WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 273

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Health and Human

Resources; reported on February 2, 2018]

A BILL to amend and reenact §16-5H-2 and §16-5H-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5Y-2, §16-5Y-4, and §16-5Y-5 of said code; to amend said code by adding thereto a new article, designated §16-54-1, §16-54-2, §16-54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, §16-54-8, and §16-54-9; to amend and reenact §30-3-14 of said code; to amend and reenact §30-3A-1, §30-3A-2, §30-3A-3, and §30-3A-4 of said code; to amend and reenact §30-4-19 of said code; to amend and reenact §30-5-6 of said code; to amend and reenact §30-7-11 of said code; to amend and reenact §30-8-18 of said code; to amend and reenact §30-14-12a of said code; to amend and reenact §30-36-2 of said code; and to amend and reenact §60A-9-4, §60A-9-5, and §60A-9-5a of said code, all relating to reducing the use of certain prescription drugs; providing for an exemption from registration for office-based, medication-assisted treatment program in specified cases; making clarifying amendments to provide for an exemption for medication-assisted treatment programs; clarifying physician responsibility for medication-assisted treatment; clarifying definition of “pain management clinic”; providing for emergency rulemaking; defining terms; providing for an advance directive; requiring consultation with patients prior to prescribing an opioid; limiting the amount of opioid prescriptions; requiring a narcotics contract in certain circumstances; providing exceptions to prescribing limits; providing for referral to a pain clinic or pain specialist; providing reports to licensing boards regarding abnormal or unusual prescribing practices; requiring insurance coverage for certain procedures to treat chronic pain; requiring the Board of Pharmacy to report quarterly to various licensing boards; exempting the Board of Pharmacy to certain purchasing requirement; clarifying who must report to the Controlled Substances Monitoring Database; clarifying the practice of acupuncture; and permitting the investigation and discipline for abnormal and unusual prescribing and dispensing of prescription drugs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

§16-5H-2. Definitions.

(a) “Chronic pain” means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. For purposes of this article, “chronic pain” does not include pain directly associated with a terminal condition.

(b) “Director” means the Director of the Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(c) “Owner” means any person, partnership, association or corporation listed as the owner of a pain management clinic on the licensing forms required by this article.

(d) “Pain management clinic” means all privately owned pain management clinics, facilities or offices not otherwise exempted from this article and which meets both of the following criteria:

(1) Where in any month more than 50 percent of patients of the clinic are prescribed or dispensed Schedule II opioids or other Schedule II controlled substances specified in rules promulgated pursuant to this article for chronic pain resulting from conditions that are not terminal; and

(2) The facility meets any other identifying criteria established by the secretary by rule.

(e) “Physician” means an individual authorized to practice medicine or surgery or osteopathic medicine or surgery in this state.

(f) “Prescriber” means an individual who is authorized by law to prescribe drugs or drug therapy related devices in the course of the individual's professional practice, including only a medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant or osteopathic physician assistant who holds a certificate to prescribe drugs; or an advanced nurse practitioner who holds a certificate to prescribe.

(g) “Secretary” means the Secretary of the West Virginia Department of Health and Human

Resources. The secretary may define in rules any term or phrase used in this article which is not expressly defined.

§16-5H-9. Rules.

(a) The Secretary of the Department of Health and Human Resources, in collaboration with the West Virginia Board of Medicine and the West Virginia Board of Osteopathy, shall promulgate rules in accordance with the provisions of §29A-1-1 *et seq.* of this code for the licensure of pain management clinics to ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these facilities. These rules shall include, at a minimum:

(1) The process to be followed by applicants seeking a license;

(2) The qualifications and supervision of licensed and non-licensed personnel at pain management clinics and training requirements for all facility health care practitioners who are not regulated by another board;

(3) The provision and coordination of patient care, including the development of a written plan of care;

(4) The management, operation, staffing, and equipping of the pain management clinic;

(5) The clinical, medical, patient, and business records kept by the pain management clinic;

(6) The procedures for inspections and for the review of utilization and quality of patient care;

(7) The standards and procedures for the general operation of a pain management clinic, including facility operations, physical operations, infection control requirements, health and safety requirements, and quality assurance;

(8) Identification of drugs that may be used to treat chronic pain that identify a facility as a pain management clinic, including, at a minimum, tramadol and carisoprodol;

(9) Any other criteria that identify a facility as a pain management clinic;

(10) The standards and procedures to be followed by an owner in providing supervision,

direction, and control of individuals employed by or associated with a pain management clinic;

(11) Data collection and reporting requirements; and

(12) Such other standards or requirements as the secretary determines are appropriate.

(b) The rules authorized by this section may be filed as emergency rules if deemed necessary to promptly effectuate the purposes of this article. The Legislature finds that the changes made to this article during the 2018 Regular Session of the Legislature constitute an emergency for the purposes of filing any amendment to existing rules.

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT

§16-5Y-2. Definitions.

(a) "Addiction" means a primary, chronic disease of brain reward, motivation, memory, and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological, social, and spiritual manifestations, which is reflected in an individual pathologically pursuing reward or relief by substance use, or both, and other behaviors. Addiction is characterized by inability to consistently abstain; impairment in behavioral control; craving; diminished recognition of significant problems with one's behaviors; interpersonal problems with one's behaviors and interpersonal relationships; a dysfunctional emotional response; and as addiction is currently defined by the American Society of Addiction Medicine.

(b) "Administrator" means an individual designated by the governing body to be responsible for the day-to-day operation of the opioid treatment programs.

(c) "Advanced alcohol and drug abuse counselor" means an alcohol and drug abuse counselor who is certified by the West Virginia Certification Board for Addiction and Prevention Professionals who demonstrates a high degree of competence in the addiction counseling field.

(d) "Alcohol and drug abuse counselor" means a counselor certified by the West Virginia Certification Board for Addiction and Prevention Professionals for specialized work with patients who have substance use problems.

(e) "Biopsychosocial" means of, relating to or concerned with, biological, psychological,

and social aspects in contrast to the strictly biomedical aspects of disease.

(f) “Center for Substance Abuse Treatment” means the center under the Substance Abuse and Mental Health Services Administration that promotes community-based substance abuse treatment and recovery services for individuals and families in the community and provides national leadership to improve access, reduce barriers, and promote high quality, effective treatment and recovery services.

(g) “Controlled Substances Monitoring Program database” means the database maintained by the West Virginia Board of Pharmacy pursuant to §60A-9-3 of this code that monitors and tracks certain prescriptions written or dispensed by dispensers and prescribers in West Virginia.

(h) “Director” means the Director of the Office of Health Facility Licensure and Certification.

(i) “Dispense” means the preparation and delivery of a medication-assisted treatment medication in an appropriately labeled and suitable container to a patient by a medication-assisted treatment program or pharmacist.

(j) “Governing body” means the person or persons identified as being legally responsible for the operation of the opioid treatment program. A governing body may be a board, a single entity or owner, or a partnership. The governing body must comply with the requirements prescribed in rules promulgated pursuant to this article.

(k) “Medical director” means a physician licensed within the State of West Virginia who assumes responsibility for administering all medical services performed by the medication-assisted treatment program, either by performing them directly or by delegating specific responsibility to authorized program physicians and health care professionals functioning under the medical director’s direct supervision and functioning within their scope of practice.

(l) “Medication-assisted treatment” means the use of medications and drug screens, in combination with counseling and behavioral therapies, to provide a holistic approach to the treatment of substance use disorders.

(m) “Medication-assisted treatment program” means all publicly and privately owned opioid treatment programs and office based medication-assisted treatment programs, which prescribe medication-assisted treatment medications and treat substance use disorders, as those terms are defined in this article.

(n) “Medication-assisted treatment medication” means any medication that is approved by the United States Food and Drug Administration under Section 505 of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. § 355, for use in the treatment of substance use disorders that is an opioid agonist or partial opioid agonist and is listed on the schedule of controlled substances in §60A-2-2201 *et seq.* of this code.

(o) “Office based medication-assisted treatment” means all publicly or privately owned ~~medication-assisted treatment programs in~~ clinics, facilities, offices, or programs that provide medication-assisted treatment to individuals with substance use disorders through the prescription, administration, or dispensing of a medication-assisted treatment medication in the form of a partial opioid agonist ~~or other medication-assisted medication approved for use in office based medication-assisted treatment setting~~.

(p) “Opioid agonist” means substances that bind to and activate the opiate receptors resulting in analgesia and pain regulation, respiratory depression, and a wide variety of behavioral changes. As used in this article, the term “opioid agonist” does not include partial agonist medications used as an alternative to opioid agonists in the treatment of opioid addiction.

(q) “Opioid treatment program” means all publicly or privately owned ~~medication-assisted treatment programs in~~ clinics, facilities, offices or programs that provide medication-assisted treatment to individuals with substance use disorders through on-site administration or dispensing of a medication-assisted treatment medication in the form of an opioid agonist ~~or partial opioid agonist~~.

