A Guide to State Opioid Prescribing Policies

State Opioid Prescribing Policy: West Virginia

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Pain Policy and Regulation: West Virginia

Intractable Pain Treatment Act

- "Intractable pain" means a state of pain having a cause that cannot be removed. Intractable pain exists if an effective relief or cure of the cause of the pain: (1) is not possible or (2) has not been found after reasonable efforts. Intractable pain may be temporary or chronic.
- **Limitation on Disciplinary Sanctions or Criminal Punishment Related to Management of Intractable Pain.**
  - A physician shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for prescribing, administering or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling intractable pain when:
    1. In a case of intractable pain involving a patient who is dying, in practicing in accordance with an accepted guideline as defined in section one of this article, the physician discharges his or her professional obligation to relieve the patient's intractable pain and promote the dignity and autonomy of the patient, even though the dosage exceeds the average dosage of a pain-relieving controlled substance; or
    2. In the case of intractable pain involving a patient who is not dying, the physician discharges his or her professional obligation to relieve the patient's intractable pain, even though the dosage exceeds the average dosage of a pain-relieving controlled substance, if the physician can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline.
  - Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert.
  - Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.
  - A registered nurse shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for administering pain-relieving controlled substances to alleviate or control intractable pain, if administered in accordance with the orders of a licensed physician.
  - A registered pharmacist shall not be subject to disciplinary sanctions by a licensing board or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled substance to alleviate or control intractable pain, if dispensed in accordance with the orders of a licensed physician.

The provisions of this section shall apply to the treatment of all patients for intractable pain, regardless of the patient's prior or current chemical dependency or addiction.


Policy for the Use of Controlled Substances for the Treatment of Pain

Effective January 10, 2005.

- The West Virginia Board of Medicine recognizes that principles of quality medical practice dictate that the people of the State of West Virginia have access to appropriate and effective pain relief. The diagnosis and treatment of pain is integral to the practice of medicine. The Board encourages physicians to view pain management as a part of quality medical practice for all patients with pain, acute or chronic, and it is especially urgent for patients who experience pain as a result of terminal illness. Fears of investigation or sanction by federal, state, and local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician's responsibility. As such, the Board will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis. The Board will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain, and treatment outcomes. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioid analgesics and are not the same as addiction.
- The Board expects physicians to incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances. Physicians should not fear disciplinary action from the Board for ordering, prescribing, dispensing, or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the course of professional practice. The Board will consider prescribing, ordering, dispensing, or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician's relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state or federal law is required.
- The Board will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.
Allegations of inappropriate pain management will be evaluated on an individual basis. The Board will not take disciplinary action against a physician for deviating from this policy when contemporaneous medical records document reasonable cause for deviation. The physician's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.

Guidelines

The Board has adopted the following criteria when evaluating the physician's treatment of pain, including the use of controlled substances.

Evaluation of the Patient.

A medical history and physical examination must be obtained, evaluated, and documented. The nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse should be documented. The presence of one or more recognized medical indications for the use of a controlled substance should be documented in the medical record.

Treatment Plan. A written treatment plan must be used, and it should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate whether any further diagnostic evaluations or other treatments are planned. After treatment is started, drug therapy should be adjusted to the individual medical needs of each patient. Other treatment modalities or a rehabilitation program should be considered, depending on the cause of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

Informed Consent and Agreement for Treatment. The risks and benefits of the use of controlled substances should be discussed with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. The patient should receive prescriptions from one physician and one pharmacy whenever possible. If the patient is at high risk for medication misuse or has a history of substance abuse, the use of a written agreement between physician and patient should be considered that outlines patient responsibilities, including:
1. urine/serum medication levels screening when requested;
2. number and frequency of all prescription refills; and
3. reasons for which drug therapy may be discontinued (eg, violation of agreement).

Periodic Review. The course of pain treatment and any new information about the cause of the pain or the patient's state of health should be reviewed periodically. The continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, or improved quality of life. Objective evidence of improved or diminished function should be monitored and information from family members or other caregivers should be considered in determining the patient's response to treatment. If the patient's progress is unsatisfactory, the physician should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

Consultation. A physician should be willing to refer a patient as necessary for additional evaluation and treatment to achieve treatment objectives. Special attention should be given to those patients with pain who are at risk for medication misuse, abuse, or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.

