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July 28, 2023

**SUMMARY OF COMMENTS RECEIVED REGARDING  
PROPOSED RULE FOR 15 CSR 15 AND  
RESPONSES OF THE WV BOARD OF PHARMACY**

The proposed rules for 15 CSR 15 were filed for a Notice of Comment Period of proposed rule 15 CSR 15 on June 27, 2023 and the comment period closed July 28, 2023 at 8:00 am. The Board received two comments on the proposed rule. A copy of this summary is being provided to the two commenters.

Commenter 1: Brittany LaPorta, Government Affairs Director, EPIC Pharmacies  
Michael Rudge, Board President, WV Independent Pharmacy Association  
Matthew Walker, Executive Director, WV Independent Pharmacy Association  
600 Quarrier St, Charleston, WV [rheath@bowlesrice.com](mailto:rheath@bowlesrice.com)

**Comment 1 (on Section 10.2 Permanent Closure of a Pharmacy Notification):** As proposed, §10.2.1.a provides that a pharmacy must “provide notice to each patient who has filled a prescription within the previous 12 months” prior to closing. That notice must be made within 15 calendar days prior to the pharmacy closure. Having discussed with several of the stores in our West Virginia Network, we feel this provision could be overly burdensome for independent pharmacies that either close their doors or alternatively sell their practice altogether. For even the smallest of pharmacies, this notification provision could require a pharmacy to provide individual notifications of its closure or sale to hundreds or even thousands of patients in essentially a two-week period. This is certainly no easy task for a small pharmacy.

**Response 1:** The Board appreciates this recommendation and recognizes the difficulty of direct mail to hundreds or thousands of patients in a two-week period. Therefore, the Board will make the following modifications to the rule in accommodation of the comment.

10.1.2.b. The notification must be made via:

10.1.2.b.1. Distribution by direct mail, electronic mail, phone, text, or written notice with each prescription dispensed;

10.1.2.b.2. Public notice in a newspaper, online or print, of general circulation, if available, in the area served by the pharmacy; and

10.1.2.b.3. Posting a closing notice on each pharmacy entrance, on each telephone greeting, and pharmacy-operated internet (e.g. website, social media, mobile applications).

10.1.2.c. Provide any new patients filling prescriptions during the 14-calendar day period prior to the pharmacy closing with written notification that includes:

10.1.2.c.1. The last day the pharmacy will be open;

10.1.2.c.2. Name, address and telephone number of the pharmacy to which pharmacy records will be transferred or the person who will serve as the custodian of pharmacy records;

10.1.2.c.3. Instructions on how patients can arrange for transfer of their pharmacy records to a pharmacy of their choice; and

10.1.2.c.4. The last day a transfer may be initiated.

**Comment 2 (on Section 10.2):** Another concern with the proposed pre-closure notification requirements relates to the potential sale of an independent pharmacy to an established chain pharmacy. In such instances, chain pharmacies will oftentimes include a retention bonus or penalty provision if a pharmacy's volume drops off by the established closing date. Accordingly, the BOP's proposed prior-notification requirements could ultimately prove harmful to an independent pharmacy seller.

As such, we would recommend that the Board of Pharmacy change this requirement to instead be a public notice requirement that could be satisfied by a pharmacy with a blanket public notification and take place contemporaneously with a pharmacy's potential sale and closure. Alternatively, we would suggest that the BOP limit the scope of that notification requirement in some way to repeat or regular customers of the pharmacy during the previous calendar year, while also giving pharmacies a more reasonable timeframe, perhaps extending through the date of closure, in order to provide such notification.

**Response 2:** The Board appreciates this recommendation and recognizes the difficulty of direct mail to hundreds or thousands of patients in a two-week period. Therefore, the Board will make the modifications to the rule as above. The Board feels for the protection of the Public it is necessary for patients to know where their medication prescriptions are located and how to obtain any available refills. Additionally, as the prescription ultimately belongs to the patient, it remains the patient's choice where to have the prescription transferred. Should the notifications extend through the sale date, a patient may not have sufficient time to transfer the prescription to the pharmacy of his/her choice and care could be interrupted.

