

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box
Filing Date

FILED

2002 MAY -7 A 11:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

May 19, 2002

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: 11

TITLE OF RULE BEING PROPOSED: Board of Pharmacy Fees 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, technicians, and interns. The Board was authorized to file rules to assess fees with each license renewal dedicated to operation of the networks. Licenses are changing to a 2 year license and are renewed during the summer of 2002, so this rule needs to be in effect so that fees can be added to this renewal to collect funds to pay for the networks. Otherwise it will be 2 years before any fees could again be collected.

Use additional sheets if necessary

William T. Douglas Jr

Authorized Signature

William T. Douglas Jr
558-0558

SCANNED



Board of Pharmacy

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

Office
232 Capitol Street
Charleston, West Virginia 25301

May 3, 2002

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

Dear Secretary Manchin:

I am writing to approve a proposed rule by the Board of Pharmacy being filed as an emergency rule, 15 CSR 11, Board of Pharmacy Fees 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: May 6, 2002

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 Fees for Pharmacist Recovery Networks

1. Date of filing May 6, 2002

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

3. Date of filing of proposed legislative rule: May 6, 2002

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 (11).

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.
Impairment in the profession of pharmacy has become a serious problem and this rule is needed to collect fees from licensees to help fund pharmacist recovery networks. If the rule does not go into effect this month then the Board will not be able to collect fees from licensees until they renew again in 2 years and the networks cannot operate until that funding is available.

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 the Board to enter into agreements to form
pharmacist

recovery networks until rules are filed.

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 this rule is approved, the Board cannot collect fees to help fund the network to
intervene in cases of impairment and monitor the continuing treatment and recovery of
those that have reported.

SUMMARY OF PROPOSED RULE

Title 15

Legislative Rules

Series 11

Board of Pharmacy Fees 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. The bill allowed the Board to promulgate rules regarding the operation of the network and to assess fees dedicated to operation of the networks. This rule establishes those fees to be added to the license renewals of pharmacist, interns, and technicians.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 15 CSR 11 Board of Pharmacy Fees 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
ESTIMATED TOTAL COST	50,000		0	50,000	50,000
PERSONAL SERVICES	40,000			40,000	40,000
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT	2,000			2,000	0
OTHER	8,000			8,000	3,000

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 numbers won't be known until that is done.

3. Objectives of These Rules:

To allow the Board to establish fees to be charged to licensees to help fund the network.

Rule Title: Board of Pharmacy Fees 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, interns will pay an additional \$5 per year, and technicians will pay an additional \$10 every two years. These increased fees will bring in an estimated \$35,000-40,000 per year to help pay for the network.

C. Economic Impact on Citizens/Public at Large.

None

Date: 05-06-02

Signature of Agency Head or Authorized Representative:

William T. Douglas Jr.

William T. Douglas Jr.
558-0558

TITLE 15
LEGISLATIVE RULES
BOARD OF PHARMACY

FILED

2002 MAY -7 A 11: 52

SERIES 11
BOARD OF PHARMACY FEES FOR PHARMACIST RECOVERY NETWORKS

OFFICE OF THE SECRETARY OF STATE

§15-11-1. General.

- 1.1. Scope. – This rule establishes fees to be added to each licensure renewal for operation of pharmacist recovery networks.
- 1.2. Authority. – W.Va. Code §30-5-7c(d).
- 1.3. Filing Date. –
- 1.4. Effective Date. –

§15-11-2. Fees.

2.1. 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:

- 2.1.1. Pharmacist- \$20 with each biennial renewal;
- 2.1.2. Intern- \$5 with each annual renewal; and
- 2.1.3. Pharmacy Technician- \$10 with each biennial renewal.

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.



Board of Pharmacy

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

Office
232 Capitol Street
Charleston, West Virginia 25301

May 7, 2002

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

FILED
2002 MAY - 7 A 11: 50
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Dear Secretary Manchin:

I am writing to urge you to approve the Board of Pharmacy rule filed as an emergency rule, 15 CSR 11, Board of Pharmacy Fees for Pharmacist Recovery Networks. Due to a sudden increase of reported impairment of pharmacists in our state, the Board sought legislation to establish a pharmacist recovery network to provide a place for those suffering from addiction to seek help. The Legislature passed HB 4277 which allowed the Board to enter into agreements to establish such programs but first required legislative rules to be promulgated.

On April 23, 2002, the Board filed 15 CSR 10 as an emergency rule so that we could start the initial stages of implementation of the program. Delegate Vicki Douglas voiced her opposition to the content of these rules; although the language is the same as the rules used in the state of North Carolina which was used as the model for the legislation. However, we are going to withdraw the substantive rule to address the concerns of Delegate Douglas but still need to obtain approval for provisions regarding fees. These additional fees, which were agreed to by the West Virginia Pharmacists Association, are to be dedicated to the operation of the pharmacist recovery network. We have changed our license renewal period to two years and are beginning that process this summer with a staggered schedule. If we do not receive authorization via emergency rule to charge the additional fee then we cannot receive any funds from many of the licensees for a full two years. Such a delay in obtaining the funding will obviously delay the network from being started; for possibly up to two years; and puts the citizens of West Virginia at greater risk of harm from an impaired pharmacist that might have otherwise sought treatment from the network during that time.

Sincerely,

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