



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Pharmacy

RULE TYPE: Legislative

TITLE-SERIES: 15-10

RULE NAME: Pharmacist Recovery Networks

CITE AUTHORITY: 30-5-7

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

15 CSR 10

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; 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. the operation of Pharmacist Recovery Networks.

1.2. Authority -- W. Va. Code § 30-5-7e(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. "Applicant" means a person applying to the Board for licensure as a pharmacist, licensed intern, or registered pharmacy technician.

2.2. "Board" means the West Virginia Board of Pharmacy.

~~2.1.~~ 2.3. "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.

~~2.2.~~ 2.4. "Executive Director" means the administrator or clinical director a person selected by the committee to administer the WVPRN.

2.5. "Facility" means a residential or in-patient treatment hospital or institution, a partial hospital programming hospital or institution with a housing component, or an intensive outpatient programming

hospital or institution, all of which have a specific program with expertise in treating healthcare professionals.

~~2.3.~~ 2.6. "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.~~ 2.7. "Licensee" means a licensed pharmacist, licensed intern, or registered pharmacy technician or registered pharmacy technician trainee.

~~2.5.~~ 2.8. "~~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. Board of Directors.

3.1. The Board of Directors shall consist, at a minimum, of the following:

3.1.a. Six licensed pharmacists various practice settings and state regions, a minimum of two 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;

3.1.b. One pharmacy technician actively registered with the Board; and

3.1.c. One actively licensed intern from each ACPE accredited school of pharmacy located in the state.

§15-10-~~3.4.~~ Pharmacist Recovery Network Agreements.

~~3.1.~~ 4.1. Pharmacist Recovery Network Agreements with the board ~~of Pharmacy~~ require the following:

~~3.1.1.a.~~ 4.1.a. Upon receiving ~~a report or request~~ information about possible impairment of a licensee ~~or applicant~~ from a person ~~licensee or another interested party,~~ the Executive Director ~~will make~~ shall contact ~~with~~ the licensee or applicant to verify the information.

~~3.1.2.b.~~ 4.1.b. 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 ~~or applicant~~ to present himself or herself to ~~the WVPRN office~~ a WVPRN-approved evaluator's office within ~~48 hours~~ seven days of initial contact for a complete substance abuse assessment.

~~3.1.b.1.~~ 4.1.b.1. If the licensee or applicant 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.~~ 4.1.b.2. After two unsuccessful interventions within a period not to exceed 14 days, the Executive Director shall inform the licensee or applicant of the WVPRN's intent to close the file and

disclose all evidence of impairment allowed by law to the board. If the licensee or applicant still refuses to cooperate, then the WVPRN shall inform the board of any and all findings of the WVPRN developed during the course of its investigation.

~~3.1.3.c~~ 4.1.c. After the licensee arrives at the network office, the program's Executive Director The evaluator shall conduct a an in-person 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~~ 4.1.d. If a diagnosis of substance abuse or dependence or an 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 dependence, or an impairing mental disorder, the Executive Director shall place the file in an inactive status, and destroy the file after ~~5~~ five years.

~~3.1.5e~~ 4.1.e. 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~~ 4.1.f. 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~~ 4.1.g. ~~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~~ 4.1.h. 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~~ 5. Due Process.

~~4.1.~~ 5.1. 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~~ 6. Receipt and Use of Information of Suspected Impairment.

~~5.1.~~ 6.1. Licensees, family members, and other persons may submit reports containing information concerning suspected impairment of a licensee to the ~~program~~ WVPRN.

~~5.2.~~ 6.2. Upon receipt of information of a suspected impairment, the ~~program~~ WVPRN shall initiate an investigation.

~~5.3.~~ 6.3. The ~~program~~ WVPRN may conduct routine inquiries regarding suspected impairments.

~~5.4.~~ 6.4. 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.

~~§15-10-6.7.~~ Intervention and Referral.

~~6.1.~~ 7.1. 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, and then refer the licensee to an appropriate treatment source acceptable to the ~~program~~ WVPRN.

~~6.2.~~ 7.2. The ~~program~~ WVPRN shall decide the methods and objectives of interventions on a case-by-case basis.

~~6.3.~~ 7.3. The ~~program~~ WVPRN shall arrange and conduct interventions as soon as possible.

~~6.4.~~ 7.4. The ~~program~~ WVPRN shall evaluate treatment sources before making case referrals for treatment.

~~6.5.~~ 7.5. The ~~program~~ WVPRN shall record intervention outcomes including treatment contracts that ~~are elements of an intervention~~ result from the administration of the case.

