

HB 4277 passed the Legislature on February 22, 2002 and authorized the Board of Pharmacy to enter into agreements with organizations to form pharmacist recovery networks for impaired pharmacists, interns, and technicians. Prior to entering into any agreement with any organization to form a pharmacist recovery network, the Board has to propose rules regarding the operation of the network. In order to protect the public and the impaired individuals, it is important to form the network as soon as possible.

Use additional sheets if necessary

*William T. Douglas Jr.*

Authorized Signature

*William T. Douglas Jr.*  
*304-558-0558*



## Board of Pharmacy

Phone (304) 558-0558  
Fax (304) 558-0572

Office  
232 Capital Street  
Charleston, West Virginia 25301

April 19, 2002

Joe Manchin, III, Secretary of State  
State Capitol Building 1, Suite 157-K  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0770

Dear Mr. Manchin:

I am writing to approve a proposed rule by the Board of Pharmacy being filed as an emergency rule, 15 CSR 10, Board of Pharmacy Rules for Pharmacist Recovery Networks. Thank you for your cooperation in this important matter.

Sincerely,

William T. Douglass, Jr.  
Executive Director and  
General Counsel



**EMERGENCY RULE QUESTIONNAIRE**

DATE: 03-18-02

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Pharmacy

232 Capitol Street, Charleston, WV 25301

304-558-0558

EMERGENCY RULE TITLE: Board of Pharmacy Rules for Pharmacist Recovery Networks

1. Date of filing 04-23-02

2. Statutory authority for promulgating emergency rule:  
WV Code 30-5-7c (d)

3. Date of filing of proposed legislative rule: 04-23-02

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Adopts new language as a new series (10)

5. Has the same or similar emergency rule previously been filed and expired?  
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.  
HB 4277 passed the Legislature on February 22, 2002 and authorized the Board of Pharmacy to enter into agreements with organizations to form pharmacist recovery networks for impaired pharmacists, interns, and technicians. Prior to entering into any agreement with any organization to form the network, the Board has to propose rules regarding the operation of the network. Impairment in the profession of pharmacy has become a serious problem and the sooner the network is formed, the sooner the public will be protected and the impaired professional can seek help.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

WV Code 30-5-7c (d), does not allow Board to enter into agreements to form pharmacist recovery networks until rules are filed.

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Substantial harm to the public will result if impaired pharmacists, interns, and technicians are allowed to continue to practice without receiving treatment for their addictions. The pharmacist recovery network would provide a place for individuals to turn to seek treatment and avoid making a serious mistake while practicing pharmacy. Until these rules are approved, the Board cannot create the necessary network to intervene in cases of impairment and monitor the continuing treatment and recovery of those that have reported.

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# **SUMMARY OF PROPOSED RULE**

## **Title 15**

### **Legislative Rules**

#### **Series 10**

## **BOARD OF PHARMACY RULES FOR PHARMACIST**

### **RECOVERY NETWORKS**

HB 4277 passed the Legislature on February 22, 2002 and authorized the Board of Pharmacy to enter into agreements with organizations to form pharmacist recovery networks for impaired pharmacists, interns, and technicians. Prior to entering into any agreement with any organization to form the network, the Board has to propose rules regarding the operation of the network. Impairment in the profession of pharmacy has become a serious problem and the sooner the network is formed, the sooner the public will be protected and the impaired professional can seek help.

The Rule establishes definitions of impairment; guidelines for program elements; procedures for receipt and use of information of suspected impairment; procedures for intervention and referral; arrangements for mandatory monitoring, treatment, rehabilitation, post-treatment support and performance; reports of individual cases to the Board; periodic reporting of statistical information; assurance of confidentiality of nonpublic information and of the peer review process; and assessment of a fee to be added to each licensure renewal for operation of pharmacist recovery networks.

