WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #2

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2012 JUN 22 PM 2:05

OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Board of Examiners for Registered Professional Nurses TITLE NUMBER: 19

RULE TYPE: Legislative CITE AUTHORITY: § 60A-9-5a(a)

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ____

TITLE OF RULE BEING AMENDED: ____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 14

TITLE OF RULE BEING PROPOSED: PRACTITIONER REQUIREMENTS FOR ACCESSING THE WEST VIRGINIA CONTROLLED SUBSTANCES MONITORING PROGRAM DATABASE

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 22, 2012 AT 4:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV RN Board

101 Dee Drive, Suite 102
Charleston, WV 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Laura S. Rhodes, M.S.N., R.N.
Executive Director

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STATE OF WEST VIRGINIA
BOARD OF EXAMINERS FOR REGISTERED PROFESSIONAL NURSES
101 Dee Drive, Suite 102
Charleston, WV 25311-1620

June 22, 2012

The Honorable Natalie Tennant
Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd
Charleston, WV 25305-0770

RE: Board Approved Proposed Rule WV 19 CSR 14

Dear Secretary Tennant:

The West Virginia Board of Examiners for Registered Professional Nurses in session June 14, 2012 approved the proposed rule WV 19 CSR 14 Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database. This letter serves to notify your office of the agency approval and to provide the required brief summary for the proposed changes.

The proposed rule is required by SB 437, of the 2012 Regular Legislative Session. This law requires the Board to incorporate language into rule which would require practitioners to take necessary steps when prescribing controlled substances to patients by accessing the database to determine whether a patient previously received a controlled substance and to document the information in the patient's file.

Should you have any questions or desire more information please contact me.

For the Board,

Laura Skidmore Rhodes

Laura Skidmore Rhodes, MSN, RN
Executive Director

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database.

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: West Virginia Board of Examiners for Registered Professional Nurses

Address: 101 Dee Drive, Suite 102
Charleston, WV 25311

Phone Number: 304-558-3596 Email: laura.s.rhodes@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This measure will have no impact on the costs and revenues of state government as it relates to the WV RN Board. There will be a cost incurred by the Board in providing adequate notification to practitioners. This cost will be managed within the current budget.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR				
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)	
1. Estimated Total Cost	0.00	0.00		0.00
Personal Services	0.00	0.00		0.00
Current Expenses	0.00	0.00		0.00
Repairs & Alterations	0.00	0.00		0.00
Assets	0.00	0.00		0.00
Other	0.00	0.00		0.00
2. Estimated Total Revenues	0.00	0.00		0.00

Rule Title: _____

Rule Title: Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database.

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

There are no increases or decreases in fees related to this rule.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None known.

Date: June 22, 2012

Signature of Agency Head or Authorized Representative

TITLE 19

LEGISLATIVE RULE

WEST VIRGINIA BOARD OF

EXAMINERS FOR REGISTERED

PROFFESIONAL NURSES

SERIES 14

PRACTITIONER REQUIREMENTS FOR ACCESSING THE WEST VIRGINIA CONTROLLED SUBSTANCES MONITORING PROGRAM DATABASE

§19-14-1. General.

1.1. Scope. – W. Va. Code § 60A-9-5a(a) provides that upon initially prescribing or dispensing any pain-relieving substance for a patient and at least annually thereafter should the prescriber or dispenser continue to treat the patient with controlled substances, all persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement Administration registration identification number and licensed shall access the West Virginia Controlled Substances Monitoring Program database for information regarding specific patients for whom they are providing pain-relieving controlled substances as part of a course of treatment for chronic, nonmalignant pain but who are not suffering from a terminal illness, and that the information obtained shall be documented in the patient's medical record. W. Va. Code§ 60A-9-5a(b) provides that emergency and legislative rules are to be promulgated to effectuate the provisions of W.Va. Code § 60A-9-5a.

1.2. Authority. -W.Va. Code § 60A-9-5a(b)

1.3. Filing date. –

1.4. Effective date. –

§19-14-2. Definitions.

2.1. As used in this rule, the following words and terms have the following meaning:

2.1.a. "Administering" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or any other means.

2.1.b. "Board" means the West Virginia Board of Examiners for Registered Professional Nurses as described at W. Va. Code § 30-7-1 et. seq.

2.1.c. "Controlled substance" means a drug that is classified by federal or state law in Schedules I, II, III, IV or V, as defined in W.Va. Code§ 60A-2-204 through 212.

2.1.d. "Course of treatment" means the period of time necessary to effect a cure for an acute disease, or the period of time from one office visit until the next scheduled or anticipated office visit for a chronic disease.

2.1.e. "CSMP" means the West Virginia Controlled Substances Monitoring Program repository and database.

