

ENGROSSED

Senate Bill No. 614

(By Senators Klempa, Beech, Williams, Browning, Snyder,
Palumbo, Wills, Foster, Minard, Tucker and Barnes)

[Originating in the Committee on the Judiciary;
reported February 28, 2011.]

A BILL to amend and reenact §60A-9-5 of the Code of West Virginia, 1931, as amended, relating to permitting specific law-enforcement officials who are members of federally affiliated drug task forces access to certain confidential pharmaceutical information to identify unusual prescription drug behavior; requiring the State Board of Pharmacy to issue periodic reports to certain law-enforcement officials, licensing authorities and prescribers that identify abnormal prescription practices; establishing an advisory committee to recommend the parameters of abnormal prescribing patterns and to recommend other actions that could reduce the amount of misuse of prescription drugs; establishing a felony offense for

misusing information from the controlled substance database; requiring the Board of Pharmacy to implement a real-time database when available and when resources permit; requiring a report to the Legislative Oversight Commission on Health and Human Resource Accountability; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

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

1 (a) (1) The information required by this article to be kept
2 by the State Board of Pharmacy is confidential and is open
3 to inspection only by inspectors and agents of the State
4 Board of Pharmacy, members of the West Virginia State
5 Police expressly authorized by the Superintendent of the
6 West Virginia State Police to have access to the information,
7 authorized agents of local law-enforcement agencies and
8 deputy sheriffs as a member of a federally affiliated drug
9 task force, authorized agents of the federal Drug Enforce-
10 ment Administration, duly authorized agents of the Bureau

11 for Medical Services ~~and the Workers' Compensation~~
12 ~~Commission~~, duly authorized agents of the Office of the
13 Chief Medical Examiner for use in post-mortem examina-
14 tions, duly authorized agents of licensing boards of practitio-
15 ners in this state and other states authorized to prescribe
16 Schedules II, III and IV controlled substances, prescribing
17 practitioners and pharmacists and persons with an enforce-
18 able court order or regulatory agency administrative sub-
19 poena: Provided, That all law-enforcement personnel who
20 have access to the controlled substances monitoring database
21 shall be granted access in accordance with applicable state
22 laws and Board of Pharmacy legislative rules and shall be
23 certified as a West Virginia law-enforcement officer and
24 shall have successfully completed U. S. Drug Enforcement
25 Administration Diversion Training and National Association
26 of Drug Diversion Investigation Training. *Provided, That all*
27 All information released by the State Board of Pharmacy
28 must be related to a specific patient or a specific individual
29 or entity under investigation by any of the above parties
30 except that practitioners who prescribe controlled sub-
31 stances may request specific data related to their Drug
32 Enforcement Administration controlled substance registra-

33 tion number or for the purpose of providing treatment to a
34 patient.

35 (2) Subject to the provisions of subdivision (1) of this
36 subsection, the board shall also review the West Virginia
37 Controlled Substance Monitoring Program database and
38 issue reports that identify abnormal or unusual practices of
39 both health care professionals and patients who exceed
40 predetermined parameters. All reports produced by the
41 board shall be kept confidential and may only be used in
42 furtherance of communicating with licensing boards regard-
43 ing abnormal prescription and dispensing practices or by
44 prescribers to more effectively manage the medications of
45 their patients. The board shall maintain the information
46 required by this article for a period of not less than five
47 years. Notwithstanding any other provisions of this code to
48 the contrary, data obtained under the provisions of this
49 article may be used for compilation of educational, scholarly
50 or statistical purposes as long as the identities of persons or
51 entities remain confidential. No individual or entity required
52 to report under section four of this article may be subject to
53 a claim for civil damages or other civil relief for the report-

54 ing of information to the Board of Pharmacy as required
55 under and in accordance with the provisions of this article.

56 (3) The board shall establish an advisory committee to
57 develop, implement and recommend parameters to be used in
58 identifying abnormal or unusual prescribing or dispensing
59 patterns in this state. This advisory committee shall:

60 (A) Consist of the following members: a licensed physician
61 member of the West Virginia Board of Medicine, a licensed
62 dentist member of the West Virginia Board of Dental
63 Examiners, a licensed physician member of the West Virginia
64 Board of Osteopathy, a member of the Controlled Substance
65 Advisory Board of the Partnership for Community Well-
66 being, a licensed physician certified by the American Board
67 of Pain Medicine and a licensed physician board certified in
68 medical oncology recommended by the West Virginia State
69 Medical Association, a licensed physician board certified in
70 palliative care recommended by the West Virginia Center on
71 End of Life Care, a member of the West Virginia Board of
72 Pharmacy, a licensed physician member of the West Virginia
73 Academy of Family Practice Physicians and a representative
74 of a controlled substance wholesaler chosen by the Board of
75 Pharmacy.