■  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 15 CSR 10 Board of Pharmacy Rules for Pharmacist Recovery Networks

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Board of Pharmacy

Address: 232 Capitol Street Charleston, WV 25301

304-558-0558

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	50,000		0	50,000	50,000
<b>PERSONAL SERVICES</b>	40,000			40,000	40,000
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>					
<b>EQUIPMENT</b>	2,000			2,000	0
<b>OTHER</b>	8,000			8,000	8,000

2. Explanation of Above Estimates:

The cost of the services for the pharmacist recovery network are not known but the above is an estimate for the payment of a part-time staff, a small amount of computer and office equipment, and office space. The Board will contract out the services so exact number won't be known until the contract is bid out.

3. Objectives of These Rules:

To allow the Board to enter into agreements to establish a pharmacist recovery network for impaired pharmacists, interns, and technicians. The rule establishes procedures of the network and sets an additional fee to be charged to licensees to fund the network

Rule Title: Board of Pharmacy Rules for Pharmacist Recovery Networks

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Will cost the Board of Pharmacy up to \$50,000 per year for contracted services.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: Pharmacists will pay an additional \$20 every two years with their license renewal, interns will pay an additional \$5 per year, and technicians will pay an additional \$10 every two years with their registration renewal. These increased fees will bring in an estimated \$35,000-40,000 per year to pay for the network.

C. Economic Impact on Citizens/Public at Large.  
None

Date: 04-22-02

Signature of Agency Head or Authorized Representative:

William T. Douglas Jr.

William T. Douglas Jr.  
304-558-0558

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**ENROLLED**

**H. B. 4277**

(By Delegates Douglas, Butcher, DeLong, Ennis,  
Hatfield, Martin and Overington)

[Passed February 22, 2002; in effect ninety days from passage.]

AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-c, relating to authorizing the board of pharmacy to enter into agreements with organizations to form pharmacist recovery networks for impaired pharmacists, pharmacy interns, and pharmacy technicians; providing for rule-making authority; and providing for fees to be set by legislative rule.

*Be it enacted by the Legislature of West Virginia:*

That article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-c, to read as follows:

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.**

1 §30-5-7c. Authorization for the board of pharmacy to enter into  
2 agreements with organizations to form pharmacist  
3 recovery networks for treatment of impaired  
4 pharmacists, pharmacy interns and pharmacy  
5 technicians.

6 (a) The board may, under legislative rules adopted by the board  
7 in accordance with article three, chapter twenty-nine-a of this  
8 code, enter into agreements with organizations to form pharmacist  
9 recovery networks. Any pharmacist recovery network shall promote  
10 the early identification, intervention, treatment, and  
11 rehabilitation of pharmacists, pharmacy interns and pharmacy  
12 technicians who may be impaired by reason of illness, alcohol or  
13 drug abuse, or as a result of any other physical or mental  
14 condition. Activities to be covered by the agreements shall include  
15 investigation, review and evaluation of records, reports,  
16 complaints, litigation and other information about the practices and  
17 practice patterns of pharmacists licensed by the board, as such  
18 matters may relate to impaired pharmacists, pharmacy interns or  
19 pharmacy technicians.

20 (b) Agreements authorized under this section shall include  
21 provisions for the impaired pharmacist recovery network to receive  
22 relevant information from the board and other sources, conduct any  
23 investigation, review and evaluation in an expeditious manner,  
24 provide assurance of confidentiality of nonpublic information, make

1 reports of investigations and evaluations to the board, and to do  
2 other related activities for operating and promoting a coordinated  
3 and effective peer review process. The agreements shall include  
4 provisions assuring basic due process for pharmacists, pharmacy  
5 interns or pharmacy technicians as well as provisions for the  
6 adequate treatment, supervision and follow through for participants.

7 (c) Any organization that enters into an agreement with the  
8 board to create a pharmacist recovery network shall establish and  
9 maintain a program for impaired pharmacists, pharmacy interns and  
10 pharmacy technicians for the purpose of identifying, reviewing and  
11 evaluating the ability of those individuals to function as  
12 pharmacist, pharmacy intern or pharmacy technician, and to provide  
13 programs for treatment and rehabilitation, including supervision and  
14 follow up for participating persons.