(r) “Owner” means any person, partnership, association, or corporation listed as the owner of a medication-assisted treatment program on the licensing or registration forms required by this

article.

(s) “Partial opioid agonist” means a Federal Drug Administration approved medication that is used as an alternative to opioid agonists for the treatment of substance use disorders and that binds to and activates opiate receptors, but not to the same degree as full agonists.

(t) “Physician” means an individual licensed in this state to practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West Virginia Board of Osteopathic Medicine and that meets the requirements of this article.

(u) “Prescriber” means a person authorized in this state, working within their scope of practice, to give direction, either orally or in writing, for the preparation and administration of a remedy to be used in the treatment of substance use disorders.

(v) “Program sponsor” means the person named in the application for the certification and licensure of an opioid treatment program who is responsible for the administrative operation of the opioid treatment program and who assumes responsibility for all of its employees, including any practitioners, agents, or other persons providing medical, rehabilitative, or counseling services at the program.

(w) “Secretary” means the Secretary of the West Virginia Department of Health and Human Resources or his or her designee.

(x) “State opioid treatment authority” means the agency or individual designated by the Governor to exercise the responsibility and authority of the state for governing the treatment of substance use disorders, including, but not limited to, the treatment of opiate addiction with opioid drugs.

(y) “State oversight agency” means the agency or office of state government identified by the secretary to provide regulatory oversight of medication-assisted treatment programs on behalf of the State of West Virginia.

(z) “Substance” means the following:

(1) Alcohol;

(2) Controlled substances defined by §60A-2-204, §60A-2-206, §60A-2-208 and §60A-2-210 of this code; or

(3) Any chemical, gas, drug, or medication consumed which causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

(aa) “Substance Abuse and Mental Health Services Administration” means the agency under the United States Department of Health and Human Services responsible for the accreditation and certification of medication-assisted treatment programs and that provides leadership, resources, programs, policies, information, data, contracts, and grants for the purpose of reducing the impact of substance abuse and mental or behavioral illness.

(bb) “Substance use disorder” means patterns of symptoms resulting from use of a substance that the individual continues to take, despite experiencing problems as a result; or as defined in the most recent edition of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders.

(cc) “Telehealth” means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site.

(dd) “Variance” means written permission granted by the secretary to a medication-assisted treatment program that a requirement of this article or rules promulgated pursuant to this article may be accomplished in a manner different from the manner set forth in this article or associated rules.

(ee) “Waiver” means a formal, time-limited agreement between the designated oversight agency and the medication-assisted treatment program that suspends a rule, policy, or standard for a specific situation so long as the health and safety of patients is better served in the situation by suspension of the rule, policy, or standard than by enforcement.

§16-5Y-4. Office based medication-assisted treatment programs to obtain registration; application; fees and inspections.

(a) No person, partnership, association, or corporation may operate an office based medication-assisted treatment program without first obtaining a registration from the secretary in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(b) Any person, partnership, association, or corporation desiring a registration to operate an office based medication-assisted treatment program in this state shall file with the Office of Health Facility Licensure and Certification an application in such form and with such information as the secretary shall prescribe and furnish accompanied by an application fee.

(c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect and review all documentation submitted with the application. The director shall then provide a recommendation to the secretary whether to approve or deny the application for registration. The secretary shall issue a registration if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(d) A registration shall be issued in one of three categories:

(1) An initial twelve month registration shall be issued to an office based medication-assisted treatment program establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this article and with all rules promulgated pursuant to this article;

(2) A provisional registration shall be issued when an office based medication-assisted treatment program seeks a renewal registration, or is an existing program as of the effective date of this article and is seeking an initial registration, and the office based medication-assisted treatment program is not in substantial compliance with this article and with all rules promulgated pursuant to this article, but does not pose a significant risk to the rights, health, and safety of a consumer. It shall expire not more than six months from the date of issuance, and may not be

consecutively reissued; or

(3) A renewal registration shall be issued when an office based medication-assisted treatment program is in substantial compliance with this article and with all rules promulgated pursuant to this article. A renewal registration shall expire not more than one year from the date of issuance.

(e) At least 60 days prior to the registration expiration date, an application for renewal shall be submitted by the office based medication-assisted treatment program to the secretary on forms furnished by the secretary. A registration shall be renewed if the secretary determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A registration issued to one program location pursuant to this article is not transferrable or assignable. Any change of ownership of a registered medication-assisted treatment program requires submission of a new application. The medication-assisted treatment program shall notify the secretary of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the secretary.

(f) Any person, partnership, association, or corporation seeking to obtain or renew a registration for an office based medication-assisted treatment program in this state must submit to the secretary the following documentation:

(1) Full operating name of the program as advertised;

(2) Legal name of the program as registered with the West Virginia Secretary of State;

(3) Physical address of the program;

(4) Preferred mailing address for the program;

(5) Email address to be used as the primary contact for the program;

(6) Federal Employer Identification Number assigned to the program;

(7) All business licenses issued to the program by this state, the state Tax Department, the Secretary of State, and all other applicable business entities;

(8) Brief description of all services provided by the program;

(9) Hours of operation;

(10) Legal Registered Owner Name – name of the person registered as the legal owner of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal owner separately, indicating the percentage of ownership;

(11) Medical director's full name, medical license number, Drug Enforcement Administration registration number, and a listing of all current certifications;

(12) For each physician, counselor, or social worker of the program, provide the following:

(A) Employee's role and occupation within the program;

(B) Full legal name;

(C) Medical license, if applicable;

(D) Drug Enforcement Administration registration number, if applicable;

(E) Drug Enforcement Administration identification number to prescribe buprenorphine for addiction, if applicable; and

(F) Number of hours worked at program per week;

(13) Name and location address of all programs owned or operated by the applicant;

(14) Notarized signature of applicant;

(15) Check or money order for registration fee;

(16) Verification of education and training for all physicians, counselors, and social workers practicing at or used by referral by the program such as fellowships, additional education, accreditations, board certifications, and other certifications; and

(17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber practicing at the program for the three months preceding the date of application~~; and~~

~~(18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the West Virginia Health Care Authority~~.

(g) Upon satisfaction that an applicant has met all of the requirements of this article, the secretary shall issue a registration to operate an office based medication-assisted treatment

program. An entity that obtains this registration may possess, have custody or control of, and dispense drugs indicated and approved by the United States Food and Drug Administration for the treatment of substance use disorders.

(h) The office based medication-assisted treatment program shall display the current registration in a prominent location where services are provided and in clear view of all patients.

(i) The secretary or his or her designee shall perform complaint and verification inspections on all office based medication-assisted treatment programs that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

(j) Any person, partnership, association, or corporation operating a medication-assisted treatment program shall be permitted to continue operation until the effective date of the new rules promulgated pursuant to this article. At that time a person, partnership, association, or corporation shall file for registration within six months pursuant to the licensing procedures and requirements of this section and the new rules promulgated hereunder. The existing procedures of the person, partnership, association, or corporation shall remain effective until receipt of the registration.

(k) A person, partnership, association, or corporation providing office based medication-assisted treatment to no more than 30 patients of their practice or program is exempt from the registration requirement contained in §16-5Y-4(a): *Provided,* That it operates in compliance with all legislative rules promulgated pursuant to this article regulating office based medication-assisted treatment.

§16-5Y-5. Operational requirements.

(a) The medication-assisted treatment program shall be licensed and registered in this state with the secretary, the Secretary of State, the state Tax Department, and all other applicable business or licensing entities.

(b) The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director, when required by the rules promulgated pursuant to this article.

(c) Each medication-assisted treatment program shall designate a medical director. If the medication-assisted treatment program is accredited by a Substance Abuse and Mental Health Services Administration (SAMHSA) approved accrediting body that meets nationally accepted standards for providing medication-assisted treatment, including the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission on Accreditation of Healthcare Organizations, then the program may designate a medical director to oversee all facilities associated with the accredited medication-assisted treatment program. The medical director shall be responsible for the operation of the medication-assisted treatment program, as further specified in the rules promulgated pursuant to this article. He or she may delegate the day to day operation of medication-assisted treatment program as provided in rules promulgated pursuant to this article. Within 10 days after termination of a medical director, the medication-assisted treatment program shall notify the director of the identity of another medical director for that program. Failure to have a medical director practicing at the program may be the basis for a suspension or revocation of the program license. The medical director shall:

(1) Have a full, active, and unencumbered license to practice allopathic medicine or surgery from the West Virginia Board of Medicine or to practice osteopathic medicine or surgery from the West Virginia Board of Osteopathic Medicine in this state and be in good standing and not under any probationary restrictions;

(2) Meet both of the following training requirements:

(A) If the physician prescribes a partial opioid agonist, he or she shall complete the requirements for the Drug Addiction Treatment Act of 2000; and

(B) Complete other programs and continuing education requirements as further described in the rules promulgated pursuant to this article;

(3) Practice at the licensed or registered medication-assisted treatment program a sufficient number of hours, based upon the type of medication-assisted treatment license or registration issued pursuant to this article, to ensure regulatory compliance, and carry out those duties specifically assigned to the medical director as further described in the rules promulgated pursuant to this article;

(4) Be responsible for monitoring and ensuring compliance with all requirements related to the licensing and operation of the medication-assisted treatment program;

(5) Supervise, control, and direct the activities of each individual working or operating at the medication-assisted treatment program, including any employee, volunteer, or individual under contract, who provides medication-assisted treatment at the program or is associated with the provision of that treatment. The supervision, control, and direction shall be provided in accordance with rules promulgated by the secretary; and

(6) Complete other requirements prescribed by the secretary by rule.

