

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

Form #3

Do Not Mark In This Box

12/15/08  
8:30 AM  
12/15/08

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Board of Dentistry TITLE NUMBER: 5

CITE AUTHORITY: §60A-9-5a(b)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10

TITLE OF RULE BEING AMENDED: Practitioner Requirements for Accessing the West Virginia Controlled Substance Monitoring Program Database

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: 7/19/2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Board of Dentistry  
PO Box 1447  
Crab Orchard, WV 25827  
304-252-8266

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

1. Authorizing statute(s) citation §60A-9-5a(b)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 6, 2013

b. What other notice, including advertising, did you give of the hearing?  
Rules were sent to the WV Dental Association, WV Dental Hygienist's Association, WV Dental Assistant's Association. All rules were placed on the Board's website.

c. Date of Public Hearing(s) or Public Comment Period ended:  
July 12, 2013 at 12:00 pm

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received 0

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

Monday July 22, 2013

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Richard D. Smith, DDS

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Executive Secretary

WV Board of Dentistry

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PO Box 1447

Crab Orchard, WV 25827

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304-252-8266

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FAX: 304-253-9454

wvbde@suddenlinkmail.com; duff@duffsmithdds.com

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

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b. Date of hearing or comment period:

n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

**SUMMARY OF PROPOSED RULE**

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

**SERIES 10  
PRACTITIONER REQUIREMENTS FOR ACCESSING THE  
WEST VIRGINIA CONTROLLED SUBSTANCES MONITORING PROGRAM  
DATABASE**

**This rule is being amended to update the following due passage of Senate Bill 580:**

Change of name from Dental Examiners to Dentistry.

**STATEMENT OF CIRCUMSTANCES  
CONCERNING A PROPOSED RULE**

**TITLE 5**

**LEGISLATIVE RULE**

**WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

**SERIES 10**

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

Due to the passage of Senate Bill 580, which changed the Board's name, it is necessary to promulgate this rule to update the name of the Board.

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

Phone Number: 304-252-8266 Email: wvbde@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.

This rule will not have any impact on costs and revenues of state government.

**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			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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.

There are not fee increases/decreases associated with 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

Date: 6/5/2013

Signature of Agency Head or Authorized Representative  
*Susan M. Comer*

JUL 22 2014

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

**SERIES 10**

**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~~ Dentistry 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) "Authorized Agent" means an individual who is an employee of the practitioner permitted to have access to the CSMP repository and database who is specifically designated by the practitioner to access the database on his/her behalf.

(c) "Board" means the West Virginia Board of ~~Dental Examiners~~ Dentistry.

(d) "Chronic nonmalignant pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause that has continued, either continuously or episodically, for longer than 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.

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

(f) "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.

(g) "CSMP" means the West Virginia Controlled Substances Monitoring Program repository and database.

(h) "DEA registration identification number" means the federal Drug Enforcement Administration registration identification number issued to a practitioner.

(i) "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.

(j) "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.

(k) "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.

(l) "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.

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

(n) "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.

(o) "Provision" means prescribing or dispensing and includes administering.

(p) "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, 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 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 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, 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 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 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, 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 copy of the CSMP accessed report signed and dated by the current practitioner.

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 prevent 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, *Provided further*, that if a practitioner is unable to access the CSMP due to the unavailability of commercially affordable broadband coverage in a practitioner's area and it is determined by the practitioner that providing a controlled substances is medically necessary, this determination shall be documented in the medical record and the controlled substance may be provided in a limited amount. The practitioner shall access the CSMP through alternate means and document the treatment rendered and the practitioner shall adjust patient care as needed.

**§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. A 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.