



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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

AGENCY: Pharmacy TITLE-SERIES: 15-10  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 15-10 Pharmacist Recovery Networks

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W. Va. Code §30-5-7

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §30-5-7(a)(14) authorizes the Board to promulgate rules regarding pharmacist recovery networks. The Rules for Pharmacist Recovery Networks have not been updated for several years. The Board worked with the current vendor, which also does work for other licensing boards in this arena, to modify the rules to modernize them.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/12/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/12/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None

**SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:**

The Rules for Pharmacist Recovery Networks have not been updated for several years. The Board worked with the current vendor, which also does work for other licensing boards in this arena, to modify the rules to modernize them.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

The Rules for Pharmacist Recovery Networks have not been updated for several years. The Board worked with the current vendor, which also does work for other licensing boards in this arena, to modify the rules to modernize them. In addition, when the Pharmacy Practice Act was changed in 2013, some language pertaining to the Pharmacy Recovery Network (PRN) was deleted from code to leave the requirements fully to rulemaking. One significant change is to lay out the structure for any PRN Board of Directors to ensure that it is made of true practicing West Virginia peers. Other changes clarify the confidentiality provisions and when information must be provided to the Board of Pharmacy.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

None

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

None

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
<b>Personal Services</b>	0	0	0
<b>Current Expenses</b>	0	0	0
<b>Repairs and Alterations</b>	0	0	0
<b>Assets</b>	0	0	0
<b>Other</b>	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.**

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TITLE 15

LEGISLATIVE RULE, WEST VIRGINIA BOARD OF PHARMACY

SERIES 10

BOARD OF PHARMACY RULES FOR PHARMACIST RECOVERY NETWORKS

**§15-10-1. General.**

1.1. Scope -- This rule ~~establishes~~ provides for 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 of Pharmacy; 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 pharmacist recovery networks.

1.2. Authority -- W. Va. Code § 30-5-7~~e(d)~~.

1.3. Filing date -- ~~June 23, 2003~~. \_\_\_\_\_.

1.4. Effective date -- ~~June 23, 2003~~ \_\_\_\_\_.

1.5. Sunset Date -- This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.

**§15-10-2. Definitions.**

2.1. "Committee" means the Board of Directors established to function as a supervisory and advisory body to the ~~Program~~ WVPRN, made up of professional peers actively licensed or registered to practice pharmacist care in West Virginia. The Board of Directors shall consist, at a minimum, of the following:

2.1.a. Six pharmacists actively licensed with the West Virginia Board of Pharmacy from various practice settings and state regions, a minimum of two of which shall be past clients of the WVPRN in recovery, or if not past clients of the WVPRN, otherwise be in recovery from alcohol or drug dependency or other mental impairment;

2.1.b. One pharmacy technician actively registered with the West Virginia Board of Pharmacy;  
and

2.1.c. One student from each ACPE accredited school of pharmacy located in the State of West Virginia actively licensed as an intern with the West Virginia Board of Pharmacy.

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

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2.3. "Impairment" means mental illness, chemical dependency, physical illness, or any abnormal physical or mental condition of a pharmacist, intern or technician which threatens a licensee or the safety of persons to whom that licensee might sell or dispense prescription drugs or devices.

2.4. "Licensee" means a licensed pharmacist, licensed intern, or registered pharmacy technician or registered pharmacy technician trainee.

2.5. "~~Program~~ or West Virginia Pharmacist Recovery Network (WVPRN)" means the program established by ~~agreements between the~~ special impaired pharmacist peer review organizations and the Board of Pharmacy.

### **§15-10-3. Pharmacist Recovery Network Agreements.**

3.1. Pharmacist Recovery Network Agreements with the Board of Pharmacy require the following:

3.1.1a. 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.

3.1.2b. If it is determined there is sufficient reason for action, such as behavioral signs, documented evidence of impairment, and/or drug diversion, the Executive Director shall ~~request the individual~~ encourage the licensee to present himself or herself to the WVPRN office a WVPRN-approved evaluator's office within 48 hours 7 days of initial contact for a complete substance abuse assessment.

3.1.b.1. If the licensee resists coming in for an assessment, 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 of Pharmacy~~ pursue one repeat contact.

3.1.b.2. After two unsuccessful interventions within a period not to exceed 14 days, the Executive Director shall inform the licensee of the WVPRN's intent to close the file and disclose all evidence of impairment allowed by law to the Board of Pharmacy. If the licensee still refuses to cooperate, then the WVPRN shall inform the Board of Pharmacy of any and all findings of the WVPRN developed during the course of its investigation.

3.1.3c After the licensee arrives at the ~~network~~ evaluator's office, the ~~program's Executive Director~~ evaluator shall conduct a substance abuse evaluation to include among other things, a psychoactive substance use history, administration of a Substance Abuse Subtle Screening Inventory (SASSI) or other diagnostic tool the evaluator deems necessary, and urinalysis utilizing a minimum of a 14-panel screen and Ethyl Glucuronide Test (ETG) and Breathalyzer;

3.1.4d. If a diagnosis of substance abuse or dependence or any other impairing mental disorder 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~~ WVPRN. If there is insufficient evidence to warrant a diagnosis of substance abuse or

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dependence, or any other impairing mental disorder, the Executive Director shall place the file in an inactive status, and destroy the file after 5 years.