(d) Each medication-assisted treatment program shall designate counseling staff, either employees, or those used on a referral-basis by the program, which meet the requirements of this article and the rules promulgated pursuant to this article. The individual members of the counseling staff shall have one or more of the following qualifications:

(1) ~~A~~ Be a licensed psychiatrist;

(2) Certification as an alcohol and drug counselor;

(3) Certification as an advanced alcohol and drug counselor;

(4) ~~A~~ Be a counselor, psychologist, marriage and family therapist, or social worker with a master's level education with a specialty or specific training in treatment for substance use disorders, as further described in the rules promulgated pursuant to this article;

(5) Under the direct supervision of an advanced alcohol and drug counselor, be a counselor with a bachelor's degree in social work or another relevant human services field: Provided, That the individual practicing with a bachelor's degree under supervision applies for

certification as an alcohol and drug counselor within three years of the date of employment as a counselor; or

(6) ~~A~~ Be a counselor with a graduate degree actively working toward licensure or certification in the individual's chosen field under supervision of a licensed or certified professional in that field and/or advanced alcohol and drug counselor.

(e) The medication-assisted treatment program shall be eligible for, and not prohibited from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing a patient for any medication-assisted treatment, a medication-assisted treatment program must receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial from a patient's insurer or West Virginia Medicaid denying coverage for such treatment: Provided, That the Secretary may grant a variance from this requirement pursuant to §15-5Y-6 of this ~~article~~ code. The program shall also document whether a patient has no insurance. At the option of the medication-assisted treatment program, treatment may commence prior to billing.

(f) The medication-assisted treatment program shall apply for and receive approval as required from the United States Drug Enforcement Administration, Center for Substance Abuse Treatment, or an organization designated by Substance Abuse and Mental Health and Mental Health Administration.

(g) All persons employed by the medication-assisted treatment program shall comply with the requirements for the operation of a medication-assisted treatment program established within this article or by any rule adopted pursuant to this article.

(h) All employees of an opioid treatment program shall furnish fingerprints for a state and federal criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a signed authorization for the release of information and retention of the fingerprints by the Criminal Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall

be subject to the provisions of 16-49-1 *et seq.* of this code and subsequent rules promulgated thereunder.

(i) The medication-assisted treatment program shall not be owned by, nor shall it employ or associate with, any physician or prescriber:

(1) Whose Drug Enforcement Administration number is not currently full, active and unencumbered;

(2) Whose application for a license to prescribe, dispense or administer a controlled substance has been denied by and is not full, active and unencumbered in any jurisdiction; or

(3) Whose license is anything other than a full, active and unencumbered license to practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West Virginia Board of Osteopathic Medicine in this state, and, who is in good standing and not under any probationary restrictions.

(j) A person may not dispense any medication-assisted treatment medication, including a controlled substance as defined by §60A-1-101 of this code, on the premises of a licensed medication-assisted treatment program, unless he or she is a physician or pharmacist licensed in this state and employed by the medication-assisted treatment program unless the medication-assisted treatment program is a federally-certified narcotic treatment program. Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician must access the Controlled Substances Monitoring Program database to ensure the patient is not seeking medication-assisted treatment medications that are controlled substances from multiple sources, and to assess potential adverse drug interactions, or both. Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician shall also ensure that the medication-assisted treatment medication utilized is related to an appropriate diagnosis of a substance use disorder and approved for such usage. The physician shall also review the Controlled Substances Monitoring Program database no less than quarterly and at each patient's

physical examination. The results obtained from the Controlled Substances Monitoring Program Database shall be maintained with the patient's medical records.

(k) A medication-assisted treatment program responsible for medication administration shall comply with:

(1) The West Virginia Board of Pharmacy regulations;

(2) The West Virginia Board of Examiners for Registered Professional Nurses regulations;

(3) All applicable federal laws and regulations relating to controlled substances; and

(4) Any requirements as specified in the rules promulgated pursuant to this article.

(l) Each medication-assisted treatment program location shall be licensed separately, regardless of whether the program is operated under the same business name or management as another program.

(m) The medication-assisted treatment program shall develop and implement patient protocols, treatment plans, or treatment strategies and profiles, which shall include, but not be limited by, the following guidelines:

(1) When a physician diagnoses an individual as having a substance use disorder, the physician may treat the substance use disorder by managing it with medication in doses not exceeding those approved by the United States Food and Drug Administration as indicated for the treatment of substance use disorders and not greater than those amounts described in the rules promulgated pursuant to this article. The treating physician and treating counselor's diagnoses and treatment decisions shall be made according to accepted and prevailing standards for medical care;

(2) The medication-assisted treatment program shall maintain a record of all of the following:

(A) Medical history and physical examination of the individual;

(B) The diagnosis of substance use disorder of the individual;

(C) The plan of treatment proposed, the patient's response to the treatment, and any modification to the plan of treatment;

(D) The dates on which any medications were prescribed, dispensed, or administered, the name and address of the individual for whom the medications were prescribed, dispensed, or administered, and the amounts and dosage forms for any medications prescribed, dispensed or administered;

(E) A copy of the report made by the physician or counselor to whom referral for evaluation was made, if applicable; and

(F) A copy of the coordination of care agreement, which is to be signed by the patient, treating physician, and treating counselor. If a change of treating physician or treating counselor takes place, a new agreement must be signed. The coordination of care agreement must be updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not updated, this review must be documented in the patient's record. The coordination of care agreement will be provided in a form prescribed and made available by the secretary;

(3) Medication-assisted treatment programs shall report information, data, statistics, and other information as directed in this code, and the rules promulgated pursuant to this article to required agencies and other authorities;

(4) ~~A physician, physician assistant, or advanced practice registered nurse shall perform a physical examination of a patient on the same day that the prescriber initially prescribes, dispenses or administers a medication-assisted treatment medication to a patient and at intervals as required in the rules promulgated pursuant to this article;~~

~~(5) An alcohol and drug abuse counselor, an advanced alcohol and drug abuse counselor or other qualified counselor, psychiatrist, psychologist or social worker shall perform a biopsychosocial assessment, including, but not limited to, a mental status examination of a patient on the same day or no more than seven days prior to the day that the physician initially prescribes,~~

~~dispenses or administers a medication-assisted treatment medication to a patient and at intervals as required in the rules promulgated pursuant to this article;~~

~~(6)~~ A prescriber authorized to prescribe a medication-assisted treatment medication who practices at a medication-assisted treatment program is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing a medication-assisted treatment medication. The prescriber shall comply with all state and federal requirements for tamper-resistant prescription paper. In addition to any other requirements imposed by statute or rule, the prescriber shall notify the secretary and appropriate law enforcement agencies in writing within 24 hours following any theft or loss of a prescription blank or breach of any other method of prescribing a medication-assisted treatment medication; and,

~~(7)~~ (5) The medication-assisted treatment program shall have a drug testing program to ensure a patient is in compliance with the treatment strategy.

(n) Medication-assisted treatment programs shall only prescribe, dispense, or administer liquid methadone to patients pursuant to the restrictions and requirements of the rules promulgated pursuant to this article.

(o) The medication-assisted treatment program shall immediately notify the secretary, or his or her designee, in writing of any changes to its operations that affect the medication-assisted treatment program's continued compliance with the certification and licensure requirements.

(p) If a physician treats a patient with more than 16 milligrams per day of buprenorphine then clear medical notes shall be placed in the patient's medical file indicating the clinical reason or reasons for the higher level of dosage.

(q) If a physician is not the patient's obstetrical or gynecological provider, the physician shall consult with the patient's obstetrical or gynecological provider to the extent possible to determine whether the prescription is appropriate for the patient.

(r) A practitioner providing medication-assisted treatment may perform certain aspects telehealth if permitted under his or her scope of practice.

(s) The physician shall follow the recommended manufacturer's tapering schedule for the medication assisted treatment medication. If the schedule is not followed, the physician shall document in the patient's medical record and the clinical reason why the schedule was not followed. The Secretary may investigate a medication-assisted treatment program if a high percentage of its patients are not following the recommended tapering schedule.

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

As used in this section:

"Acute pain" means a time limited pain caused by a specific disease or injury.

"Chronic pain" means a noncancer non-end of life pain lasting more than three months or longer than the duration of normal tissue healing.