Medical Records. Accurate and complete records must be kept, to include:
4. medical history and physical examination results;
5. diagnostic, therapeutic, and laboratory results;
6. evaluations and consultations;
7. treatment objectives;
8. discussion of risks and benefits;
9. informed consent;
10. treatments;
11. medications (including date, type, dosage, and quantity prescribed);
12. instructions and agreements; and
13. periodic reviews.
14. All records should be kept current and should be maintained in an accessible manner readily available for review.

Compliance With Controlled Substances Laws and Regulations. All licensing laws and regulations relating to prescribing controlled medications must be followed.

Definitions

Terms are defined as follows:

Acute Pain: Acute pain is the normal, predicted physiologic response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. It is generally time-limited.

Addiction: Addiction is a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiologic consequences of extended opioid therapy for pain and are not the same as addiction.
• **Chronic Pain:** Chronic pain is a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

• **Pain:** An unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

• **Physical Dependence:** Physical dependence is a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and/or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

• **Pseudoaddiction:** The iatrogenic syndrome resulting from the misinterpretation of relief-seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief-seeking behaviors resolve when effective analgesic therapy is instituted.

• **Substance Abuse:** Substance abuse is the use of any substance(s) for nontherapeutic purposes or use of medication for purposes other than those for which it is prescribed.

• **Tolerance:** Tolerance is a physiologic state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

The entire text of the West Virginia Uniform Controlled Substances Act can be found at [http://www.legis.state.wv.us/WVCODE/code.cfm?chap=60a&art=2#02](http://www.legis.state.wv.us/WVCODE/code.cfm?chap=60a&art=2#02)

**West Virginia Uniform Controlled Substances Act**

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**Prescriptions**

- Schedule II controlled substances require a written prescription and may not be dispensed without it unless the prescribing involves an emergency dispensing of schedule II controlled medications, consistent with federal regulations. Schedule II controlled substance prescriptions cannot be refilled.

- Schedules III through V medications must be issued pursuant to a lawful prescription. Schedule III through V medications cannot be filled or refilled more than 6 months after the date of the prescription or refill it more than 5 times unless the same has been renewed by the physician. This is only a summary, and the entire act should be read carefully.

- The Prescription Monitoring Program is West Virginia's central repository for controlled substance prescription information involving prescriptions in schedules II, III, and V. The program is administered through the Board of Pharmacy.

**Rule Regarding Use of Electronic Communication (Faxing) of Schedule II Controlled Substance Prescriptions.**

A prescription for a schedule II controlled substance may be faxed, so long as the pharmacist has the original written prescription at the time of dispensing it, subject to the following exceptions (where the electronic version serves as the original):

1. The prescription for a schedule II narcotic substance is to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion;
2. The prescription for a schedule II controlled substance is for a resident of a long-term care facility; or
3. The prescription for a schedule II controlled substance is for a patient under the care of a hospice certified by Medicare or licensed by the state. The practitioner or practitioner's agent shall note on the prescription that the patient is in hospice care. Other emergency rules relating to schedule II controlled substance prescriptions apply, and West Virginia practitioners should read these.

**Law Regarding Purpose of Issue of Controlled Substance Prescription.**

- To be effective, an individual practitioner shall issue a prescription for a controlled substance for a legitimate medical purpose in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is on the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of the Uniform Controlled Substances Act, and the person knowingly filling such a purported prescription as well as the person issuing it are subject to the penalties provided for violations of the provisions of law relating to controlled substances.

- It is illegal to issue a prescription to obtain controlled substances for office supplies and later dispense the controlled substance to patients. It is illegal to issue a prescription for the dispensing of narcotic drugs to a person who is dependent on narcotic drugs for the purpose of continuing dependence, unless the purpose is to conduct an authorized clinical investigation in the development of a narcotic addict rehabilitation program.