**Comment 3 (on Section 10.2.3 Post-closing requirements):** As currently proposed, a permanently closed pharmacy is given thirty-days to comply with several notice requirements related to its closure, including providing notice to the BOP of "the name, address and phone number of the pharmacy that took possession of the pharmacy records or the licensed pharmacist who is serve [sic] as the custodian of the records..." See §10.2.3.c.6. Again, our concern is that this thirty-day deadline for compliance may be difficult for many small, independent pharmacies to meet. For instance, we are aware of at least one example of a store in Virginia where a custodian of files could not be found in such a timely fashion. Additionally, what is a pharmacy to do if it cannot find a custodian to take the files in question. Given the difficulties associated with the closure or sale of a pharmacy, we would recommend that the BOP consider expanding the timeframe for both this and other post-closing requirements set forth in §10.2.3 to 90 days in order to better allow pharmacists to comply with the newly established requirements. Alternatively, the BOP could establish tiered deadlines for closed pharmacies in which certain requirements – such as the notice of closure and removal of all prescription and non-prescription drugs – would take place prior to other administrative requirements. This would better allow

pharmacists an opportunity to comply with the BOP deadlines as they go through the difficult process of permanently closing a pharmacy.

**Response 3:** The Board appreciates this comment and realizes the potential for this to occur as a pharmacist is closing the pharmacy. In recognition of this, the Board will modify the rule as below permitting the pharmacy registrant to request an extension to comply with 10.2.3 requirements as below.

10.2.3.f. The pharmacist-in-charge may be permitted, by written permission from the Board, an extension for compliance with Section 10.2.3 if the requestor shows good cause for the extension.

Commenter 2: Anthony Moore, Owner, Moore's Pharmacy  
1311 Old, Courthouse Dr, Martinsburg, WV 25404  
[tonymoore@moore-rx.com](mailto:tonymoore@moore-rx.com)

**Comment 1:**

I believe this new law to be detrimental to independent pharmacy owners wanting to sell their stores. Store valuations are based on the number of patients who transfer their prescriptions to the purchaser. Giving 15 days notice will cause many to transfer their Rxs prematurely and negate good will built up over decades. This will result in a dramatic drop in equity for the owner(s).

I am against this new law wholeheartedly.

**Response 1:** The Board appreciates the pharmacist/owner's comments related to 15 CSR 15. However, the Board feels for the protection of the Public it is necessary for patients to know where their medication prescriptions are located and how to obtain any available refills. Additionally, as the prescription ultimately belongs to the patient, it remains the patient's choice where to have the prescription transferred. Should a patient not have adequate notification of where the prescriptions are to be located, a patient may not have sufficient time to transfer the prescription to the pharmacy of his/her choice and care could be interrupted.



July 26, 2023

Ms. Krista Capehart  
West Virginia Board of Pharmacy  
1207 Quarrier Street, 4th Floor  
Charleston, WV 25301  
Email: [krista.d.capehart@wv.gov](mailto:krista.d.capehart@wv.gov)

RE: Public Comment on Proposed Rule 15 CSR 15

Dear Ms. Capehart,

On behalf of EPIC Pharmacies, which includes twenty-five stores in its West Virginia Network, and the West Virginia Independent Pharmacy Association (WVIPA), we write you today to provide public comment on the West Virginia Board of Pharmacy's ("BOP") proposed legislative rule, WV CSR §15-15-1, *et seq.* – "Regulations Governing Pharmacy Permits."

We appreciate the Board of Pharmacy's efforts to ensure that adequate notice is provided to West Virginia consumers and patients in the event of an emergency, temporary or even permanent pharmacy closure. As you well know, pharmacists play a critical role in West Virginia's health care delivery system, and the state's network of independent pharmacists is oftentimes essential for West Virginians' continuity of care. For many West Virginians, their local pharmacy is oftentimes the first point of contact for needed health care decisions. Accordingly, we appreciate the need to provide sufficient notice to West Virginians on pharmacy closures. With this in mind, we would suggest some modest modifications to the proposed rule to ensure that our patients needs are met, while also avoiding potentially difficult compliance requirements for West Virginia's small and independent pharmacies.