"Health care practitioner" or "practitioner" means:

A physician licensed pursuant to the provisions of §30-3-1 and §30-14-1 *et seq.*;

A podiatrist licensed pursuant to the provisions of §30-3-1 *et seq.;*

A physician assistant with prescriptive authority as set forth in §30-3E-1 *et seq.*;

An advanced practice registered nurse with prescriptive authority as set forth in §30-7-15a;

A dentist licensed pursuant to the provisions of §30-4-1 *et seq.*;

An optometrist licensed pursuant to the provisions of §30-8-1 *et seq.*; and

A veterinarian licensed pursuant to the provisions of §30-10-1 *et seq.*

"Office" shall mean the office of Drug Control Policy.

"Pain clinic" shall mean the same as that term is defined in §16-5H-2 of this code.

"Pain specialist" shall mean practitioner who is board certified in pain management or a related field.

§16-54-2. Voluntary Non-Opioid Advanced Directive Form.

(a) The office shall establish a voluntary non-opioid advanced directive form. The form

shall be available on the office's web site. The form shall indicate to a health care practitioner that an individual may not be administered or offered a prescription or medication order for an opioid. The advance directive shall be filed in the individual's medical record in either a health care facility or a private office of a practitioner, or both, and shall be transferred with the person from one practitioner to another or from one health care facility to another.

(b) An individual may revoke the voluntary non-opioid advanced directive form for any reason and may do so by written or oral means.

(c) A practitioner without actual knowledge of an advance directive as set forth in §16-54-2(a) of this Code and who prescribes an opioid in a medical emergency situation is not civilly or criminally liable for failing to act in accordance with the directives unless the act or omission was the result of a practitioner's gross negligence or willful misconduct. For purposes of this section a medical emergency situation shall mean an acute injury or illness that poses an immediate risk to a person's life or long-term health.

§16-54-3. Opioid Prescription Notifications.

Prior to issuing a prescription for an opioid, a practitioner shall:

(1) Advise the patient regarding the quantity of the opioid and a patient's option to fill the prescription in a lesser quantity; and

(2) Inform the patient of the risks associated with the opioid prescribed.

§16-54-4. Opioid Prescription limitations.

(a) When issuing a prescription for an opioid to an adult patient seeking treatment in an emergency room or an urgent care facility setting for outpatient use, a health care practitioner may not issue a prescription for more than a 4-day supply.

(b) A health care practitioner may not issue an opioid prescription to a minor for more than a 3-day supply and shall discuss with the parent or guardian of the minor the risks associated with opioid use and the reasons why the prescription is necessary.

(c) A dentist or an optometrist may not issue an opioid prescription for more than a 3-day

supply at any time.

(d) A practitioner may not issue an initial opioid prescription for more than a 7-day supply. The prescription shall be for the lowest effective dose which in the medical judgement of the practitioner would be the best course of treatment for this patient and his or her condition.

(e) Prior to issuing an initial opioid prescription, a practitioner shall:

(1) Take and document the results of a thorough medical history, including the patient's experience with non-opioid medication and non-pharmacological pain management approaches and substance abuse history;

(2) Conduct, as appropriate, and document the results of a physical examination;

(3) Develop a treatment plan, with particular attention focused on determining the cause of the patient's pain; and

(4) Access relevant prescription monitoring information under the controlled substances monitoring database.

(f) Notwithstanding any provision of this code or legislative rule to the contrary, no medication listed as a Schedule II Controlled Substance as set forth in §60A-2-206 of this code, may be prescribed by a practitioner for greater than a 30-day supply: *Provided*, That 2 additional prescriptions, each for a 30-day period for a total of a 90-day supply, may be prescribed if the practitioner accesses the West Virginia Controlled Substances Monitoring Program Database as set forth in §60A-9-1 *et seq.* of this code: *Provided,* That the limitations in this section do not apply to cancer patients, patients receiving hospice care from a licensed hospice provider, patients receiving palliative care, a patient who is a resident of a long-term care facility, or a patient receiving medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.

(g) A practitioner is required to conduct and document the results of a physical examination every 90 days for any patient for whom he or she continues to treat with any Schedule II Controlled Substance as set forth in §60-2-206 of this code.

(h) A prescription for any drug listed on Schedule II as set forth in §60A-2-1 *et seq.* of this code for greater than a 7-day period shall require the patient to execute a narcotics contract with their prescribing practitioner. The contract shall be made a part of the patient's medical record. The narcotics contract is required to provide that:

(1) The patient agrees only to obtain scheduled medications from this particular prescribing practitioner;

(2) The patient agrees they will only fill those prescriptions for Schedule II at a single pharmacy;

(3) The patient agrees to notify the prescribing practitioner within 24 hours of any emergency where they are prescribed scheduled medication; and

(4) If the patient fails to honor the provisions of the narcotics contract, the prescribing practitioner may either terminate the provider/patient relationship or continue to treat the patient without prescribing Schedule II drugs for the patient. Should the practitioner decide to terminate the relationship, he or she is required to do so pursuant to the provisions of this code and any rules promulgated hereunder. Termination of the relationship for the patient's failure to honor the provisions of the contract is not subject to any disciplinary action by the practitioner's licensing board.

§16-54-5. Subsequent prescriptions; limitations.

(a) No less than six days after issuing the initial prescription as set forth in §16-54-4 of this Code, the practitioner, after consultation with the patient, may issue a subsequent prescription for an opioid to the patient if:

(1) The subsequent prescription would not be deemed an initial prescription pursusnt to §16-54-4 of this code;

(2) The practitioner determines the prescription is necessary and appropriate to the patient's treatment needs and documents the rationale for the issuance of the subsequent prescription; and

(3) The practitioner determines that issuance of the subsequent prescription does not present an undue risk of abuse, addiction, or diversion and documents that determination.

(b) Prior to issuing the subsequent prescription of the course of treatment, a practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is under 18 years of age, the risks associated with the drug being prescribed. This discussion shall include:

(1) The risks of addiction and overdose associated with opioid drugs and the dangers of taking opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

(2) The reasons why the prescription is necessary;

(3) Alternative treatments that may be available; and

(4) Risks associated with the use of the drugs being prescribed, specifically that opioids are highly addictive, even when taken as prescribed, that there is a risk of developing a physical or psychological dependence on the controlled substance, and that the risks of taking more opioids than prescribed, or mixing sedatives, benzodiazepines, or alcohol with opioids, can result in fatal respiratory depression.

(c) The discussion as set forth in §16-54-5(b) of this Code shall be included in a notation in the patient's medical record.

§16-54-6. Ongoing treatment; referral to pain clinic or pain specialist.

(a) At the time of the issuance of the third prescription for a prescription opioid the practitioner shall consider referring the patient to a pain clinic or a pain specialist. The practitioner shall discuss the benefits of seeking treatment through a pain clinic or a pain

specialist and provide him or her with an understanding of any risks associated by choosing to not to pursue that as an option.

(b) If the patient declines to seek treatment from a pain clinic or a pain specialist and opts to remain a patient of the practitioner, and the practitioner continues to prescribe an opioid for pain as provided in this code, the practitioner shall:

(1) Note in the patient's medical records that the patient knowingly declined treatment from a pain clinic or pain specialist;

(2) Review, at a minimum of every three months, the course of treatment, any new information about the etiology of the pain, and the patient's progress toward treatment objectives and document the results of that review;

(3) Assess the patient prior to every renewal to determine whether the patient is experiencing problems associated with physical and psychological dependence and document the results of that assessment; and

(4) Periodically make reasonable efforts, unless clinically contraindicated, to either stop the use of the controlled substance, decrease the dosage, try other drugs or treatment modalities in an effort to reduce the potential for abuse or the development of physical or psychological dependence, and document with specificity the efforts undertaken.

§16-54-7. Exceptions.

(a) This article does not apply to a prescription for a patient who is currently in active treatment for cancer, receiving hospice care from a licensed hospice provider or palliative care provider, or is a resident of a long-term care facility, or to any medications that are being prescribed for use in the treatment of substance abuse or opioid dependence.

(b) A practitioner may prescribe an initial seven-day supply of an opioid to a post-surgery patient immediately following a surgical procedure. Based upon the medical judgment of the practitioner, a subsequent prescription may be prescribed by the practitioner pursuant to the provisions of this code. Nothing in this section authorizes a practitioner to prescribe any

medication which he or she is not permitted to prescribe pursuant to their practice act.

(c) A practitioner who acquires a patient after January 1, 2018, who is currently being prescribed an opioid from another practitioner shall be required to access the Controlled Substances Monitoring Database as set forth in §60A-9-1 *et seq.* Any prescription would not be deemed an initial prescription pursuant to the provisions of this section. The practitioner shall otherwise treat the patient as set forth in this code.

(d) This article does not apply to an existing practitioner patient relationship established before January 1, 2018, where there is an established and current opioid treatment plan which is reflected in the patient's medical records.

§16-54-8. Treatment of Chronic Pain.

