WEST VIRGINIA CODE: §16b-7-8

§16B-7-8. Violations; penalties; injunction.

(a) Any person, partnership, association, or corporation which establishes, conducts, manages, or operates a pain management clinic without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule lawfully promulgated pursuant to this article, shall be assessed a civil penalty by the director, in consultation with the Inspector General, in accordance with this subsection. Each day of continuing violation after conviction shall be considered a separate violation:

(1) If a pain management clinic or any owner or designated physician is found to be in violation of any provision of this article, unless otherwise noted herein, the director, in consultation with the Inspector General, may suspend or revoke the clinic's license.

(2) If the clinic's designated physician knowingly and intentionally misrepresents actions taken to correct a violation, the director, in consultation with the Inspector General, may impose a civil penalty not to exceed $10,000, and, in the case of an owner-operated pain management clinic, revoke or deny a pain management clinic's license.

(3) If an owner or designated physician of a pain management clinic concurrently operates an unlicensed pain management clinic, the director, in consultation with the Inspector General, may impose a civil penalty upon the owner or physician, or both, not to exceed $5,000 per day.

(4) If the owner of a pain management clinic that requires a license under this article fails to apply for a new license for the clinic upon a change-of-ownership and operates the clinic under the new ownership, the director, in consultation with the Inspector General, may impose a civil penalty not to exceed $5,000.

(5) If a physician knowingly operates, owns, or manages an unlicensed pain management clinic that is required to be licensed pursuant to this article; knowingly prescribes or dispenses or causes to be prescribed or dispensed, controlled substances in an unlicensed pain management clinic that is required to be licensed; or licenses a pain management clinic through misrepresentation or fraud; procures or attempts to procure a license for a pain management clinic for any other person by making or causing to be made any false representation, the director, in consultation with the Inspector General, may assess a civil penalty of not more than $20,000. The penalty may be in addition to or in lieu of any other action that may be taken by the director, in consultation with the Inspector General, or any other board, court, or entity.

(b) Notwithstanding the existence or pursuit of any other remedy, the director, in consultation with the Inspector General, may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association,

WV Legislature

or corporation to restrain or prevent the establishment, conduct, management, or operation of any pain management clinic or violation of any provisions of this article, or any rule lawfully promulgated thereunder without first obtaining a license therefor in the manner hereinbefore provided.

(c) In determining whether a penalty is to be imposed and in fixing the amount of the penalty, the director, in consultation with the Inspector General, shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the pain management clinic's actions or the actions of the designated or practicing physician, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated;

(2) What actions, if any, the owner or designated physician took to correct the violations;

(3) Whether there were any previous violations at the pain management clinic; and

(4) The financial benefits that the pain management clinic derived from committing or continuing to commit the violation.

(d) Upon finding that a physician has violated the provisions of this article or rules adopted pursuant to this article, the director, in consultation with the Inspector General, shall provide notice of the violation to the applicable licensing board.

WV Legislature