Specifically, we would suggest modification to the following requirements contained within §10.2 of the proposed rule, relating to the permanent closure of a pharmacy:

- **Section 10.2 – Notification for Permanent Closure:** As proposed, §10.2.1.a provides that a pharmacy must "provide notice to each patient who has filled a prescription within the previous 12 months" prior to closing. That notice must be made within 15 calendar days prior to the pharmacy closure. Having discussed with several of the stores in our West Virginia Network, we feel this provision could be overly burdensome for independent pharmacies that either close their doors or alternatively sell their practice altogether. For even the smallest of pharmacies, this notification provision could require a pharmacy to provide individual notifications of its closure or sale to hundreds or even thousands of patients in essentially a two-week period. This is certainly no easy task for a small pharmacy. Another concern with the proposed pre-closure notification requirements relates to the potential sale of an independent pharmacy to an established chain pharmacy. In such instances, chain pharmacies will oftentimes include a retention bonus or penalty provision if a pharmacy's volume drops off by the

established closing date. Accordingly, the BOP's proposed prior-notification requirements could ultimately prove harmful to an independent pharmacy seller.

As such, we would recommend that the Board of Pharmacy change this requirement to instead be a public notice requirement that could be satisfied by a pharmacy with a blanket public notification and take place contemporaneously with a pharmacy's potential sale and closure. Alternatively, we would suggest that the BOP limit the scope of that notification requirement in some way to repeat or regular customers of the pharmacy during the previous calendar year, while also giving pharmacies a more reasonable timeframe, perhaps extending through the date of closure, in order to provide such notification.

- Section 10.2.3 – Post-Closing Requirements: As currently proposed, a permanently closed pharmacy is given thirty-days to comply with several notice requirements related to its closure, including providing notice to the BOP of “the name, address and phone number of the pharmacy that took possession of the pharmacy records or the licensed pharmacist who is serve [sic] as the custodian of the records...” See §10.2.3.c.6. Again, our concern is that this thirty-day deadline for compliance may be difficult for many small, independent pharmacies to meet. For instance, we are aware of at least one example of a store in Virginia where a custodian of files could not be found in such a timely fashion. Additionally, what is a pharmacy to do if it cannot find a custodian to take the files in question. Given the difficulties associated with the closure or sale of a pharmacy, we would recommend that the BOP consider expanding the timeframe for both this and other post-closing requirements set forth in §10.2.3 to 90 days in order to better allow pharmacists to comply with the newly established requirements. Alternatively, the BOP could establish tiered deadlines for closed pharmacies in which certain requirements – such as the notice of closure and removal of all prescription and non-prescription drugs – would take place prior to other administrative requirements. This would better allow pharmacists an opportunity to comply with the BOP deadlines as they go through the difficult process of permanently closing a pharmacy.

Again, we thank you for the BOP's efforts to ensure that adequate notice is provided to West Virginia consumers and patients, as well as the Board's overall and ongoing work on behalf of West Virginia's pharmacies, pharmacists and pharmacy patients. We thank you for your time and consideration of these comments. To the extent that you have questions regarding any of these suggestions, or would like to discuss them further, please do not hesitate to contact me.

Respectfully Submitted,

*Brittany LaPorta*

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Brittany LaPorta, Government Affairs Director  
EPIC Pharmacies



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Michael Rudge, Board President  
West Virginia Independent Pharmacy Association



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Matthew R. Walker, Executive Director  
West Virginia Independent Pharmacy Association



Capehart, Krista D &lt;krista.d.capehart@wv.gov&gt;

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**Pharmacy closure**

2 messages

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**Tony Moore** <tonymoore@moore-rx.com>  
To: krista.d.capehart@wv.gov

Thu, Jul 13, 2023 at 5:20 PM

I believe this new law to be detrimental to independent pharmacy owners wanting to sell their stores. Store valuations are based on the number of patients who transfer their prescriptions to the purchaser. Giving 15 days notice will cause many to transfer their Rx's prematurely and negate good will built up over decades. This will result in a dramatic drop in equity for the owner(s).

I am against this new law wholeheartedly

Anthony Moore.  
Owner Moore's pharmacy

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**Capehart, Krista D** <krista.d.capehart@wv.gov>  
To: Tony Moore <tonymoore@moore-rx.com>

Mon, Jul 17, 2023 at 10:02 AM

Anthony

Thank you so very much for your comments. The Board will review the comments and respond prior to the final filing with WV Secretary of State later this summer.

Best,  
Krista

**Krista D. Capehart, PharmD, MS, BCACP, FAPhA, AE-C**

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