(a) When patients seek treatment for any of the myriad conditions that cause pain, a health care practitioner should consider prescribing or recommending any of the following treatment alternatives before starting a patient on an opioid: physical therapy, occupational therapy, acupuncture, massage therapy, osteopathic manipulation, chronic pain management program, and chiropractic care. If in the medical opinion of the practitioner these treatments would not benefit the patient, he or she is not required to prescribe or recommend these treatment alternatives and should note this in the patient's medical record.

(b) Nothing in this section should be construed to require that all of the treatment alternatives set forth in §16-54-8(a) of this Code are required to be exhausted prior to the patient receiving a prescription for an opioid.

(c) At a minimum an insurance provider who offers an insurance product in this state, the West Virginia Bureau for Medical Services and the Public Employees Insurance Agency shall provide coverage for 20 visits per event of physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management program, and chiropractic care when ordered by a health care practitioner to treat conditions that cause chronic pain. A patient may seek treatment for physical therapy, occupational therapy, osteopathic manipulation, a chronic pain management

program, and chiropractic care prior to seeking treatment from a practitioner and a practitioner referral is not required as a condition of coverage by the Bureau for Medical Services, the Public Employees Insurance Agency and any insurance provider who offers an insurance product in this state. Any deductible required for any of these services may not be greater than the deductible required for an emergency room visit.

(d) Nothing in this section precludes a practitioner from simultaneously prescribing an opioid and prescribing or recommending any of the procedures set forth in §16-54-8(a) of this Code.

§16-54-9. Discipline.

A violation of this article is grounds for disciplinary action by the board that regulates the health care practitioner who commits the violation.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrist; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determination; referral to law enforcement authorities.

(a) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies, the Board of Pharmacy, and others.

The board may initiate investigations as to professional incompetence or other reasons

for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees, hospital administrators, professional societies or others; or unfavorable outcomes arising out of medical professional liability. The board shall initiate an investigation if it receives notice that three or more judgments, or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability, have been rendered or made against the physician or podiatrist within a five-year period. The board may not consider any judgments or settlements as conclusive evidence of professional incompetence or conclusive lack of qualification to practice.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of the requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are provided, the subject physician or podiatrist is allowed 15 days to comment on the requested information and such comments must be considered by the board.

The chief executive officer of every hospital shall, within 60 days after the completion of the hospital's formal disciplinary procedure and also within sixty days after the commencement of and again after the conclusion of any resulting legal action, report in writing to the board the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced, or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend

staff or section meetings need not be reported. Voluntary cessation of hospital privileges for reasons unrelated to professional competence or ethics need not be reported.

Any managed care organization operating in this state which provides a formal peer review process shall report in writing to the board, within 60 days after the completion of any formal peer review process and also within 60 days after the commencement of and again after the conclusion of any resulting legal action, the name of any physician or podiatrist whose credentialing has been revoked or not renewed by the managed care organization. The managed care organization shall also report in writing to the board any other disciplinary action taken against a physician or podiatrist relating to professional ethics, professional liability, moral turpitude, or drug or alcohol abuse within 60 days after completion of a formal peer review process which results in the action taken by the managed care organization. For purposes of this subsection, “managed care organization” means a plan that establishes, operates or maintains a network of health care providers who have entered into agreements with and been credentialed by the plan to provide health care services to enrollees or insureds to whom the plan has the ultimate obligation to arrange for the provision of or payment for health care services through organizational arrangements for ongoing quality assurance, utilization review programs, or dispute resolutions.

Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, medical professional liability, moral turpitude, or drug or alcohol abuse shall report in writing to the board within 60 days of a final decision the name of the member, together with all pertinent information relating to the action.

Every person, partnership, corporation, association, insurance company, professional society, or other organization providing professional liability insurance to a physician or podiatrist in this state, including the state Board of Risk and Insurance Management, shall submit to the board the following information within 30 days from any judgment or settlement of a civil or medical professional liability action excepting product liability actions: The name of the insured; the date

of any judgment or settlement; whether any appeal has been taken on the judgment and, if so, by which party; the amount of any settlement or judgment against the insured; and other information required by the board.

Within 30 days from the entry of an order by a court in a medical professional liability action or other civil action in which a physician or podiatrist licensed by the board is determined to have rendered health care services below the applicable standard of care, the clerk of the court in which the order was entered shall forward a certified copy of the order to the board.

Within 30 days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is convicted of a felony under the laws of this state or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of the physician or podiatrist or applicant, the nature of the offense committed, and the final judgment and sentence of the court.

Upon a determination of the board that there is probable cause to believe that any person, partnership, corporation, association, insurance company, professional society, or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with §29A-5-1 et seq. After reviewing the record of the hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than $1,000 nor more than $10,000 against the violator. The board shall notify any person so assessed of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within 30 days, the Attorney General may institute a civil action in

the circuit court of Kanawha County to recover the amount of the assessment. In any civil action, the court's review of the board's action shall be conducted in accordance with §29A-5-4. Notwithstanding any other provision of this article to the contrary, when there are conflicting views by recognized experts as to whether any alleged conduct breaches an applicable standard of care, the evidence must be clear and convincing before the board may find that the physician or podiatrist has demonstrated a lack of professional competence to practice with a reasonable degree of skill and safety for patients.

Any person may report to the board relevant facts about the conduct of any physician or podiatrist in this state which in the opinion of that person amounts to medical professional liability or professional incompetence.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility, or professional society comprised primarily of physicians or podiatrists to suspend, restrict, or revoke the privileges or membership of the physician or podiatrist.

(c) The board may deny an application for license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing or attempting to renew a license to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation, or through known error of the board;

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude, or directly relates to the practice of medicine. Any plea of nolo contendere is a

conviction for the purposes of this subdivision;

(3) False or deceptive advertising;

(4) Aiding, assisting, procuring, or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law;

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. The reports and records covered in this subdivision mean only those that are signed in the capacity as a licensed physician or podiatrist;

(6) Requesting, receiving, or paying directly or indirectly a payment, rebate, refund, commission, credit, or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication, or any other medical goods, services or devices used in connection with medical or other health care services;

(7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless the physician or podiatrist discloses in writing such interest to the patient. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services;

As used in this subdivision, “proprietary interest” does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy;

(8) Exercising influence within a patient-physician relationship for the purpose of engaging

a patient in sexual activity;

(9) Making a deceptive, untrue or fraudulent representation in the practice of medicine and surgery or podiatry;

(10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation, or undue influence;

(11) Failing to keep written records justifying the course of treatment of a patient, including, but not limited to, patient histories, examination and test results, and treatment rendered, if any;

(12) Exercising influence on a patient in such a way as to exploit the patient for financial gain of the physician or podiatrist or of a third party. Any influence includes, but is not limited to, the promotion or sale of services, goods, appliances, or drugs;

(13) Prescribing, dispensing, administering, mixing, or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician's or podiatrist's professional practice. A physician who discharges his or her professional obligation to relieve the pain and suffering and promote the dignity and autonomy of dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act, does not violate this article;

(14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed, and written consent;

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he or she is not competent to perform;

(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating the responsibilities knows or has reason to know that the person is not qualified by

training, experience, or licensure to perform them;

(17) Violating any provision of this article or a rule or order of the board or failing to comply with a subpoena or subpoena duces tecum issued by the board;

(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate, or preclude another physician or podiatrist from lawfully advertising his or her services;

(19) Gross negligence in the use and control of prescription forms;

(20) Professional incompetence;

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill, or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or she may resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding; or

(22) Knowingly failing to report to the board any act of gross misconduct committed by another licensee of the board.

(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant ~~who~~, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing, or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the

same effect as a verdict or plea of guilt. Upon application of a physician that has had his or her license revoked because of a drug related felony conviction, upon completion of any sentence of confinement, parole, probation, or other court-ordered supervision and full satisfaction of any fines, judgments or other fees imposed by the sentencing court, the board may issue the applicant a new license upon a finding that the physician is, except for the underlying conviction, otherwise qualified to practice medicine: *Provided,* That the board may place whatever terms, conditions or limitations it deems appropriate upon a physician licensed pursuant to this subsection.

(e) The board may refer any cases coming to its attention to an appropriate committee of an appropriate professional organization for investigation and report. Except for complaints related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by bribery or fraudulent misrepresentation, any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of grounds for the complaint shall be dismissed: *Provided,* That in cases of conduct alleged to be part of a pattern of similar misconduct or professional incapacity that, if continued, would pose risks of a serious or substantial nature to the physician's or podiatrist's current patients, the investigating body may conduct a limited investigation related to the physician's or podiatrist's current capacity and qualification to practice and may recommend conditions, restrictions, or limitations on the physician's or podiatrist's license to practice that it considers necessary for the protection of the public. Any report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within 90 days of any referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it considers appropriate, as provided in this section.

