

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

Form #2

Do Not Mark In This Box

**FILED**

2012 JUL 26 AM 10:09

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Board of Dental Examiners TITLE NUMBER: 5

RULE TYPE: Legislative CITE AUTHORITY: §60A-9-5a in Com. Sub. for S. B. 437

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: Practitioner Requirement for Accessing the West Virginia Controlled Substance  
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 ~~8/24/2012~~ 8/25/12 AT 12:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Board of Dental Examiners

PO Box 1447  
Crab Orchard, WV 25827-1447

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**SUMMARY OF PROPOSED RULE**

**TITLE 5  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

**SERIES 10  
RULE FOR THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

This rule is being proposed as a new series to require practitioners to access the WV Controlled Substances Monitoring Program Database and review their patients controlled substances records before initially prescribing.

**STATEMENT OF CIRCUMSTANCES  
CONCERNING A PROPOSED RULE**

**TITLE 5**

**LEGISLATIVE RULE**

**WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

**SERIES 10**

**RULE FOR THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

This rule is filed as required by Senate Bill 437 of the 2012 Legislative Session. The passage of this bill requires rules to be filed as an emergency and through the regular rule making process.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

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

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Board of Dental Examiners

Address: PO Box 1447  
Crab Orchard, WV 25827-1447

Phone Number: (304)252-8266 Email: wvde@suddenlinkmail.com

**Fiscal Note Summary**

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

There is no additional cost nor revenue to state government related to this proposed rule.

**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.

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

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

Rule Title: \_\_\_\_\_

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

n/a

### 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

Date: 7-24-2012

Signature of Agency Head or Authorized Representative

*Clifford R. Smith*

**TITLE 5  
LEGISLATIVE RULE  
WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

FILED

2012 JUL 26 AM 10:09

**SERIES 10**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

**§5-10-1. 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 by the Board of Dental Examiners 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. –

**§5-10-2. Definitions.**

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

(a) “Administering” means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or any other means.

(b) “Board” means the West Virginia Board of Dental Examiners.

(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.

(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.

(e) “CSMP” means the West Virginia Controlled Substances Monitoring Program repository and database.

(f) “DEA registration identification number” means the federal Drug Enforcement Administration registration identification number issued to a practitioner.

(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.

(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.

(i) “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.

(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 I controlled substance.

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

(l) “Practitioner” means a dentist licensed pursuant to the provisions of the West Virginia Dental Practice Act, W. Va. Code § 30-4-1 et seq. who possesses a valid DEA registration identification number.

(m) “Provision” means prescribing or dispensing and includes administering.

(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.

### **§5-10-3. 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.

**§5-10-4. Other legal authority.**

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

**§5-10-5. Discipline.**

5.1. Any practitioner who fails to comply with this rule 5 CSR 10 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 § 30-4-20.

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July 24, 2012

Mrs. Judy Cooper  
Office of the Secretary of State  
Administrative Law Division  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305

**RE: 5CSR10**

Dear Mrs. Cooper:

Enclosed please find a Notice of a Comment Period on a Proposed Rule to be filed with your office and copies for the Legislative Rule-Making Review Committee. Please place the same on the State Register and return to us a copy of the same with the filing date shown for our records. If additional information is needed please do not hesitate to contact this office.

Thank you in advance for your help and cooperation, the Board greatly appreciates it.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard D. Smith".

RICHARD D. SMITH, DDS  
Executive Secretary

RDS/smc  
Enclosure