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

- 20 (1) Definitions of impairment;
- 21 (2) Guidelines for program elements;
- 22 (3) Procedures for receipt and use of information of suspected  
23 impairment;
- 24 (4) Procedures for intervention and referral;

1 (5) Arrangements for mandatory monitoring, treatment,  
2 rehabilitation, post-treatment support and performance;

3 (6) Reports of individual cases to the board;

4 (7) Periodic reporting of statistical information;

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

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

11 (e) Upon investigation and review of a pharmacist, pharmacy  
12 intern or pharmacy technician, or upon receipt of a complaint or  
13 other information, an organization that enters into an agreement  
14 with the board to operate a pharmacist recovery network shall report  
15 immediately to the board detailed information about any pharmacist,  
16 pharmacy intern or pharmacy technician, if:

17 (1) The individual constitutes an imminent danger to the public  
18 or himself or herself; or

19 (2) The individual refuses to cooperate with the program,  
20 refuses to submit to treatment, refuses to participate in follow up  
21 treatment and monitoring, or is still impaired after treatment; or

22 (3) It reasonably appears that there are other grounds for  
23 disciplinary action.

24 (f) Any confidential patient information acquired, created or

1 used by a pharmacist recovery network pursuant to this section shall  
2 remain confidential and may not be subject to discovery or subpoena  
3 in a civil case.

4 (g) If the board has not instituted any disciplinary  
5 proceedings as provided in this article, any information received,  
6 maintained or developed by a pharmacist recovery network relating to  
7 the alcohol or chemical dependency impairment of any pharmacist,  
8 pharmacy intern or pharmacy technician shall be confidential and not  
9 available for public information, discovery or court subpoena nor  
10 for introduction into evidence in any professional liability action  
11 or other action for damages arising out of the provision of or  
12 failure to provide health care services.

13 (h) No person participating in a pharmacist recovery network  
14 developed under this section may be required in a civil case to  
15 disclose any information, including opinions, recommendations or  
16 evaluations, acquired or developed solely in the course of  
17 participating in the program.

18 (i) All persons engaged in activities conducted pursuant to a  
19 pharmacist recovery network developed under this section when acting  
20 in good faith and without malice enjoy immunity from individual  
21 civil liability while acting within the scope of their duties as  
22 part of a pharmacist recovery network.

**TITLE 15  
LEGISLATIVE RULES  
BOARD OF PHARMACY**

**SERIES 10  
BOARD OF PHARMACY RULES FOR PHARMACIST RECOVERY NETWORKS**

**§15-10-1. Definitions.**

- 1.1. Board means the West Virginia Board of Pharmacy.
- 1.2. Committee means the Board of Directors established to function as a supervisory and advisory body to the Program.
- 1.3 Impairment means mental illness, chemical dependency, physical illness, or any abnormal physical or mental condition of a pharmacist, intern or technician which threatens himself or herself or the safety of persons to whom such person might sell or dispense prescription drugs or devices.
- 1.4 Licensee means a licensed pharmacist, licensed intern, or registered pharmacy technician.
- 1.5 Program means the program established by agreements between special impaired pharmacist peer review organizations and the Board.

**§15-10-2. Pharmacist Recovery Network Agreements.**

- 2.1. Pharmacist Recovery Network activities shall include:
  - 2.1.1. investigation;
  - 2.1.2 review and evaluation of records, reports, complaints, litigation, and other information about the practices and practice patterns of licensees of the Board;
  - 2.1.3. programs for impaired licensees of the Board; and
  - 2.1.4. other activities as deemed appropriate by the Board.

**§15-10-3. Due Process.**

- 3.1. Any action taken pursuant to a pharmacist recovery network must afford the licensee all due process rights enumerated in West Virginia Code §29A-1-1 et. seq.

**§15-10-4. Receipt and Use of Information of Suspected Impairment**

- 4.1. Information concerning suspected impairment may be received by the program through reports by licensees, family members, and others, and through self-referral.
- 4.2. Upon receipt of information of a suspected impairment, the program shall initiate an investigation.