(f) The investigating body, as provided in §30-3-14(e) of this ~~section~~ code, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to

submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to an examination has the right, at his or her expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery or podiatry in this state is considered to have given his or her consent to submit to all examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to an examination under circumstances which the board finds are not beyond his or her control, failure or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action, the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with §29A-5-1 *et seq*. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his or her expense. The physician or podiatrist has the right to defend against any charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross-examine witnesses and the right to have subpoenas and subpoenas duces tecum issued on his or her behalf for the attendance of witnesses and the production of documents. The board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) In disciplinary actions in which probable cause has been found by the board, the board

shall, within 20 days of the date of service of the written notice of charges or 60 days prior to the date of the scheduled hearing, whichever is sooner, provide the respondent with the complete identity, address, and telephone number of any person known to the board with knowledge about the facts of any of the charges; provide a copy of any statements in the possession of or under the control of the board; provide a list of proposed witnesses with addresses and telephone numbers, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing: *Provided,* That the board shall not be required to furnish or produce any materials which contain opinion work product information or would be a violation of the attorney-client privilege. Within 20 days of the date of service of the written notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do so throughout the disciplinary process. Within 30 days of receipt of the board's mandatory discovery, the respondent shall provide the board with the complete identity, address, and telephone number of any person known to the respondent with knowledge about the facts of any of the charges; provide a list of proposed witnesses with addresses and telephone numbers, to be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of physical and mental examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit to be used at the hearing.

(j) Whenever it finds any person unqualified because of any of the grounds set forth in §30-3-14(c) of this ~~section~~ code, the board may enter an order imposing one or more of the following:

(1) Deny his or her application for a license or other authorization to practice medicine and surgery or podiatry;

(2) Administer a public reprimand;

(3) Suspend, limit, or restrict his or her license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of that person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

(4) Revoke his or her license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances for any period of time, including for the life of the licensee, that the board may find to be reasonable and necessary according to evidence presented in a hearing before the board or its designee;

(5) Require him or her to submit to care, counseling, or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him or her to participate in a program of education prescribed by the board;

(7) Require him or her to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and

(8) Assess a civil fine of not less than $1,000 nor more than $10,000.

(k) Notwithstanding the provisions of §30-1-8, if the board determines the evidence in its possession indicates that a physician's or podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided in §30-3-4(j) of this ~~section~~ code on a temporary basis and without a hearing if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within 15 days of the action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.

(l) Any person against whom disciplinary action is taken pursuant to this article has the right to judicial review as provided in §29A-5-1 *et seq*. and §29A-6-1 *et seq*.: *Provided,* That a circuit judge may also remand the matter to the board if it appears from competent evidence presented to it in support of a motion for remand that there is newly discovered evidence of such

a character as ought to produce an opposite result at a second hearing on the merits before the board and:

(1) The evidence appears to have been discovered since the board hearing; and

(2) The physician or podiatrist exercised due diligence in asserting his or her evidence and that due diligence would not have secured the newly discovered evidence prior to the appeal.

A person may not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking, suspending, or limiting his or her license while any appeal is pending. Within 60 days, the board shall report its final action regarding restriction, limitation, suspension, or revocation of the license of a physician or podiatrist, limitation on practice privileges, or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American Podiatry Association, professional societies of physicians or podiatrists in the state, and any entity responsible for the fiscal administration of Medicare and Medicaid.

(m) Any person against whom disciplinary action has been taken under this article shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation, or restriction period the physician or podiatrist may resume practice if the board has so ordered.

(n) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available to the board or a medical peer review committee pursuant to law and any person acting without malice and without gross negligence who assists in the organization, investigation, or preparation of any such report or

information or assists the board or a hospital governing body or any committee in carrying out any of its duties or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided in this article.

(o) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate sanction as provided in this section. The board may grant the request and, if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection may, at reasonable intervals, petition for removal of any restriction or limitation on or for reinstatement of his or her license to practice medicine and surgery or podiatry.

(p) In every case considered by the board under this article regarding discipline or licensure, whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether probable cause exists to substantiate charges of disqualification due to any reason set forth in §30-3-14(c) of this ~~section~~ code. If probable cause is found to exist, all proceedings on the charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at the hearing, including the record of the final action taken: *Provided,* That any medical records, which were introduced at the hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of the records, may not be open to the public nor is the public entitled to the records.

(q) If the board receives notice that a physician or podiatrist has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital or a professional society, as defined in §30-3-14(b) of this ~~section~~ code, for three or more incidents during a five-year period, the board shall require the physician or podiatrist to practice under the

direction of a physician or podiatrist designated by the board for a specified period of time to be established by the board.

(r) Notwithstanding any other provisions of this article, the board may, at any time, on its own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the West Virginia State Bar's mediator referral service of certified mediators with expertise in professional disciplinary matters. The board and the physician or podiatrist may choose a mediator from that list. If the board and the physician or podiatrist are unable to agree on a mediator, the board shall designate a mediator from the list by neutral rotation. The mediation shall not be considered a proceeding open to the public, and any reports and records introduced at the mediation shall not become part of the public record. The mediator and all participants in the mediation shall maintain and preserve the confidentiality of all mediation proceedings and records. The mediator may not be subpoenaed or called to testify or otherwise be subject to process requiring disclosure of confidential information in any proceeding relating to or arising out of the disciplinary or licensure matter mediated: *Provided,* That any confidentiality agreement and any written agreement made and signed by the parties as a result of mediation may be used in any proceedings subsequently instituted to enforce the written agreement. The agreements may be used in other proceedings if the parties agree in writing.

(s) A physician licensed under this article may not be disciplined for providing expedited partner therapy in accordance with §16-4F-1 *et seq*.

(t) Whenever the board receives credible information that a licensee of the board is engaging or has engaged in criminal activity or the commitment of a crime under state or federal law, the board shall report the information, to the extent that sensitive or confidential information may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting required under federal law for reporting actions relating to health care providers to the United

States Department of Health and Human Services.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.

For the purposes of this article, the words or terms defined in this section have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

(1) An "accepted guideline" is a care or practice guideline for pain management developed by a nationally recognized clinical or professional association or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. An accepted guideline also includes policy or position statements relating to pain management issued by any West Virginia board included in §30-1-1 *et seq.* of the West Virginia Code with jurisdiction over various health care practitioners. Guidelines established primarily for purposes of coverage, payment, or reimbursement do not qualify as accepted practice or care guidelines when offered to limit treatment options otherwise covered by the provisions of this article.

(2) "Board" or "licensing board" means the West Virginia Board of Medicine, the West Virginia Board of Osteopathy, the West Virginia Board of Registered Nurses ~~or,~~ the West Virginia Board of Pharmacy, the West Virginia Board of Optometry, or the West Virginia Board of Dentistry.

(3) "Nurse" means a registered nurse licensed in the State of West Virginia pursuant to the provisions of §30-7-1 *et seq*.

(4) "Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

(5) "Pain-relieving controlled substance" includes, but is not limited to, an opioid or other drug classified as a Schedule II through V controlled substance and recognized as effective for pain relief, and excludes any drug that has no accepted medical use in the United States or lacks accepted safety for use in treatment under medical supervision including, but not limited to, any

drug classified as a Schedule I controlled substance.

(6) "Pharmacist" means a registered pharmacist licensed in the State of West Virginia pursuant to the provisions of §30-5-1 *et seq*.

~~(7) "Physician" means a physician licensed in the State of West Virginia pursuant to the provisions of article three or article fourteen of this chapter.~~

(7) "Prescriber" shall mean:

(A) A physician licensed pursuant to the provisions of §30-3-1 *et seq.* or §30-14-1 *et seq*;

(B) An advanced practice registered nurse with prescriptive authority as set forth in §30-7-15a;

(C) A dentist licensed pursuant to the provisions of §30-4-1 *et seq*.; and

(D) An optometrist licensed pursuant to the provisions of §30-8-1 *et seq.*

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

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

(1) In the case of a dying patient experiencing pain, the physician practices in accordance with an accepted guideline as defined in §30-3A-1 of this ~~article~~ code and discharges his or her professional obligation to relieve the dying patient's pain and promote the dignity and autonomy of the dying patient; or

(2) In the case of a patient who is not dying and is experiencing pain, the ~~physician~~ prescriber discharges his or her professional obligation to relieve the patient's pain, if the ~~physician~~ prescriber can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or

criminal action.

(b) A health care provider, as defined in §55-7B-2, with prescriptive authority is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

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

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

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

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

§30-3A-3. Acts subject to discipline or prosecution.

(a) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a ~~physician~~ prescriber for:

(1) Failing to maintain complete, accurate, and current records documenting the physical examination and medical history of the patient, the basis for the clinical diagnosis of the patient, and the treatment plan for the patient;

(2) Writing a false or fictitious prescription for a controlled substance scheduled in ~~§60A-2-1 *et seq.*;~~ §60A-2-201 *et seq.*;or

(3) Prescribing, administering, or dispensing a controlled substance in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, *et seq*. or chapter §60A-1-101 *et seq.* of this code; ~~or~~

(4) Diverting controlled substances prescribed for a patient to the physician's own personal use~~.~~; or

(5) Abnormal or unusual prescribing or dispensing patterns, or both as identified by the controlled substance monitoring program set forth in §60A-9-1 *et seq*. of this code. These prescribing and dispensing patterns may be discovered in the report filed with the appropriate board as required by section §60A-9-1 *et seq*.

