

1 That §60A-9-5 and §60A-9-7 of the Code of West Virginia, 1931,
2 as amended, be amended and reenacted; and that said code be amended
3 by adding thereto a new section, designated §60A-9-5a, all to read
4 as follows:

5 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

6 **§60A-9-5. Confidentiality; limited access to records; period of**
7 **retention; no civil liability for required reporting.**

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

1 subpoena. ~~Provided, That~~ All information released by the State
2 Board of Pharmacy must be related to a specific patient or a
3 specific individual or entity under investigation by any of the
4 above parties except that practitioners who prescribe controlled
5 substances may request specific data related to their Drug
6 Enforcement Administration controlled substance registration number
7 or for the purpose of providing treatment to a patient. The Board
8 shall maintain the information required by this article for a
9 period of not less than five years. Notwithstanding any other
10 provisions of this code to the contrary, data obtained under the
11 provisions of this article may be used for compilation of
12 educational, scholarly or statistical purposes as long as the
13 identities of persons or entities remain confidential. No
14 individual or entity required to report under section four of this
15 article may be subject to a claim for civil damages or other civil
16 relief for the reporting of information to the Board of Pharmacy as
17 required under ~~and in accordance with~~ the provisions of this
18 article.

19 (b) All practitioners, as that term is defined in section one
20 hundred-one, article two of this chapter, who prescribe or dispense
21 schedule II, III or IV controlled substances shall, on or before
22 July 1, 2011, have online or other form of electronic access to the
23 West Virginia Controlled Substances Monitoring Program database.

1 (c) Persons or entities with access to the West Virginia
2 Controlled Substances Monitoring Program database pursuant to this
3 section may, ~~pursuant to~~ under rules promulgated by the Board of
4 Pharmacy, delegate appropriate personnel to have access to said
5 database.

6 (d) Good faith reliance by a practitioner on information
7 contained in the West Virginia Controlled Substances Monitoring
8 Program database in prescribing or dispensing or refusing or
9 declining to prescribe or dispense a schedule II, III or IV
10 controlled substance ~~shall constitute~~ constitutes an absolute
11 defense in any civil or criminal action brought due to prescribing
12 or dispensing or refusing or declining to prescribe or dispense.
13 ~~and~~

14 (e) The Board of Pharmacy is hereby authorized to promulgate
15 an emergency rule under chapter twenty-nine-a to effectuate the
16 amendments to this section enacted during the 2010 Regular Session
17 of the Legislature.

18 (f) Nothing in the article ~~shall be construed to require~~
19 requires a practitioner to access the West Virginia Controlled
20 Substances Monitoring Program database except as provided in
21 section five-a of this article.

22 **§60A-9-5a. Practitioner requirements to conduct annual search of**
23 **the database; penalties; required rulemaking.**

1 (a) Upon initial prescribing or dispensing of any
2 pain-relieving controlled substances and at least annually
3 thereafter, all persons with prescriptive authority and in
4 possession of a valid Drug Enforcement Administration Registration
5 Identification number and, who are licensed by the Board of
6 Medicine as set forth in article three, chapter thirty of this
7 code, the Board of Registered Professional Nurses, as set forth in
8 article seven, chapter thirty of this code, the Board of Dental
9 Examiners as set forth in article four, chapter thirty of this code
10 and the Board of Osteopathy as set forth in article fourteen,
11 chapter thirty of this code, shall access the West Virginia
12 Controlled Substances Monitoring Program database for information
13 regarding specific patients for whom they are providing
14 pain-relieving controlled substances as part of a course of
15 treatment for chronic, nonmalignant pain but who are not suffering
16 from a terminal illness. The information obtained from accessing
17 the West Virginia Controlled Substances Monitoring Program for the
18 patient shall be documented in the medical record. A pain-relieving
19 controlled substance is defined as set forth in section one,
20 article three-a, chapter thirty of this code.

21 (b) The various boards mentioned in subsection (a) of this
22 section shall promulgate both emergency and legislative rules
23 pursuant to the provisions of article three, chapter twenty-nine-a

1 of this code to effectuate the provisions of this section.

2 **§60A-9-7. Criminal penalties.**

3 (a) ~~Any~~ A person who is required to submit information to the
4 State Board of Pharmacy pursuant to the provisions of this article
5 who fails to do so as directed by the board shall be guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined not less
7 than \$100 nor more than \$500.

8 (b) ~~Any~~ A person who is required to submit information to the
9 State Board of Pharmacy pursuant to the provisions of this article
10 who knowingly and willfully refuses ~~to submit the information~~
11 ~~required by this article~~ shall be guilty of a misdemeanor and, upon
12 conviction thereof, shall be confined in ~~a county or regional~~ jail
13 not more than six months or fined not more than \$1,000, or both
14 confined and fined.

15 (c) ~~Any~~ A person who is required by the provisions of this
16 article to submit information to the State Board of Pharmacy who
17 knowingly submits ~~thereto~~ information known to that person to be
18 false or fraudulent shall be guilty of a misdemeanor and, upon
19 conviction thereof, shall be confined in ~~a county or regional~~ jail
20 not more than one year or fined not more than \$5,000, or both
21 confined and fined.

22 (d) ~~Any~~ A person granted access to the information required by
23 the provisions of this article to be maintained by the State Board

1 of Pharmacy who ~~shall willfully disclose the information required~~
2 ~~to be maintained by this article~~ willfully discloses the
3 information in a manner inconsistent with a legitimate
4 law-enforcement purpose, a legitimate professional regulatory
5 purpose, the terms of a court order or as otherwise expressly
6 authorized by the provisions of this article shall be guilty of a
7 misdemeanor and, upon conviction thereof, shall be confined in a
8 ~~county or regional~~ jail for not more than six months or fined not
9 more than \$1,000, or both confined and fined.

10 (e) A person who is required to access the information
11 contained in the West Virginia Controlled Substances Monitoring
12 Program database as set forth in subsection (a), section five-a of
13 this article, and fails to do so as directed by the rules of their
14 licensing board is guilty of a misdemeanor and, upon conviction
15 thereof, shall be fined not less than \$100 nor more than \$500 .

NOTE: The purpose of this bill is to require professions with prescriptive authority to search the Controlled Substance Monitoring Program database annually for specified patients. The bill also sets forth criminal penalties for a failure to perform this search.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.