3.1.5e. The Executive Director shall draw up a final agreement (or "contract") between the licensee and the ~~program~~ WVPRN 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;

3.1.6f. 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~~ or any other treatment documentation, including recommendations to return to practice, if applicable;

3.1.7g. ~~Monitors~~ The Executive Director 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

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

### **§15-10-4. Due Process.**

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

### **§15-10-5. 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~~ WVPRN.

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

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

5.4. The ~~program~~ WVPRN may require a licensee suspected of impairment to submit to personal interviews before any person authorized by the ~~program~~ WVPRN, including but not limited to evaluators or treatment centers.

### **§15-10-6. 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 request the licensee to surrender their license to the WVPRN to be put into inactive status at the Board

of Pharmacy, and then refer the licensee to an appropriate treatment source acceptable to the ~~program~~WVPRN.

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

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

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

6.5. The ~~program~~WVPRN shall record intervention outcomes including treatment contracts that ~~are elements of an intervention~~ result from the administration of the case.

#### **§15-10-7. Monitoring Treatment.**

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

7.1.1. adequate medical and non-medical staffing, facilities, and experience with health professional clients;

7.1.2. appropriate treatment;

7.1.3. affordable treatment; and

~~7.1.4. adequate facilities; and~~

7.1.54. appropriate post-treatment support.

#### **§15-10-8. Monitoring Rehabilitation and Performance.**

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

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

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

8.4. The ~~program~~WVPRN shall maintain appropriate case records in a HIPPA encrypted data file regarding each licensee that is a participant.

#### **§15-10-9. 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~~ WVPRN shall monitor the post-treatment support of treatment sources on an ongoing basis.

9.3. The ~~program~~ WVPRN's own post-treatment support shall be monitored by the ~~program~~ WVPRN on an ongoing basis utilizing recognized performance measures.

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

~~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 §30-5-7c(e).~~

~~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.~~

10.1. Any voluntary agreement entered into between the WVPRN and a licensee shall not be considered a disciplinary action or order by the Board of Pharmacy, shall not be disclosed to the Board of Pharmacy, and shall not be public information if:

10.1.a. Such voluntary agreement is the result of the licensee or applicant self-enrolling or voluntarily participating in the WVPRN;

10.1.b. The Board of Pharmacy has not received nor filed any written complaints regarding said licensee or applicant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients; and

10.1.c. The licensee or applicant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.

10.2 Pursuant to this section, if any licensee or applicant enters into a voluntary agreement with the WVPRN, and then fails to comply with or fulfill the terms of said agreement, the Executive Director shall report the noncompliance to the Board of Pharmacy within twenty-four hours, so the Board of Pharmacy may determine whether to initiate disciplinary proceedings.

10.3 If the Board of Pharmacy has not instituted any disciplinary proceeding as provided for in West Virginia Code Chapter 30, Article 5, Section 31, any information received, maintained or developed by the WVPRN relating to the alcohol or chemical dependency impairment or mental impairment of any licensee or applicant and any voluntary agreement made pursuant to this Series shall be confidential and not available for public information, discovery or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.



10.34. In the event the ~~program~~WVPRN becomes aware that the licensee has diverted controlled substances to a person other than himself or herself, or the individual constitutes an immediate danger to the public or himself or herself, the ~~program~~WVPRN shall report this infraction to the Board of Pharmacy. In this case, the licensee is not protected by the program's confidentiality provisions or from disciplinary action by the Board of Pharmacy.

**§15-10-11. Periodic Reporting of Statistical Information.**

11.1. The ~~program~~WVPRN shall compile and annually report to the Board of Pharmacy comprehensive statistical reports concerning suspected impairments, impairments, self-referrals, post-treatment support and other significant demographic and substantive information collected through program operations, Provided that, in making such report, the WVPRN shall not disclose any personally identifiable information relating to any pharmacist, intern, pharmacy technician, or pharmacy technician trainee participating in a voluntary agreement as provided herein.

11.2. The WVPRN shall on a quarterly basis provide reports on the status of licensees subject to monitoring by the WVPRN by Order of the Board of Pharmacy issued in accordance with West Virginia Code § 30-5-31.

**§15-10-12. Confidentiality.**

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

12.2. All records and proceedings of the ~~program~~WVPRN that pertain or refer to a person participating in a pharmacist recovery network shall be privileged and confidential, used by the ~~program~~WVPRN 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 subsections 3.1.b.2 and 10.14 of this rule.

12.3. The ~~program~~WVPRN 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 and a release by the licensee has been executed;

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

12.3.3. the ~~program~~WVPRN is required to make a report to the ~~board~~ Board of Pharmacy pursuant to subsections 3.1.b.2 or 10.14 of this rule.

**§15-10-13. Discretionary Authority of the Board of Pharmacy to Designate Program**

13.1. The Board of Pharmacy has the sole discretion to designate pharmacy recovery programs for licensees of the Board of Pharmacy and no provision of this Series may be construed to entitle any pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee to the creation or designation of a pharmacy recovery program for any individual qualifying illness or group of qualifying illnesses.

**§15-10-~~13~~14. Fees.**

~~13~~14.1. The Board of Pharmacy shall assess the following fees to be added to each licensure renewal application fee payable to the Board of Pharmacy with any revenue generated by the assessment dedicated to the operation of the pharmacist recovery network:

~~13~~14.1.1. Pharmacist - \$20 with each biennial renewal;

~~13~~14.1.2. Intern - \$5 with each annual renewal; and

~~13~~14.1.3. Pharmacy Technician - \$10 with each biennial renewal.