

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**
Form #7

Do Not Mark In This Box
Filing Date

FILED

2014 JUN 11 P 1:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Board of Dentistry TITLE NUMBER: 5

CITE AUTHORITY: HB 4538 passed during the 2014 Legislative Session §30-4-6

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: 15

TITLE OF RULE BEING PROPOSED: Board of Dentistry Rules for Dental 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 4538 pass the Legislature on March 7, 2014 and authorized the Board of Dentistry to enter into agreements with organizations to form dental recovery networks for impaired dentists and dental hygienists. This rule is necessary in regard to the operation of such recovery networks. Impairment in the dental profession is a serious problem and the sooner the network is formed, the sooner the public will be protected and the impaired practitioner can seek help without the fear of losing their license.

Use additional sheets if necessary


Authorized Signature

Members

David G. Edwards, DDS
President

C. Richard Gerber, DDS
Secretary

L. Edward Eckley, DDS

George D. Conard, Jr., DDS

Stan W. Kaczowski, DDS

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James M. Casey
Assistant Attorney General

June 10, 2014

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


Dear Secretary Tennant:

Pursuant to the passage of House Bill 4538 and unanimous vote of the West Virginia Board of Dentistry at its meeting on March 28, 2014, enclosed please find an Emergency Rule filing of 5CSR15, Board of Dentistry Rules for Dental Recovery Networks.

The Board has been very concerned about impairment of licensees. For many years the Board has relied informally on the Pharmacist's Recovery Network for assistance in securing treatment for impaired practitioners. The Board is of the opinion these rules should be effective as soon as possible in order to fulfill its duties to ensure the health, safety and welfare of the Citizens of the State of West Virginia.

Should you have any questions or need further information, please do not hesitate to contact this office.

Very truly yours,


RICHARD D. SMITH, DDS
Executive Secretary

RDS/smc
Enclosures



EMERGENCY RULE QUESTIONNAIRE

DATE: 6/10/2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

EMERGENCY RULE TITLE: Board of Dentistry Rules for Dental Recovery Networks

1. Date of filing 6/11/2014

2. Statutory authority for promulgating emergency rule:
~~Only general rule making authority in §30-4-6 effective June 8, 2014. The Board is of~~
the opinion these rules should be effective now, instead of waiting a year from now for
them to be effective.

3. Date of filing of proposed legislative rule: 6/11/2014

4. Does the emergency rule adopt new language or does it amend or appeal a current
legislative rule? 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.
Impairment in the dental profession is a serious problem. This rule is necessary in
regards to the operation of a dental recovery network. The sooner the network is
formed, the sooner the public will be protected and the impaired practitioner can seek
help without the fear of losing their license.

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.

Promulgated due to passage of HB 4538 during the 2014 Legislative Session. No particular time frame was noted.

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

This rule allows an impaired practitioner to seek help without fear of losing their license who may otherwise not seek help.

SUMMARY OF PROPOSED RULE

**TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTISTRY**

**SERIES 15
BOARD OF DENTISTRY RULES FOR DENTAL RECOVERY NETWORKS**

HB 4538 passed the Legislature on March 7, 2014 and authorized the Board of Dentistry to enter into agreements with organizations to form dental recovery networks for impaired dentists and dental hygienists. This rule is necessary in regard to the operation of such recovery networks. Impairment in the dental profession is a serious problem and the sooner the network is formed, the sooner the public will be protected and the impaired practitioner can seek help without the fear of losing their license.

**STATEMENT OF CIRCUMSTANCES
CONCERNING A PROPOSED RULE**

**TITLE 5
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF DENTISTRY**

**SERIES 15
BOARD OF DENTISTRY RULES FOR DENTAL RECOVERY NETWORKS**

This rule is necessary to effectuate HB 4538 which the Legislature passed on March 7, 2014. This bill authorized the Board to enter into agreements with organizations to form dental recovery networks for licensed dentists and dental hygienists in West Virginia. These rules are necessary in regards to the operation of such organization.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Board of Dentistry Rules for Dental Recovery Networks

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Board of Dentistry

Address: PO Box 1447
Crab Orchard, WV 25827

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

The exact costs of operating a dental recovery network to the Board of Dentistry is not known at this time. However, the rule proposed requires each licensed dentist and dental hygienist to pay an additional \$10 and \$5 fee per year, respectively, to cover the costs of this endeavor.

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	18,250.00	18,250.00	18,250.00

Board of Dentistry Rules for Dental Recovery Networks

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.

