



1 requiring a report to the Legislative Oversight Commission on  
2 Health and Human Resources Accountability; and granting rule-  
3 making authority.

4 *Be it enacted by the Legislature of West Virginia:*

5 That §60A-9-5 of the Code of West Virginia, 1931, as amended,  
6 be amended and reenacted to read as follows:

7 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

8 **§60A-9-5. Confidentiality; limited access to records; period of**  
9 **retention; no civil liability for required reporting.**

10 (a) (1) The information required by this article to be kept by  
11 the State Board of Pharmacy is confidential and is open to  
12 inspection only by inspectors and agents of the State Board of  
13 Pharmacy, members of the West Virginia State Police expressly  
14 authorized by the Superintendent of the West Virginia State Police  
15 to have access to the information, authorized agents of local law-  
16 enforcement agencies and deputy sheriffs as a member of a federally  
17 affiliated drug task force, authorized agents of the federal Drug  
18 Enforcement Administration, duly authorized agents of the Bureau  
19 for Medical Services ~~and the Workers' Compensation Commission~~, duly  
20 authorized agents of the Office of the Chief Medical Examiner for  
21 use in post-mortem examinations, duly authorized agents of  
22 licensing boards of practitioners in this state and other states  
23 authorized to prescribe Schedules II, III and IV controlled  
24 substances, prescribing practitioners and pharmacists and persons

1 with an enforceable court order or regulatory agency administrative  
2 subpoena: Provided, that all law-enforcement personnel who have  
3 access to the controlled substance monitoring program shall be  
4 certified as a West Virginia law-enforcement officer and shall have  
5 successfully completed U. S. Drug Enforcement Administration  
6 Diversion Training and National Association of Drug Diversion  
7 Investigation Training. ~~Provided, That all~~ All information released  
8 by the State Board of Pharmacy must be related to a specific  
9 patient or a specific individual or entity under investigation by  
10 any of the above parties except that practitioners who prescribe  
11 controlled substances may request specific data related to their  
12 Drug Enforcement Administration controlled substance registration  
13 number or for the purpose of providing treatment to a patient.

14 (2) Subject to the provisions of subdivision (1) of this  
15 subsection, the board shall also review the West Virginia  
16 Controlled Substance Monitoring Program database and issue a  
17 monthly report that identifies or "red flags" abnormal or unusual  
18 practices of both medical professionals and patients who exceed  
19 pre-determined parameters. All reports produced by the board shall  
20 be kept confidential and may only be used in furtherance of law  
21 enforcement and disciplinary responsibilities regarding abnormal  
22 prescription and dispensing practices or by prescribers to more  
23 effectively manage the medications of their patients. The board  
24 shall maintain the information required by this article for a

1 period of not less than five years. Notwithstanding any other  
2 provisions of this code to the contrary, data obtained under the  
3 provisions of this article may be used for compilation of  
4 educational, scholarly or statistical purposes as long as the  
5 identities of persons or entities remain confidential. No  
6 individual or entity required to report under section four of this  
7 article may be subject to a claim for civil damages or other civil  
8 relief for the reporting of information to the Board of Pharmacy as  
9 required under and in accordance with the provisions of this  
10 article.

11 (3) The board shall establish an advisory committee to  
12 recommend parameters to be used in identifying abnormal or unusual  
13 prescribing or dispensing patterns to the board. This advisory  
14 committee shall:

15 (A) Consist of the following members: a member of the West  
16 Virginia Board of Medicine, a member of the West Virginia Board of  
17 Dental Examiners, a member of the West Virginia Board of  
18 Osteopathy, a member of the Controlled Substance Advisory Board of  
19 the Partnership for Community Well-being, a pain management  
20 physician and an oncologist recommended by the West Virginia  
21 Medical Association an oncologist, a palliative care physician  
22 recommended by the West Virginia Center on End of Life Care, a  
23 member of the West Virginia Board of Pharmacy, a member of the West  
24 Virginia Academy of Family Practice Physicians and a representative

1 of a controlled substance wholesaler chosen by the Board of  
2 Pharmacy.

3 (B) Recommended parameters to identify or "red flag" abnormal  
4 or unusual prescribing or dispensing patterns of use of controlled  
5 substances for both patients and medical professionals in order to  
6 prepare a monthly report.

7 (C) Recommend parameters unique to different health care  
8 professionals due to the nature of their work such as palliative  
9 care physicians, oncologists, pain specialists and other  
10 specialties as determined by the advisory committee.

11 (D) Make recommendations for training, research and other  
12 areas that are determined by the committee to have the potential to  
13 reduce inappropriate use of prescription drugs in this state.

14 (b) Upon receipt of the committee's profession or specialty  
15 specific recommendations as to parameters each professional  
16 licensing board shall adopt parameters for abnormal or unusual  
17 prescribing or dispensing.

18 (c) The Board of Pharmacy is responsible for establishing the  
19 advisory committee and providing administrative support. Further,  
20 the Board of Pharmacy shall notify health care professionals of  
21 their patients who have been identified to have abnormal or unusual  
22 medication patterns for the prescribers consideration in terms of  
23 future health care decisions. Health care professionals shall be  
24 identified who are prescribing or dispensing outside of the

1 parameters established herein and shall be reported for further  
2 investigation to appropriate law-enforcement personnel and  
3 licensing authorities.

4 ~~(b)~~(d) All practitioners, as that term is defined in section  
5 one hundred-one, article two of this chapter who prescribe or  
6 dispense schedule II, III or IV controlled substances shall, on or  
7 before July 1, 2011, have online or other form of electronic access  
8 to the West Virginia Controlled Substances Monitoring Program  
9 database;

10 ~~(c)~~(e) Persons or entities with access to the West Virginia  
11 Controlled Substances Monitoring Program database pursuant to this  
12 section may, pursuant to rules promulgated by the Board of  
13 Pharmacy, delegate appropriate personnel to have access to said  
14 database;

15 ~~(d)~~(f) Good faith reliance by a practitioner on information  
16 contained in the West Virginia Controlled Substances Monitoring  
17 Program database in prescribing or dispensing or refusing or  
18 declining to prescribe or dispense a schedule II, III or IV  
19 controlled substance shall constitute an absolute defense in any  
20 civil or criminal action brought due to prescribing or dispensing  
21 or refusing or declining to prescribe or dispense; and

22 ~~(e)~~(g) The Board of Pharmacy is hereby authorized to  
23 promulgate an emergency rule under chapter twenty-nine-a to  
24 effectuate the amendments to this section enacted during the 2010

1 and 2011 Regular ~~Session~~ Sessions of the Legislature.

2 ~~(f)~~ (h) Nothing in the article shall be construed to require a  
3 practitioner to access the West Virginia Controlled Substances  
4 Monitoring Program database.

5 (i) Unauthorized access or use or unauthorized disclosure of  
6 the information in the database is a felony punishable by  
7 incarceration in a state correctional facility for not less than  
8 one year nor more than five years or fined not less than three  
9 thousand dollars nor more than ten thousand dollars, or both.

10 (j) The Board of Pharmacy shall make every effort to update  
11 the database to a real-time database as soon as a system is  
12 available and when funding is available.

13 (k) The Board of Pharmacy shall provide an annual report on  
14 the West Virginia Controlled Substance Monitoring Program to the  
15 Legislative Oversight Commission on Health and Human Resources  
16 Accountability with recommendations for needed legislation.