(b) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a nurse or pharmacist for:

(1) Administering or dispensing a controlled substance in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, *et seq*. or §60A-1-101 of this code; or

(2) Diverting controlled substances prescribed for a patient to the nurse's or pharmacist's own personal use.

§30-3A-4. ~~Construction of article.~~ Abnormal or unusual prescribing practices.

~~This article may not be construed to legalize, condone, authorize or approve mercy killing or assisted suicide~~

(a) Upon receipt of the quarterly report set forth in §60A-9-1 *et seq*., the licensing board shall notify the prescriber that he or she has been identified as a potentially unusual or abnormal

prescriber. The board may take appropriate action, including but not limited to an investigation or disciplinary action based upon the findings provided in the report.

(b) A licensing board may upon receipt of credible and reliable information independent of the quarterly report as set forth in §60A-9-1 *et seq*. initiate an investigation into any alleged abnormal prescribing or dispensing practices of a licensee.

(c) The licensing boards and prescribers shall have all rights and responsibilities in their practice acts.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may initiate a complaint upon receipt of the quarterly report from the Board of Pharmacy as required by §60A-9-1 *et seq*. or upon receipt of credible information and shall, upon the receipt of a written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, certificate holder, or permittee has violated §30-4-19(a) of this ~~section~~ code or rules promulgated pursuant to this article.

(c) Upon a finding of probable cause to go forward with a complaint, the board shall provide a copy of the complaint to the licensee, certificate holder or permittee.

(d) Upon a finding that probable cause exists that the licensee, certificate holder or permittee has violated §30-4-19(g) of this ~~section~~ code or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for disciplinary action against the licensee, certificate holder, or permittee. Any hearing shall be held in accordance with the provisions of this article and shall require a violation to be proven by a preponderance of the evidence.

(e) A member of the complaint committee or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict, or revoke the license, certificate, or permit of, or impose probationary conditions upon, or take disciplinary action against, any licensee, certificate holder, or permittee for any of the following reasons:

(1) Obtaining a board authorization by fraud, misrepresentation, or concealment of material facts;

(2) Being convicted of a felony or a misdemeanor crime of moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a board authorization revoked or suspended, other disciplinary action taken, or an application for a board authorization denied by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice;

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare, or safety of the public;

(8) Having an incapacity that prevents a licensee from engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence, and safety to the public;

(9) Committing fraud in connection with the practice of dentistry or dental hygiene;

(10) Failing to report to the board one's surrender of a license or authorization to practice dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of

those authorities or bodies for conduct that would constitute grounds for action as defined in this section;

(11) Failing to report to the board any adverse judgment, settlement, or award arising from a malpractice claim arising related to conduct that would constitute grounds for action as defined in this section;

(12) Being guilty of unprofessional conduct as contained in the American Dental Association principles of ethics and code of professional conduct. The following acts are conclusively presumed to be unprofessional conduct:

(A) Being guilty of any fraud or deception;

(B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

(C) Abusing alcohol or drugs;

(D) Violating any professional confidence or disclosing any professional secret;

(E) Being grossly immoral;

(F) Harassing, abusing, intimidating, insulting, degrading, or humiliating a patient physically, verbally or through another form of communication;

(G) Obtaining any fee by fraud or misrepresentation;

(H) Employing directly or indirectly, or directing or permitting any suspended or unlicensed person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof;

(I) Practicing or offering or undertaking to practice dentistry under any firm name or trade name not approved by the board;

(J) Having a professional connection or association with, or lending his or her name to another, for the illegal practice of dentistry, or professional connection or association with any person, firm, or corporation holding himself or herself, themselves, or itself out in any manner contrary to this article;

(K) Making use of any advertising relating to the use of any drug or medicine of unknown

formula;

(L) Advertising to practice dentistry or perform any operation thereunder without causing pain;

(M) Advertising professional superiority or the performance of professional services in a superior manner;

(N) Advertising to guarantee any dental service;

(O) Advertising in any manner that is false or misleading in any material respect;

(P) Soliciting subscriptions from individuals within or without the state for, or advertising or offering to individuals within or without the state, a course or instruction or course materials in any phase, part, or branch of dentistry or dental hygiene in any journal, newspaper, magazine, or dental publication, or by means of radio, television, or United States mail, or in or by any other means of contacting individuals: *Provided*, That the provisions of this paragraph may not be construed so as to prohibit:

(i) An individual dentist or dental hygienist from presenting articles pertaining to procedures or technique to state or national journals or accepted dental publications; or

(ii) Educational institutions approved by the board from offering courses or instruction or course materials to individual dentists and dental hygienists from within or without the state; or

(Q) Engaging in any action or conduct which would have warranted the denial of the license.

(13) Knowing or suspecting that a licensee is incapable of engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence, and safety to the public, and failing to report any relevant information to the board;

(14) Using or disclosing protected health information in an unauthorized or unlawful manner;

(15) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;

(16) Failing to furnish to the board or its representatives any information legally requested by the board or failing to cooperate with or engaging in any conduct which obstructs an investigation being conducted by the board;

(17) Announcing or otherwise holding himself or herself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his or her practice to any branch of dentistry without first complying with the requirements established by the board for the specialty and having been issued a certificate of qualification in the specialty by the board;

(18) Failing to report to the board within 72 hours of becoming aware thereof any life threatening occurrence, serious injury, or death of a patient resulting from dental treatment or complications following a dental procedure;

(19) Failing to report to the board any driving under the influence and/or driving while intoxicated offense; or

(20) Violation of any of the terms or conditions of any order entered in any disciplinary action.

(i) For the purposes of §30-4-19(g) of this ~~section~~ code, ~~effective July 1, 2013,~~ disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Suspension;

(5) Revocation;

(6) Administrative fine, not to exceed $1,000 per day per violation;

(7) Mandatory attendance at continuing education seminars or other training;

(8) Practicing under supervision or other restriction; or

(9) Requiring the licensee or permittee to report to the board for periodic interviews for a

specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

(k) The board may defer disciplinary action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice dental care and to enter an approved treatment and monitoring program in accordance with the board's legislative rule: *Provided,* That this subsection does not apply to a licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to an offense relating to a controlled substance in any jurisdiction.

(l) A person authorized to practice under this article who reports or otherwise provides evidence of the negligence, impairment or incompetence of another member of this profession to the board or to any peer review organization is not liable to any person for making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-6. Powers and duties of the board.

(a) (1) The board has all the powers and duties set forth in this article, by rule, in §30-1-1 *et seq*. and elsewhere in law, including the power to:

~~(a)~~ (2) Hold meetings;

~~(b)~~ (3) Establish additional requirements for a license, permit, and registration;

~~(c)~~ (4) Establish procedures for submitting, approving, and rejecting applications for a license, permit and registration;

~~(d)~~ (5) Determine the qualifications of any applicant for a license, permit, and registration;

~~(e)~~ (6) Establish a fee schedule;

~~(f)~~ (7) Issue, renew, deny, suspend, revoke, or reinstate a license, permit, and registration;

~~(g)~~ (8) Prepare, conduct, administer and grade written, oral or written and oral examinations for a license and registration and establish what constitutes passage of the examination;

~~(h)~~ (9) Contract with third parties to administer the examinations required under the provisions of this article;

~~(i)~~ (10) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examination and the pass and fail rate;

~~(j)~~ (11) Regulate mail order pharmacies;

~~(k)~~ (12) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees and contract with persons necessary to enforce the provisions of this article. Inspectors shall be licensed pharmacists;

~~(l)~~ (13) Investigate alleged violations of the provisions of this article, legislative rules, orders, and final decisions of the board;

~~(m)~~ (14) Conduct disciplinary hearings of persons regulated by the board;

~~(n)~~ (15) Determine disciplinary action and issue orders;

~~(o)~~ (16) Institute appropriate legal action for the enforcement of the provisions of this article;

~~(p)~~ (17) Maintain an accurate registry of names and addresses of all persons regulated by the board;

~~(q)~~ (18) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

~~(r)~~ (19) Propose rules in accordance with the provisions of §29A-3-1 *et seq*. to implement the provisions of this article;

~~(s)~~ (20) Sue and be sued in its official name as an agency of this state;

~~(t)~~ (21) Confer with the Attorney General or his or her assistant in connection with legal

matters and questions; and

~~(u)~~ (22) Take all other actions necessary and proper to effectuate the purposes of this article.

(b) The Board is exempt from state purchasing laws, legislative rules, and policies for the purposes of spending grant money if the grant is in relation to substance use and controlled substances.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11. Denial, revocation or suspension of license; grounds for discipline.

