

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

Form #8

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Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

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

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 22, 2012

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES x NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT: July 27, 2012

SERIES NUMBER OF RULE: 14

TITLE OF RULE: Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database

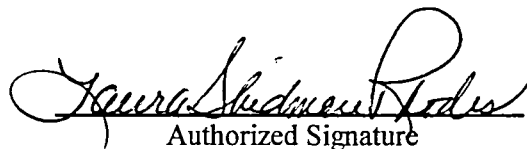
THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

As a result of the comments received on the above referenced rule the following amendments were approved by the Board:

1. Definitions were added for "Authorized agent", "Chronic nonmalignant pain".
2. Language was added to further clarify that this rule pertains to licensees with prescriptive authority privileges.
3. Language was added addressing the correct procedures in the instance of an emergency relating to power and equipment failures.

Use additional sheets if necessary


Authorized Signature

Form #7

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Review Committee

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

July 30, 2012

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

RE: Board Approved Amendments to Emergency Rule WV 19
CSR 14

Dear Secretary Tennant:

The West Virginia Board of Examiners for Registered Professional Nurses (Board) in session July 27, 2012 approved the proposed rule WV 19 CSR 14 Practitioner Requirements for Accessing the West Virginia Controlled Substances Monitoring Program Database following the comment period. Pursuant to the Board's decision, amendments are necessary for the existing emergency rule. 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.

Pursuant to the comments received, the Board approved amendments to the proposed rule which further clarify requirements for practitioners accessing the database, defines terminology used in the rule and provides steps to be taken in the instance of an emergency.

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

For the Board,

A handwritten signature in cursive script that reads "Laura Skidmore Rhodes".

Laura Skidmore Rhodes, MSN, RN
Executive Director



EMERGENCY RULE QUESTIONNAIRE

DATE: July 30, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Examiners for Registered Professionals
101 Dee Drive, Suite 102
Charleston, WV 25311
304-5583596

EMERGENCY RULE TITLE: Practitioner Requirements for Accessing the West Virginia Controlled Substance Monitoring Program Database

1. Date of filing June 22, 2012
2. Statutory authority for promulgating emergency rule:
SB 437, 2012 Regular Legislative Session changes necessitate this rule.
West Virginia Code Section 60A-9-6 provides rule-making authority.
3. Date of filing of proposed legislative rule: June 22, 2012
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule? Adopts new language.
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.
SB 437 (2012) makes the new language necessary and requires the Board to incorporate language into rule which would require practitioners to follow the requirements for accessing the controlled substance monitoring program database to determine whether a patient has previously received controlled substances and to document the information.

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.

SB 437 (2012) became effective June 8, 2012.

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

SB 437 makes the changes necessary. With the increase in substance abuse issues, this new language makes it necessary for practitioners to access the database and be aware of the patient's use of controlled substances before prescribing to the patients and to document and monitor the patient's use of controlled substances.

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 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: _____

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: July 30, 2012.

Signature of Agency Head or Authorized Representative

Gaura Shidmore Rhodes

TITLE 19

LEGISLATIVE RULE

WEST VIRGINIA BOARD OF

EXAMINERS FOR REGISTERED

PROFFESIONAL NURSES

SERIES 14

FILED

2012 AUG -1 PM 2:18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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 by a registered professional nurse with valid prescribing privileges.

2.1.b. "Authorized agent" means an individual, who is an employee of any of the covered persons or entities permitted to have access to the central repository who is specifically designated by the by the Advanced Practice Registered Nurse with prescriptive privileges to access the central repository on behalf of the covered person or entity.

2.1.bc. "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.bd. "Chronic nonmalignant pain" means pain that has persisted after reasonable medical

efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three (3) continuous months. For purposes of this rule, "chronic nonmalignant pain" does not include pain associated with a terminal condition or illness or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition or illness.

2.1.ee. "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.df. "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.eg. "CSMP" means the West Virginia Controlled Substances Monitoring Program repository and database.

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

2.1.gi. "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.hj. "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.ik. "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.jl. "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.km. "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.ln. "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.mo. "Provision" means prescribing and administering.

2.1.np. "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, or the practitioner's authorized agent, 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 paper or electronic copy of the CSMP accessed report maintained in the patient medical record. ~~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, or the practitioner's authorized agent, 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 period 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 paper or electronic copy of the CSMP accessed report maintained in the patient medical record. ~~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, or the practitioner's authorized agent; 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 paper or electronic copy of the CSMP accessed report maintained in the patient medical record. ~~signed and dated by the current practitioner. *Provided*, that an electronic date and signature of the current practitioner will meet this requirement.~~

3.6. Accessing the CSMP must occur prior to the provision of the controlled substance *Provided*, that if there is an equipment failure, electricity outage or other disaster or event that renders review of the CSMP impossible prior to provision of the required controlled substances and it is determined by the practitioner that providing a controlled substance is medically necessary, this determination of medical necessity shall be documented in the medical record and the controlled substance may be provided in a limited amount. The circumstances preventing the access to the CSMP prior to provision of the controlled substance shall be documented in the patient's medical record, and immediately upon having access restored the

CSMP report shall be accessed, documented as described in this rule and the practitioner shall adjust patient care as needed.

§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.