The Board's revenues will increase approximately \$18,250 per year with a \$10 increase to dentists renewals and a \$5 increase to dental hygienists renewals to cover the costs of the dental recovery network. This increase of revenue is to be used to operate the dental recovery networks.

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.

n/a

Date: June 10, 2014

Signature of Agency Head or Authorized Representative

Susan M. Cohen

**TITLE 5
LEGISLATIVE RULE
BOARD OF DENTISTRY**

FILED

2014 JUN 11 P 1:00

**SERIES 15
BOARD OF DENTISTRY RULES FOR DENTAL RECOVERY NETWORKS**

OFFICE OF THE CLERK
SECRETARY OF STATE

§5-15-1. General.

1.1. Scope. -- This rule establishes definitions of impairment; guidelines for program elements; procedures for receipt and use of information of suspected impairment; procedures for intervention and referral; arrangements for mandatory monitoring, treatment, rehabilitation, post-treatment support and performance; reports of individual cases to the Board; periodic reporting of statistical information; assurance of confidentiality of nonpublic information and of the peer review process; and assessment of a fee to be added to each licensure renewal for operation of dental recovery networks.

1.2. Authority. -- W. Va. Code §30-4-6.

1.3. Filing Date. --

1.4. Effective Date. --

§5-15-2. Definitions.

2.1. "Committee" means the Board of Directors established to function as a supervisory and advisory body to the Program.

2.2. "Executive Director" means the administrator or clinical director selected by the Committee to administer the program.

2.3. "Impairment" means mental illness, chemical dependency, physical illness, or any abnormal physical or mental condition of a dentist or dental hygienist which threatens a licensee or the safety of persons of whom are patients of the licensee.

2.4. "Licensee" means a licensed dentist, or licensed dental hygienist.

2.5. "Program or West Virginia Dental Recovery Network (WVDRN)" means the program established by agreements between impaired dentist and/or hygienist peer review organizations and the Board.

§5-15-3. Dental Recovery Network Agreements.

3.1. Dental Recovery Network Agreements with the Board require the following:

3.1.1. Upon receiving a report or request about possible impairment of a licensee from a licensee or another interested party, the Executive Director will make contact with the licensee to verify the information.

3.1.2. If it is determined there is sufficient reason for action, such as behavioral signs, documented

evidence of impairment, and/or drug abuse or diversion, the Executive Director shall encourage the licensee to present himself or herself to the WVDRN office within 48 hours of initial contact for an interview.

a. If the licensee resists coming in for an interview, the Executive Director shall pursue one repeat contact.

b. After two unsuccessful interventions within a period not to exceed 14 days, the Executive Director shall inform the licensee of the program's intent to close the file and disclose all evidence of impairment allowed by law to the Board.

3.1.3. After the licensee arrives at the network office, the program's Executive Director shall conduct an interview and determine what steps are needed to be taken and will arrange for an appropriate assessment.

3.1.4. After receiving results of an assessment, the Executive Director shall draft an appropriate agreement for further assessment, treatment, and monitoring. If a diagnosis of substance abuse or dependence as per the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association is made, the Executive Director shall arrange for further evaluation and treatment of the licensee to be conducted at a facility or by an individual approved by the program. If there is insufficient evidence to warrant a diagnosis of substance abuse or dependence, the Executive Director shall place the file in an inactive status, and destroy the file after 5 years.

3.1.5. The Executive Director shall draw up a final agreement between the licensee and the program for the licensee to enter into a treatment or other appropriate program. The Executive Director shall work with the treatment provider to determine the guidelines of treatment and aftercare, and shall consult with the primary care giver on a regular basis;

3.1.6. The Executive Director shall collect appropriate paper work, as specified in the contract, regarding treatment progress, group therapy participation, urine and blood analysis, discharge summaries, etc;

3.1.7. Monitors shall assist the licensee in transition into the workplace by providing information if requested to the supervisors and co-workers regarding chemical dependency, relapse, and diversion; and

3.1.8. Upon the completion of treatment and rehabilitation, and the expiration of the 5 year recovery contract, the network shall conclude involvement with the licensee.

§5-15-4. Due Process.

4.1. Any action taken pursuant to a dental recovery network shall afford the licensee all due process rights enumerated in W. Va. Code §§29A-1-1 et. seq.

§5-15-5. Receipt and Use of Information of Suspected Impairment

5.1. Licensees, family members, and other persons may submit reports containing information concerning suspected impairment of a licensee to the program.

5.2. Upon receipt of information of a suspected impairment, the program shall initiate an investigation.

5.3. The program may conduct routine inquiries regarding suspected impairments.

5.4. The program may require a licensee suspected of impairment to submit to personal interviews before any person authorized by the program.

