



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Dentistry WV Board of TITLE-SERIES: 5-15  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 5-15 Dental Recovery Networks

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: §30-4-6

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:

§30-4-6 is the provision in the practice act authorizing the Board to promulgate rules.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/16/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/18/2022

COMMENTS RECEIVED: No

(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?

The filed rule was placed on the Board's website. The West Virginia Dental & Hygiene Associations were notified and sent a copy of the filing.

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

This rule provides for the Dental Recovery Network. Technical modifications were made. New definitions were added and other provisions to clarify what reports are required to be given to the Board of Dentistry and costs that may be charged to the participants.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule required updating in order to clarify reporting requirements and costs that may be charged to the participants.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule should have no economic impact on revenues of State Government

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This rule should have no economic impact on special revenue accounts.

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

This rule should have no economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

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

This rule should have no economic impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes  
 Susan Combs -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



TITLE 5  
LEGISLATIVE RULE  
BOARD OF DENTISTRY

SERIES 15  
BOARD OF DENTISTRY RULES FOR DENTAL RECOVERY NETWORKS

§5-15-1. 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 dental recovery networks the Dental Recovery Network.

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

1.3. Filing Date. -- ~~April 21, 2015~~.

1.4. Effective Date. -- ~~June 1, 2015~~.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2033.

§5-15-2. Definitions.

2.1. "Applicant" means a person applying to the Board for licensure as a dentist or dental hygienist.

~~2.1.~~ 2.2. "Committee" means the Board of Directors established to function as a supervisory and advisory body to the Program West Virginia Dental Recovery Network.

~~2.2.~~ 2.3. "Executive Director" means the administrator or clinical director a person selected by the Committee to administer the program WVDRN.

2.4. "Facility" means a residential or in-patient treatment hospital or institution, or 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.~~ 2.5. "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 applicant or the safety of persons of whom are patients of the licensee.

2.6. "Investigation" means an effort to gather facts to form a conclusion as to whether impairment exists concerning a licensee or applicant who has been reported to the WVDRN as impaired or suspected to be impaired.

~~2.4:~~ 2.7. "Licensee" means a licensed dentist, or licensed dental hygienist.

~~2.5:~~ 2.8. "~~Program~~ West Virginia Dental Recovery Network (WVDRN)" means the program established by agreements between the impaired dentist and/or hygienist peer review organizations and the Board of Dentistry.

2.9. "Self-Report" means a licensee or applicant who has presented to the WVDRN for treatment of impairment.

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

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

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

3.1.b. 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 or applicant to present himself or herself to ~~the WVDRN office~~ a WVDRN approved evaluator's office within ~~48 hours~~ seven days of initial contact for ~~an interview~~ a complete substance abuse assessment.

3.1.b.1. If the licensee or applicant resists coming in for an ~~interview~~ assessment, the Executive Director shall 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 or applicant of the ~~program's~~ WVDRN's intent to close the file and disclose all evidence of impairment allowed by law to the Board.

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

3.1.d. ~~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 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 or applicant to be conducted at a facility or by an individual approved by the ~~program~~ WVDRN. 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.e. The Executive Director shall draw up a final agreement or contract between the licensee or applicant and the ~~program~~ WVDRN for the licensee or applicant 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.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.g. ~~Monitors~~ The Executive Director shall assist the licensee or applicant 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.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 or applicant.

**§5-15-4. Due Process.**

4.1. Any action taken pursuant to ~~a dental recovery network~~ the WVDRN 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 or applicant to the ~~program~~ WVDRN.

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

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

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

**§5-15-6. Intervention and Referral.**

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

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

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

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

6.5. The ~~program~~ WVDRN shall record intervention outcomes including treatment contracts that are

elements of an intervention.

**§5-15-7. Monitoring Treatment.**

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

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

7.1.b. appropriate treatment;

7.1.c. affordable treatment; and

~~7.1.d. adequate facilities; and~~

~~7.1.e.~~ 7.1.d. appropriate post-treatment support.

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

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

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

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

8.4. The ~~program~~ WVDRN shall maintain appropriate case records regarding each licensee or applicant 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 or applicant's recovery.

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

9.3. The ~~program's~~ WVDRN's own post-treatment support shall be monitored by the ~~program~~ WVDRN 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 obtained during the investigation.~~

~~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. A voluntary agreement entered into between the WVDRN and a licensee or applicant is not considered a disciplinary action or order by the Board, shall not be disclosed to the Board, and shall not be public information if:

10.1.a. The voluntary agreement is the result of the licensee or applicant by a self-report or voluntarily participating in the WVDRN;

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

10.2. If a licensee or applicant enters into a voluntary agreement with the WVDRN, 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. If the board has not instituted a disciplinary proceeding, any information received, maintained or developed by the WVDRN 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.

~~10.3.~~ 10.4. In the event the program WVDRN 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 WVDRN shall report this infraction to the Board. In this case, the licensee or applicant 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 WVDRN 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 WVDRN operations. The WVDRN shall not disclose any personally identifiable information relating to any dentist or dental hygienist participating in a voluntary agreement as provided herein.

11.2. The WVDRN shall, on a quarterly basis, report on the status of licensees subject to monitoring by the WVDRN by Order of the Board.

**§5-15-12. Confidentiality.**

12.1. All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the ~~program~~ WVDRN, all communications to or from the ~~program~~ WVDRN, and all proceedings, findings, and conclusions of the ~~program~~WVDRN, 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~~ WVDRN 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~~ WVDRN, 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 10.4 ~~10.4~~ of this rule.

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

12.3.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 or applicant and release by the licensee or applicant has been executed;

12.3.b. the release is authorized in writing by the impaired licensee or applicant; or

12.3.c. the ~~program~~ is required to make a report to the board pursuant to subsection 10.4 ~~10.4~~ 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.a. Dentist - \$10 with each annual renewal;

13.1.b. Dental Hygienist - \$5 with each annual renewal.

13.2. The DRN may assess costs to licensee or applicant participants for the administration, monitoring and costs of their treatment, as well as reimburse for random or regular drug testing.