

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 627**

BY SENATORS TAKUBO, MAYNARD, MULLINS,

STOLLINGS, TRUMP AND PLYMALE

[Introduced February 18, 2016;

Referred to the Committee on the Judiciary.]



1 A BILL to amend and reenact §30-3A-2 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §55-7-23 of said code, all relating to permitting physicians to decline  
3 prescribing controlled substance in certain circumstances; limiting disciplinary action on  
4 medical license for not prescribing or discontinuing prescribing controlled substance in  
5 certain circumstances; precluding criminal action for not prescribing or discontinuing  
6 prescribing controlled substance in certain circumstances; and limiting liability for not  
7 prescribing or discontinuing prescribing controlled substance in certain circumstances.

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

1 That §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that §55-7-23 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**

### **ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.**

#### **§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.**

1 (a) A physician is not subject to disciplinary sanctions by a licensing board or criminal  
2 punishment by the state for prescribing, administering or dispensing pain-relieving controlled  
3 substances for the purpose of alleviating or controlling pain if:

4 (1) In the case of a dying patient experiencing pain, the physician practices in accordance  
5 with an accepted guideline as defined in section one of this article and discharges his or her  
6 professional obligation to relieve the dying patient's pain and promote the dignity and autonomy  
7 of the dying patient; or

8 (2) In the case of a patient who is not dying and is experiencing pain, the physician  
9 discharges his or her professional obligation to relieve the patient's pain, if the physician can  
10 demonstrate by reference to an accepted guideline that his or her practice substantially complied  
11 with that accepted guideline. Evidence of substantial compliance with an accepted guideline may

12 be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted  
13 guideline is not sufficient alone to support disciplinary or criminal action.

14 (b) A physician is not subject to disciplinary sanctions by a licensing board or criminal  
15 punishment by the state for declining to prescribe, or declining to continue to prescribe, any  
16 controlled substance to a patient which the physician is treating if in the reasonably prudent  
17 medical judgment of the physician he or she believes the patient is misusing the controlled  
18 substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed  
19 for their use.

20 ~~(b)~~ (c) A registered nurse is not subject to disciplinary sanctions by a licensing board or  
21 criminal punishment by the state for administering pain-relieving controlled substances to alleviate  
22 or control pain, if administered in accordance with the orders of a licensed physician.

23 ~~(c)~~ (d) A registered pharmacist is not subject to disciplinary sanctions by a licensing board  
24 or criminal punishment by the state for dispensing a prescription for a pain-relieving controlled  
25 substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed  
26 physician.

27 ~~(d)~~ (e) For purposes of this section, the term “disciplinary sanctions” includes both  
28 remedial and punitive sanctions imposed on a licensee by a licensing board, arising from either  
29 formal or informal proceedings.

30 ~~(e)~~ (f) The provisions of this section apply to the treatment of all patients for pain,  
31 regardless of the patient’s prior or current chemical dependency or addiction. The board may  
32 develop and issue policies or guidelines establishing standards and procedures for the application  
33 of this article to the care and treatment of persons who are chemically dependent or addicted.

## **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

### **ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-23. Prescription drugs and medical devices; limiting health care providers’ liability  
exposure.**

1 (a) No health care provider, as defined in section two, article seven-b of this chapter, is  
2 liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription  
3 drug or use of a medical device that was prescribed or used by the health care provider in  
4 accordance with instructions approved by the U. S. Food and Drug Administration regarding the  
5 dosage and administration of the drug, the indications for which the drug should be taken or device  
6 should be used, and the contraindications against taking the drug or using the device: *Provided,*  
7 That the provisions of this section ~~shall~~ do not apply if: (1) The health care provider had actual  
8 knowledge that the drug or device was inherently unsafe for the purpose for which it was  
9 prescribed or used; or (2) a manufacturer of ~~such~~ the drug or device publicly announces changes  
10 in the dosage or administration of ~~such~~ the drug or changes in contraindications against taking  
11 the drug or using the device and the health care provider fails to follow ~~such~~ the publicly  
12 announced changes and ~~such~~ the failure proximately caused or contributed to the plaintiff's  
13 injuries or damages.

14 (b) A physician is not liable to a patient or third party for declining to prescribe, or declining  
15 to continue to prescribe, any controlled substance to a patient which the physician is treating if in  
16 the physician's reasonably prudent medical judgment he or she believes the patient is misusing  
17 the controlled substance in an abusive manner or unlawfully diverting a controlled substance  
18 legally prescribed for their use.

19 ~~(b)~~ (c) The provisions of this section are not intended to create a new cause of action.

NOTE: The purpose of this bill is to allow a physician to decline to prescribe a controlled substance to a patient without being subject to disciplinary action, criminal action or creating a cause of action if the physician believes the patient is abusing the controlled substance or diverting it unlawfully.

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