§5-15-6. Intervention and Referral.

6.1. When, following an investigation, the impairment of a licensee is confirmed, the Executive Director shall cause an intervention to be conducted using specialized techniques designed to assist the licensee in acknowledging responsibility for dealing with the impairment. The Executive Director shall then refer the licensee to an appropriate treatment source acceptable to the program.

6.2. The program shall decide the methods and objectives of interventions on a case-by-case basis.

6.3. The program shall arrange and conduct interventions as soon as possible.

6.4. The program shall evaluate treatment sources before making case referrals for treatment.

6.5. The program shall record intervention outcomes including treatment contracts that are elements of an intervention.

§5-15-7. Monitoring Treatment.

7.1. The program shall monitor a treatment source receiving referrals from it as to the treatment source's ability to provide:

7.1.1. adequate medical and non-medical staffing;

7.1.2. appropriate treatment;

7.1.3. affordable treatment;

7.1.4. adequate facilities; and

7.1.5. appropriate post-treatment support.

§5-15-8. Monitoring Rehabilitation and Performance.

8.1. The program shall designate monitoring requirements for each licensee participating in the program. Licensees may be required to be tested regularly or randomly on demand of the program.

8.2. The program may require treatment sources to submit reports regarding a licensee's rehabilitation and performance to the program.

8.3. The program may require impaired licensees to submit to periodic personal interviews before any person authorized by the program.

8.4. The program shall maintain appropriate case records regarding each licensee that is a participant.

§5-15-9. Monitoring Post-Treatment Support.

9.1. Post-treatment support may include family counseling, advocacy and other services and programs considered appropriate to the licensee's recovery.

9.2. The program shall monitor the post-treatment support of treatment sources on an ongoing basis.

9.3. The program's own post-treatment support shall be monitored by the program on an ongoing basis.

§5-15-10. Reports of Cases of Impairment to the Board.

10.1. After investigation and review of a licensee, the program shall report immediately to the Board detailed information about any licensee as required by W. Va. Code §30-4-6.

10.2. The program shall submit quarterly a report to the Board on the status of all licensees involved in the program who have been previously reported to the Board. The program shall submit a monthly report to the Board on the status of any licensee previously reported to the Board who is in active treatment until a time mutually agreed to by the Board and the program.

10.3. In the event the program becomes aware that the licensee has diverted controlled substances to a person other than himself or herself, the program shall report this infraction to the Board. In this case, the licensee is not protected by the program's confidentiality provisions or from disciplinary action by the Board.

§5-15-11. Periodic Reporting of Statistical Information.

11.1. The program shall compile and annually report to the Board comprehensive statistical reports concerning suspected impairments, impairments, self-referrals, post-treatment support and other significant demographic and substantive information collected through program operations.

§5-15-12. Confidentiality.

12.1. All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the program, all communications to or from the program, and all proceedings, findings, and conclusions of the program, including those relating to intervention, treatment, or rehabilitation, that in any way pertain to or refer to a person participating in a dental recovery network are privileged and confidential.

12.2. All records and proceedings of the program that pertain or refer to a person participating in a dental recovery network shall be privileged and confidential, used by the program and its members only in the exercise of the proper function of the program, not be considered public records, and not be subject to court subpoena, discovery, or introduction as evidence in any civil, criminal, or administrative proceedings, except as provided in subsection 10.1 of this rule.

12.3. The program may only disclose the information relative to an impaired licensee if:

12.3.1. it is essential to disclose the information to persons or organizations needing the information in order to address the intervention, treatment, or rehabilitation needs of the impaired licensee;

12.3.2. the release is authorized in writing by the impaired licensee; or

12.3.3. the program is required to make a report to the board pursuant to subsection 10.1 of this rule.

§5-15-13. Fees.

13.1. 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 dental recovery network:

13.1.1. Dentist - \$10 with each annual renewal;

13.1.2. Dental Hygienist - \$5 with each annual renewal.

Members

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June 10, 2014

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Administrative Law Division
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Charleston, WV 25305

OFFICE OF THE ATTORNEY GENERAL
SECRETARIAT OF STATE
2014 JUN 11 P 1:00
FILED

Dear Mrs. Cooper:

Enclosed please find an Notice of an Emergency Rule, with a cover letter to Secretary Tennant, to be filed with your office and copies for the Legislative Rule-Making Review Committee concerning Dental Recovery Networks.

Please place this notice 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,

SUSAN M. COMBS
Assistant Executive Secretary

Enclosures