- 4.3. The program may conduct routine inquiries regarding suspected impairments.
- 4.4. Licensees suspected of impairment may be required to submit to personal interviews before any person authorized by the program.

**§15-10-5. Intervention and Referral.**

5.1. When, following an investigation, impairment is confirmed, an intervention shall be conducted using specialized techniques designed to assist the licensee in acknowledging responsibility for dealing with the impairment. The licensee shall be referred to an appropriate treatment source acceptable to the program.

- 5.2. The program shall decide the methods and objectives of interventions on a case-by-case basis.
- 5.3. The program shall arrange and conduct interventions as soon as possible.
- 5.4. The program shall evaluate treatment sources before making case referrals for treatment.
- 5.5. The program shall record intervention outcomes including treatment contracts that are elements of an intervention.

**§15-10-6. Monitoring Treatment.**

6.1. The program shall monitor a treatment source receiving referrals from them as to its ability to provide:

- 6.1.1. adequate medical and non-medical staffing;
- 6.1.2. appropriate treatment;
- 6.1.3. affordable treatment;
- 6.1.4. adequate facilities; and
- 6.1.5 appropriate post-treatment support.

**§15-10-7. Monitoring Rehabilitation and Performance.**

7.1. The program shall designate monitoring requirements for each licensee participating in the program. Licensees may be required to be tested regularly or randomly on demand of the program.

7.2. The program may require treatment sources to submit reports regarding a licensee's rehabilitation and performance to the program.

7.3. The program may require impaired licensees to submit to periodic personal interviews before any person authorized by the program.

- 7.4. The program shall maintain appropriate case records regarding participants.

**§15-10-8. Monitoring Post-Treatment Support.**

8.1. Post-treatment support may include family counseling, advocacy and other services and programs deemed appropriate to improve recoveries.

8.2. The program shall monitor the post-treatment support of treatment sources on an ongoing basis.

8.3. The program's own post-treatment support shall be monitored by the program on an ongoing basis.

#### **§15-10-9. Reports of Cases of Impairment to the Board.**

9.1. Upon investigation and review of a licensee, the program shall report immediately to the Board detailed information about any licensee as required by West Virginia Code §30-5-7c(e).

9.2. The program shall submit quarterly a report to the Board on the status of all licensees then involved in the program who have been previously reported to the Board. The program shall submit monthly to the Board a report on the status of any licensee previously reported to the Board then in active treatment until such time as mutually agreed to by the Board and the program.

#### **§15-10-10. Periodic Reporting of Statistical Information.**

10.1. The program shall compile and annually report to the Board comprehensive statistical reports concerning suspected impairments, impairments, self-referrals, post-treatment support and other significant demographic and substantive information collected through program operations.

#### **§15-10-11. Confidentiality.**

11.1. All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the program, all communications to or from the program, and all proceedings, findings, and conclusions of the program, including those relating to intervention, treatment, or rehabilitation, that in any way pertain to or refer to a licensee who is or may be impaired shall be privileged and confidential.

11.2. All records and proceedings of the program that pertain or refer to a licensee who is or may be impaired shall be privileged and confidential, used by the program and its members only in the exercise of the proper function of the program, not be considered public records, and not be subject to court subpoena, discovery, or introduction as evidence in any civil, criminal, or administrative proceedings, except as provided in Section 9.1 of this rule.

11.3. The program may only disclose the information relative to an impaired licensee if:

11.3.1. it is essential to disclose the information to persons or organizations needing the information in order to address the intervention, treatment, or rehabilitation needs of the impaired licensee;

11.3.2. the release is authorized in writing by the impaired licensee; or

11.3.3 the program is required to make a report to the board pursuant to Section 9.1 of this rule.

#### **§15-10-12. Fees.**

12.1. The Board shall assess the following fees to be added to each licensure renewal application fee payable to the Board with any revenue generated by the assessment dedicated to the operation of the pharmacist recovery network:

12.1.1. Pharmacist- \$20 with each biennial renewal;

12.1.2. Intern- \$5 with each annual renewal; and

12.1.3. Pharmacy Technician- \$10 with each biennial renewal.