~~§15-10-7.8.~~ Monitoring Treatment.

~~7.1.~~ 8.1. 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.~~ 8.1.a. adequate medical and non-medical staffing, facilities, and experience with health professional clients;

~~7.1.2.~~ 8.1.b. appropriate treatment;

~~7.1.3.~~ 8.1.c. affordable treatment; and

~~7.1.4.~~ adequate facilities; and

~~7.1.5.~~ 8.1.d. appropriate post-treatment support.

~~§15-10-8.9.~~ Monitoring Rehabilitation and Performance.

~~8.1.~~ 9.1. 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.~~ 9.2. The ~~program~~ WVPRN may require treatment sources to submit reports regarding a licensee's rehabilitation and performance to the ~~program~~ WVPRN.

~~8.3.~~ 9.3. The ~~program~~ WVPRN may require impaired licensees to submit to periodic personal interviews before any person authorized by the ~~program~~ WVPRN.

~~8.4.~~ 9.4. The ~~program~~ WVPRN shall maintain appropriate case records in a HIPPA encrypted data file regarding each licensee that is a participant.

~~§15-10-9-10.~~ Monitoring Post-Treatment Support.

~~9.1.~~ 10.1. Post-treatment support may include family counseling, advocacy and other services and programs considered appropriate to the licensee's recovery.

~~9.2.~~ 10.2. The ~~program~~ WVPRN shall monitor the post-treatment support of treatment sources on an ongoing basis.

~~9.3.~~ 10.3. The ~~program~~ WVPRN's own post-treatment support shall be monitored by the ~~program~~ WVPRN on an ongoing basis utilizing recognized performance measures.

~~§15-10-10-11.~~ 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 §30-5-7c(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.~~ 11.1. A voluntary agreement entered into between the WVPRN and a licensee is not considered a disciplinary action or order by the Board, shall not be disclosed to the Board of Pharmacy, and shall not be public information if:

~~10.1.a.~~ 11.1.a. The voluntary agreement is the result of the licensee or applicant self-enrolling or voluntarily participating in the WVPRN;

~~10.1.b.~~ 11.1.b. The Board has not received nor filed any written complaints regarding the licensee or applicant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients; and

~~10.1.c.~~ 11.1.c. The licensee or applicant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.

~~10.2~~ 11.2. If a 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 within twenty-four hours, so the Board may determine whether to initiate disciplinary proceedings.

~~10.3~~ 11.3. If the board has not instituted a disciplinary proceeding, any information received, maintained or developed by the WVPRN relating to the alcohol or chemical dependency impairment or mental impairment of a licensee or applicant and the voluntary agreement 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.~~ 11.4. If WVPRN becomes aware that the licensee or applicant 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. In this case, the licensee is not protected by the program's confidentiality provisions or from disciplinary action by the Board.

~~§15-10-11,~~ §12 Periodic Reporting of Statistical Information.

~~11.1.~~ 12.1. The program WVPRN 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. The WVPRN may 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.~~ 12.2. The WVPRN shall, on a quarterly basis, report on the status of licensees subject to monitoring by the WVPRN by Order of the Board.

~~§15-10-12,~~ §13. Confidentiality.

~~12.1.~~ 13.1. 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,~~ 13.2. 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 4.1.b.2 and 10.14 11.4. of this rule.

~~12.3.~~ 13.3. The ~~program~~ WVPRN may only disclose the information relative to an impaired licensee if:

~~12.3.1.~~ 13.3.a. it is essential to disclose the information to ~~persons or organizations~~ a person or an organization 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.~~ 13.3.b. the release is authorized in writing by the impaired licensee; or

~~12.3.3.~~ 13.3.c. the ~~program~~ WVPRN is required to make a report to the ~~board~~ board pursuant to subsections 4.1.b.2 or 10.14 11.4. of this rule.

§15-10-13, 14. Discretionary Authority of the Board to Designate Program

~~13.1.~~ 14.1. The board has the sole discretion to designate pharmacy recovery programs for licensees of the board and no provision of this rule 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, 15. Fees.

~~13.1.1.~~ 15.1. The board of ~~Pharmacy~~ 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 pharmacist recovery network:

~~13.1.1.1.~~ 15.1.a. Pharmacist - \$20 with each biennial renewal;

~~13.1.1.2.~~ 15.1.b. Intern - \$5 with each annual renewal; and

~~13.1.1.3.~~ 15.1.c. Pharmacy Technician - \$10 with each biennial renewal.