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# Medical Regulation, Licensure and Discipline in West Virginia

Practitioner Diversion Awareness Conference  
U.S. Drug Enforcement Administration  
Charleston Marriott Town Center

Sept. 29-30, 2018

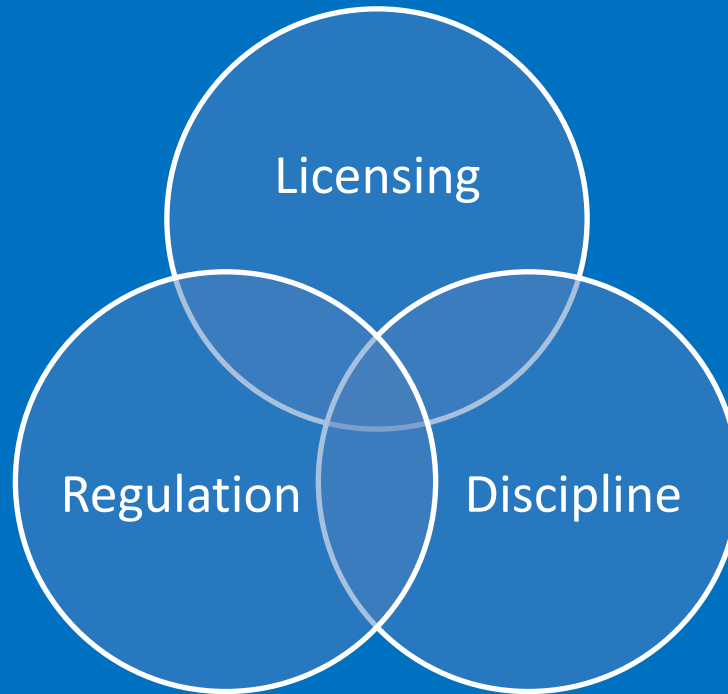


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# Medical Board Functions

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# West Virginia Board of Medicine

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- One of 70 allopathic (MD) and osteopathic (DO) medical boards in the U.S., including territories and the District of Columbia.
- WV one of 14 states with both an MD board and a DO board.
- PAs may be licensed under either board – or both – depending on where their collaborating physicians are licensed.



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# WV - At a Glance

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The West Virginia Board of Medicine is a Chapter 30 board established by statute in 1949.

Our statutory authority falls under the WV Medical Practice Act and the WV Physician Assistants Practice Act.



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# Our Board

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- Meets 6x/year – Jan., March, May, July, Sept., Nov.
- 16 members:
  - Appointed by the Governor:
    - 8 MDs
    - 2 DPMs
    - 2 PAs
    - 3 lay members
  - State health officer (ex officio).



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# Board Committees

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- Complaint Committee
- Executive / Management Committee
- Legislative Committee
- Licensure Committee
- Personnel Committee
- Physician Assistant Committee



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# Our Staff

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- Administration
- Licensing, Certification & Renewals
- Investigation, Complaints & Compliance
  
- Total – 17



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# Continuing Medical Education

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- MDs and DPMs (general)
  - Minimum 50 hours in preceding 2 years;
  - Include at least 30 hours in area(s) of specialty;
  - **Minimum 3 hours in a Board-approved course on drug diversion training and best practice prescribing of controlled substances (waivers available for non-prescribing physicians).**



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# CME cont. ...

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- Physicians may count up to 20 hours of med student teaching/preceptorship in the 50-hour total.
  - Other options:\*
    - Pass cert./recert exam of ABMS member board
    - Maintenance of cert. (MOC) from ABMS member board
    - One year ACGME postgraduate training
- \*all include 3-hour drug diversion/best practice prescribing requirement



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# Investigations - 2017

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- Average 170 complaints per year – many alleging multiple violations
- 205 complaints in 2017 – 68 remained under investigation at the start of 2018
- 103 complaints closed without discipline
- 54 Orders, Consent Orders, or amended Consent Orders entered



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# Nature of Complaints

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- Malpractice or failure to practice acceptably
- **Improper prescribing**
- Boundary issues
- Unprofessional, unethical conduct
- License application/renewal: false statements
- Failure to meet AMA or APMA standards
- Professional incompetence
- Violation of laws, rules or orders
- Medical recordkeeping



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# Rx Offenses – At a Glance

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- From January 2015 through August 2018, the Board has disciplined 20 MDs, 4 DPMs and 2 PAs for violations involving controlled substances.
- Of these 26 practitioners, 14 were subject to license revocation or surrender, 11 had restrictions placed on their prescribing authority, and 1 was publicly reprimanded.