2.1.f. "DEA registration identification number" means the federal Drug Enforcement Administration registration identification number issued to a practitioner.

2.1.g. "Dispensing" means the preparation and delivery of a drug to an ultimate user by or pursuant to a lawful order of a practitioner, including the prescribing, packaging, labeling, administering or compounding necessary to prepare the drug for that delivery.

2.1.h. "Medical records" means records including the medical history and physical examination; diagnostic, therapeutic and laboratory results; evaluations and consultations; treatment objectives; discussion of risks and benefits; informed consent; treatments; medications (including date, type, dosage and quantity provided); instructions and agreements; and periodic reviews.

2.1.1. "Opioid" means natural and semi-synthetic derivatives of the opium poppy, as well as similar synthetic compounds that have analgesic or pain relieving properties because of their effects in the central nervous system. These include, but are not limited to, codeine, morphine, hydromorphone, hydrocodone, oxycodone, methadone, and fentanyl.

2.1.j. "Pain-relieving controlled substance" means, but is not limited to, an opioid or other drug classified as a Schedule II through V controlled substance and recognized as effective for pain relief, and excludes any drug that has no accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision including, but not limited to, any drug classified as a Schedule controlled substance.

2.1.k. "Patient" means a person presenting himself or herself for treatment who is not considered by the practitioner as suffering from a terminal illness.

2.1.l. "Practitioner" means a registered professional nurse licensed pursuant to the provisions of The Nurse Practice Act W. Va. Code § 30-7-1 *et seq.* who possesses a valid DEA registration identification.

2.1.m. "Provision" means prescribing and administering.

2.1.n. "Terminal illness" means an incurable or irreversible condition as diagnosed by the attending physician or a qualified physician for which the administration of life-prolonging intervention will serve only to prolong the dying process.

§19-14-3. General Rules for Practitioners for Patients Not Suffering from a Terminal Illness.

3.1. Prior to the initial provision of any pain-relieving controlled substance as part of a course of treatment for chronic nonmalignant pain to any patient not considered by a practitioner to be suffering from a terminal illness, a practitioner shall apply for and receive capability to access the CSMP for purposes of compliance with this rule.

3.2. Prior to the initial provision of a pain-relieving controlled substance as part of a course of treatment for chronic nonmalignant pain to a patient not considered by the current practitioner to be suffering from a terminal illness, a current practitioner is required to access the CSMP to

determine whether the patient has obtained any controlled substance reported to the CSMP from any source other than the current practitioner within the twelve (12) month period immediately preceding the visit of the patient to the current practitioner.

3.3. Upon accessing the CSMP prior to the initial provision of a pain-relieving controlled substance as part of a course of treatment for chronic nonmalignant pain, the access and any controlled substances reported to the CSMP within the twelve (12) month period immediately preceding the visit of the patient shall be then promptly documented in the patient's medical record, with rationale for provision of the pain-relieving controlled substance by the current practitioner, with a copy of the CSMP accessed report signed and dated by the current practitioner.

3.4. After the initial provision of a pain-relieving controlled substance as part of a course of treatment for chronic nonmalignant pain, should the patient continue as a patient with the current practitioner, and the current practitioner continues to provide pain-relieving controlled substances as part of a course of treatment for chronic, nonmalignant pain, the CSMP shall be accessed by the current practitioner at least annually to determine whether the patient has obtained any controlled substances reported to the CSMP from any source other than the current practitioner within the twelve.(12) month period immediately preceding the access. The access and any controlled substances from any other source other than the current practitioner reported to the CSMP within such twelve (12) month immediately preceding the access shall be then promptly documented in the patient's medical record, with rationale for continuing provision of the pain-relieving substance by the current practitioner, with a copy of the CSMP accessed report signed and dated by the current practitioner.

3.5.. Nothing herein prohibits the CSMP from being accessed for a specific patient more frequently than annually by the current practitioner, however, upon any such additional access of the CSMP, controlled substances reported to the CSMP from any source other than the current practitioner shall be promptly documented in the patient's medical record, with rationale for provision of the pain-relieving controlled substance by the current practitioner, with a copy of the CSMP accessed report signed and dated by the current practitioner. *Provided*, that an electronic date and signature of the current practitioner will meet this requirement.

§19-14-4. Other legal authority

4.1. Practitioners must comply with all other applicable federal and state laws, rules, and regulations.

§19-14-5. Discipline.

5.1. Any practitioner who fails to comply with this rule 19 CSR 14 is subject to Board disciplinary proceedings for failing to perform any statutory or legal obligation placed upon the practitioner and unprofessional, unethical, and dishonorable conduct, pursuant to W. Va. Code § 30-7-11 and 19CSR 3