- All controlled substance prescriptions must be dated as of and signed on the date issued to the patient and must contain patient's full name and address, and the name, address, and registration number of the prescribing practitioner. The practitioner should sign a controlled substance prescription as he or she signs a check or legal document. Ink or indelible pencil must be used or the practitioner's name may be typewritten and the prescription manually signed. An agent of the practitioner may prepare the prescriptions for signature, but the practitioner remains responsible for demonstrating a legitimate medical purpose in the usual course of professional practice.

- Pharmacists have a corresponding responsibility to fill prescriptions for a legitimate medical purpose in the usual course of pharmacy practice.

- Each controlled substance prescription must be written on a separate prescription blank. Controlled substances cannot be ordered on a blank with a controlled substance. Only one prescription for a controlled substance may be written per prescription blank.
Pharmacists may accept a controlled substance prescription issued by a practitioner located outside the state of West Virginia, but only if it is issued pursuant to the laws in the state where the practitioner resides/practices.

A pharmacist should refuse to fill a prescription with more than one controlled substance on the prescription blank or a noncontrolled substance on a blank with a controlled substance. However, if in the professional judgment of the pharmacist there is an immediate necessity for the patient to receive his or her medication, then the prescriptions may be dispensed and the pharmacist shall document in a log the prescription numbers and drugs dispensed. This log shall be kept in the pharmacy and be available for inspection. The pharmacist shall contact the prescriber as soon as possible to inform him or her that the prescription was not written according to this rule. If the pharmacist continues to receive prescriptions from the same practitioner that do not comply with this rule, then the pharmacist shall inform the West Virginia Board of Pharmacy.

Every controlled substance prescription shall have the name of the practitioner stamped, typed, or printed legibly on the face of the prescription, as well as the signature of the practitioner. Institutional prescription blanks shall include the US Drug Enforcement Administration number of the hospital or other institution and the special internal code number (suffix) assigned to him or her by the hospital or other institution in lieu of the individual US Drug Enforcement Administration number of the practitioner. If multiple practitioners are listed on a prescription blank, then the specific name of the prescriber shall be clearly distinguished on the prescription. If a pharmacist receives a prescription that does not comply with this subsection, the pharmacist shall refuse to fill the prescription. However, the pharmacist can follow the same professional judgment provision stated above and fill the prescription, tell the provider, and tell the pharmacy board if it continues to happen.

**Emergency Treatment of Acute Withdrawal Symptoms.** If the physician is not specifically registered to conduct a narcotic treatment program, then he or she may administer, but not prescribe, narcotic drugs to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral for treatment.

4. No more than 1 day's medication may be administered to the person or for the person's use at one time.
5. The emergency treatment may be carried out for not more than 3 days and may not be renewed or extended.
6. This prohibition does not apply to physicians or hospital staff who need to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or to administer or dispense narcotic drugs to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

**Life of a Schedule II Controlled Substance Prescription.** A prescription for a schedule II controlled substance can be filled up to 90 days from date of issuance. A pharmacist may fill such a prescription after 90 days if the prescriber confirms to the pharmacist that he or she still wants the prescription filled and the pharmacist documents this confirmation discussion on the back of the prescription. Remember, a schedule II controlled substance prescription cannot be refilled. Partial filling rules apply, and the remaining portion must be filled within 72 hours of the first partial filling. If this does not occur, the physician must issue a new prescription for the controlled substance.

**Disposal of Controlled Substances.** Compliance with federal law and regulations is considered in compliance with this section. A registrant shall document the destruction or disposal of all controlled substances on the appropriate form approved by the Board. The disposal of excessive amounts of residual and wasted controlled substances accrued by extemporaneous compounding in an institutional setting may be completed by two (2) registered or licensed healthcare professionals with a record of the destruction indicating the 2 witnesses with their signatures.

**Reporting Theft of Drugs.** If any controlled substances are lost or stolen, the registrant must immediately submit a report of the drug theft or loss to the Board of Pharmacy.

**Additional Information**
Review all original documents and consult [www.legalsideofpain.com](http://www.legalsideofpain.com) if other details relevant to West Virginia are needed.

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