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# Prescribing Offenses

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- Prescribing, dispensing, administering, mixing or otherwise preparing a prescription drug including any controlled substance under state or federal law other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the licensee's professional practice.



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# Prescribing Offenses

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- Gross negligence in the use and control of prescription forms.
- Pre-signing blank prescription forms.
- Conviction or plea to a felony involving prescribing, selling, administering (etc.) a prescription drug for other than generally accepted therapeutic purposes.



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# Prescribing Offenses

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- Prescribing controlled substances:
  - With intent or knowledge that it likely will be used other than for medically appropriate reasons;
  - With the intent to evade any law with respect to the sale, use or disposition of the drug;
  - For the personal use of the licensee or immediate family when the licensee knows or should know abuse is occurring or may result from such practice;
  - In excessive quantities.



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# Prescribing Offenses

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- Prescribing controlled substances to self and family (with limited exceptions);
- Prescribing Schedule II drugs for “office use;”
- Failure to obtain and maintain access to the CSMP;
- Failure to utilize the CSMP;
- Failure to implement a narcotics contract (SB 273);
- Failure to practice medicine with reasonable skill and safety / competence.



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# The Complaint Process

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- Must relate to a specific, individual MD, DPM or PA.
- WV BOM does not investigate clinics, health centers or hospitals.
- No jurisdiction over business disputes, general billing disputes, insurance coverage, personality conflicts or employee/employer disputes.
- Disagreement over treatment plan does not necessarily mean a professional conduct violation has occurred.



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# The Complaint Process

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- Complaint Committee directs all investigations.
- Physician/PA notified and has opportunity to respond; can hire legal counsel.
- After investigation, Committee determines whether probable cause exists to institute disciplinary charges. If not, the complaint is closed.
- Due process considerations apply.
- If a hearing is convened, the contested case process in Administrative Procedures Act applies.



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# The Complaint Process

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- The Complaint Committee may consider:
  - Witness interviews
  - Medical records
  - Prescribing records
  - CSMP access and use
  - Expert medical opinions
  - Information submitted by the licensee or any interested party (i.e., patient or reporting entity)



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# The Complaint Process

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- There are opportunities to resolve disciplinary complaints via Consent Orders.
- The Board issues a Final Order on the matter.



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# The Complaint Process

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- While the investigation is pending, complaints regarding a licensee's professional conduct are confidential.
- If the board takes action against a licensee, that becomes a matter of public record and information becomes available on the board's website at [wvbom.wv.gov](http://wvbom.wv.gov).
- Closure decisions also are public information.



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# The Complaint Process

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- In some cases, when the board believes a practitioner's ongoing practice represents an immediate danger, it can order a "summary suspension" of the practitioner's license. This prohibits the practitioner from practicing, even if the investigation and review is ongoing.



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# Disciplinary Sanctions

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- When appropriate, the Board may:
  - Deny a license application
  - Revoke a license (up to lifetime of licensee)
  - Suspend, limit or restrict a license for up to five years
  - Impose a period of probation with specific terms and conditions
  - Require additional or remedial training



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# Disciplinary Sanctions cont. ...

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- Administer a public reprimand
- Impose evaluation or treatment requirements
- Require supervised practice
- Impose a civil fine
- Assess costs
- Require a period of free public or charitable practice



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# National Reporting

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- All Board actions are a matter of public record.
- All Board Orders and Consent Orders are reported to the Federation of State Medical Boards (FSMB).
- All disciplinary action other than purely administrative fines (i.e. unrelated to the delivery of health care services) is reportable to the National Practitioner Data Bank (NPDB).



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# Other Issues – SB 273

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- Places restrictions on initial prescribing.
- Common feedback:
  - Physical exams required every 90 days.
  - Practitioners unable to designate colleagues in narcotics contracts.
  - Application of bill provisions to hospital “orders” vs physician Rx
  - Some practitioners reluctant to write opioid Rx at all, even for long-time patients with chronic pain.



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# Overdose Fatalities - 2016

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- According to DHHR analysis, 81% interacted with at least 1 health care system.
- 91% had documented history in CSMP.
- 49% of women and 36% of men had filled a controlled substance Rx within 30 days prior to death.
- 33% tested positive for controlled substance, but had no record of an Rx.



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# Contact Information

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