76 (B) Recommend parameters to identify abnormal or
77 unusual prescribing or dispensing patterns of use of con-
78 trolled substances for both patients and health care profes-
79 sionals in order to prepare reports as requested in accor-
80 dance with subsection (a), subdivision (2) of this section.

81 (C) Recommend parameters unique to different health care
82 professionals due to the nature of their work such as pallia-
83 tive care physicians, oncologists, and pain medicine special-
84 ists.

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

89 (b) Upon receipt of the committee's recommendations of
90 parameters for prescribing and dispensing specific to each
91 profession and subspecialty therewithin, each professional
92 licensing board shall adopt parameters for the profession and
93 subspecialties thereof and provide them to the board.

94 (c) The Board of Pharmacy is responsible for establishing
95 the advisory committee and providing administrative
96 support. The advisory committee shall elect a chair by
97 majority vote. The board shall promulgate rules with advice

98 and consent of the advisory committee, in accordance with
99 the provisions of article three, chapter twenty-nine-a of this
100 code on or before June 1, 2012. The legislative rules must
101 include, but shall not be limited to, the following matters: (1)
102 Identifying parameters used in identifying abnormal or
103 unusual prescribing or dispensing patterns; (2) processing
104 parameters and developing reports of abnormal or unusual
105 prescribing or dispensing patterns for both patients and
106 health care professionals; and (3) establishing the informa-
107 tion to be contained in reports and the process by which the
108 reports will be generated and disseminated.

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

115 ~~(c)~~(e) Persons or entities with access to the West Virginia
116 Controlled Substances Monitoring Program database
117 pursuant to this section may, pursuant to rules promulgated
118 by the Board of Pharmacy, delegate appropriate personnel to
119 have access to said database;

120 ~~(d)~~(f) Good faith reliance by a practitioner on information
121 contained in the West Virginia Controlled Substances
122 Monitoring Program database in prescribing or dispensing or
123 refusing or declining to prescribe or dispense a schedule II,
124 III or IV controlled substance shall constitute an absolute
125 defense in any civil or criminal action brought due to
126 prescribing or dispensing or refusing or declining to pre-
127 scribe or dispense; and

128 ~~(e) The Board of Pharmacy is hereby authorized to promul-~~
129 ~~gate an emergency rule under chapter twenty-nine-a to~~
130 ~~effectuate the amendments to this section enacted during the~~
131 ~~2010 Regular Session of the Legislature.~~

132 (g) A prescribing practitioner may notify law enforcement
133 of a patient, who in the prescribing practitioner's judgment
134 may be in violation of section four hundred ten, article four,
135 chapter sixty-a of this code, based on information obtained
136 and reviewed from the controlled substances monitoring
137 database. A prescribing practitioner who makes a notifica-
138 tion pursuant to this subsection shall be immune from any
139 civil, administrative or criminal liability that otherwise
140 might be incurred or imposed because of such notification if
141 such notification is made in good faith.

142 ~~(f)~~(h) Nothing in the article shall be construed to require a
143 a practitioner to access the West Virginia Controlled Sub-
144 stances Monitoring Program database.

145 (i) Unauthorized access or use or unauthorized disclosure
146 of the information in the database is a felony punishable by
147 incarceration in a state correctional facility for not less than
148 one year nor more than five years or fined not less than
149 \$3,000 nor more than \$10,000, or both.

150 (j) The Board of Pharmacy shall make every effort to
151 update the database to a real-time database as soon as a
152 system is available and when funding is available. The
153 implementation of the parameters to identify abnormal or
154 unusual prescribing or dispensing patterns or practices as
155 established by this article shall be contingent on available
156 funding.

157 (k) The Board of Pharmacy shall provide an annual report
158 on the West Virginia Controlled Substance Monitoring
159 Program to the Legislative Oversight Commission on Health
160 and Human Resources Accountability with recommendations
161 for needed legislation.