(a) The board shall have the power to deny, revoke or suspend any license to practice registered professional nursing issued or applied for in accordance with the provisions of this article, or to otherwise discipline a licensee or applicant upon proof that he or she:

(1) Is or was guilty of fraud or deceit in procuring or attempting to procure a license to practice registered professional nursing; or

(2) Has been convicted of a felony; or

(3) Is unfit or incompetent by reason of negligence, habits, or other causes; or

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or

(5) Is mentally incompetent; or

(6) Is guilty of conduct derogatory to the morals or standing of the profession of registered nursing; or

(7) Is practicing or attempting to practice registered professional nursing without a license or reregistration; or

(8) Has demonstrated abnormal prescribing or dispensing practices pursuant to §30-3A-4; or

~~(8)~~ (9) Has willfully or repeatedly violated any of the provisions of this article.

(b) An advanced practice registered nurse licensed under this article may not be disciplined for providing expedited partner therapy in accordance with §16-4F-1 *et seq*. of this

code.

ARTICLE 8. OPTOMETRISTS.

§30-8-18. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information ~~and~~ or based upon the quarterly report from the Board of Pharmacy as required by §60A-9-1 *et seq*. shall upon the written complaint of any person cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules of the board.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, certificate holder or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated §30-8-18(g) of this ~~section~~ code or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated §30-8-18(g) of this ~~section~~ code or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, certificate or permit or the imposition of sanctions against the licensee, certificate holder, or permittee. Any hearing shall be held in accordance with the provisions of this article, and the provisions of §29A-5-1- and §29A-6-1 *et seq*. of this code.

(e) Any member of the board or the executive secretary of the board may issue subpoenas and subpoenas duces tecum on behalf of the board to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive secretary may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license, certificate or permit of, impose probationary conditions upon or

take disciplinary action against, any licensee, certificate holder, or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license, certificate or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk;

(4) Intentional violation of a lawful order;

(5) Having had an authorization to practice optometry revoked, suspended, other disciplinary action taken, by the proper authorities of another jurisdiction;

(6) Having had an application to practice optometry denied by the proper authorities of another jurisdiction;

(7) Exceeded the scope of practice of optometry;

(8) Aiding or abetting unlicensed practice;

(9) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare, or safety of the public; or

(10) False and deceptive advertising; this includes, but is not limited to, the following:

(A) Advertising "free examination of eyes," or words of similar import and meaning; or

(B) Advertising frames or mountings for glasses, contact lenses, or other optical devices which does not accurately describe the same in all its component parts.

(h) For the purposes of §30-8-18(g) of this ~~section~~ code disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or certificate holders to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

§30-10-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion and shall upon the written complaint of any person or based upon the quarterly report from the Board of Pharmacy as required by §60A-9-1 *et seq*. cause an investigation to be made to determine whether grounds exist for disciplinary action under this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee, permittee, registrant or certificate holder.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, permittee, registrant or certificate holder has violated any provision of this article.

(d) Upon a finding that probable cause exists that the licensee, permittee, registrant or certificate holder has violated this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license, permit, registration or certificate or the imposition of sanctions against the licensee, permittee, registrant or certificate holder. The hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by this article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny, refuse to renew, suspend or revoke the license, permit, registration or certificate of, impose probationary conditions upon or take disciplinary action against, any licensee, permittee, registrant or certificate holder for any of the following reasons:

(1) Obtaining a license, permit, registration or certificate by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct;

(4) Intentional violation of this article or lawful order;

(5) Having had a license or other authorization to practice revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization refused, revoked or suspended by the proper authorities of another jurisdiction, irrespective of intervening appeals and stays; or

(6) Engaging in any act which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 a day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee, permittee, registrant or certificate holder to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-12a. Initiation of suspension or revocation proceedings allowed and required; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; probable cause determinations; referrals to law enforcement authorities.

(a) The board may independently initiate suspension or revocation proceedings as well as initiate suspension or revocation proceedings based on information received from any person, including but not limited to the Board of Pharmacy as required by §60A-9-1 *et seq* of this code.

The board shall initiate investigations as to professional incompetence or other reasons for which a licensed osteopathic physician and surgeon may be adjudged unqualified if the board receives notice that three or more judgments or any combination of judgments and settlements resulting in five or more unfavorable outcomes arising from medical professional liability have been rendered or made against such osteopathic physician within a five-year period.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any osteopathic physician known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject osteopathic physician if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are provided, the subject osteopathic physician has 15 days to comment on the requested information and such comments must be considered by the board.

After the completion of a hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within 60 days the name of any member of the medical staff or any other osteopathic physician practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, together with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any

osteopathic physician by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

Any professional society in this state comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within 60 days of a final decision the name of such member, together with all pertinent information relating to such action.

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to an osteopathic physician in this state shall submit to the board the following information within 30 days from any judgment, dismissal or settlement of a civil action or of any claim involving the insured: The date of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information required by the board.

Within 30 days after a person known to be an osteopathic physician licensed or otherwise lawfully practicing medicine and surgery in this state or applying to be licensed is convicted of a felony under the laws of this state, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of such osteopathic physician or applicant, the nature of the offense committed and the final judgment and sentence of the court.

Upon a determination of the board that there is probable cause to believe that any person,

partnership, corporation, association, insurance company, professional society or other organization has failed or refused to make a report required by this subsection, the board shall provide written notice to the alleged violator stating the nature of the alleged violation and the time and place at which the alleged violator shall appear to show good cause why a civil penalty should not be imposed. The hearing shall be conducted in accordance with the provisions of §29A-5-1 *et seq*. After reviewing the record of such hearing, if the board determines that a violation of this subsection has occurred, the board shall assess a civil penalty of not less than $1,000 nor more than $10,000 against such violator. The board shall notify anyone assessed of the assessment in writing and the notice shall specify the reasons for the assessment. If the violator fails to pay the amount of the assessment to the board within 30 days, the Attorney General may institute a civil action in the Circuit Court of Kanawha County to recover the amount of the assessment. In any such civil action, the court's review of the board's action shall be conducted in accordance with the provisions of §29A-5-4 of this code.

Any person may report to the board relevant facts about the conduct of any osteopathic physician in this state which in the opinion of such person amounts to professional malpractice or professional incompetence.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.

The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of osteopathic physicians or physicians and surgeons of other schools of medicine to suspend, restrict or revoke the privileges or membership of such osteopathic physician.

(c) In every case considered by the board under this article regarding suspension, revocation or issuance of a license whether initiated by the board or upon complaint or information from any person or organization, the board shall make a preliminary determination as to whether

probable cause exists to substantiate charges of cause to suspend, revoke or refuse to issue a license as set forth in subsection (a), section eleven of this article. If such probable cause is found to exist, all proceedings on such charges shall be open to the public who are entitled to all reports, records, and nondeliberative materials introduced at such hearing, including the record of the final action taken: *Provided,* That any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his or her right to the confidentiality of such records, shall not be open to the public nor is the public entitled to such records. If a finding is made that probable cause does not exist, the public has a right of access to the complaint or other document setting forth the charges, the findings of fact and conclusions supporting such finding that probable cause does not exist, if the subject osteopathic physician consents to such access.

(d) If the board receives notice that an osteopathic physician has been subjected to disciplinary action or has had his or her credentials suspended or revoked by the board, a medical peer review committee, a hospital or professional society, as defined in subsection (b) of this section, for three or more incidents in a five-year period, the board shall require the osteopathic physician to practice under the direction of another osteopathic physician for a specified period to be established by the board.

(e) Whenever the board receives credible information that a licensee of the board is engaging or has engaged in criminal activity or the commitment of a crime under state or federal law, the board shall report the information, to the extent that sensitive or confidential information may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting required under federal law for reporting actions relating to health care providers to the United States Department of Health and Human Services.

ARTICLE 36. ACUPUNCTURISTS.

§30-36-2. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Acupuncture" means a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points.

(2) "Board" means the West Virginia Acupuncture Board.

(3) "License" means a license issued by the board to practice acupuncture.

(4) "Moxibustion" means the burning of mugwort on or near the skin to stimulate the acupuncture point.

(5) "Practice acupuncture" means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance and restoration of health.

(b) (1) "Practice acupuncture" includes:

~~(1)~~ (A) Stimulation of points of the body by the insertion of acupuncture needles;

~~(2)~~ (B) The application of moxibustion; and

~~(3)~~ (C) Manual, mechanical, thermal or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

(2) The practice of acupuncture does not include the procedure of auricular acupuncture when used in the context of a chemical dependency treatment program when the person is trained and approved by the National Acupuncture Detoxification Association or an equivalent certifying body.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

~~Whenever a medical services provider dispenses a controlled substance listed in~~

~~Schedule II, III or IV as established under the provisions of article two of this chapter or an opioid antagonist, or whenever a prescription for the controlled substance or opioid antagonist is filled by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for outpatient use; or (iii) a pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the Board of Pharmacy pursuant to this article, report the following information, as applicable:~~

(a) The following individuals shall report the required information to the controlled substance monitoring database when:

(1) A medical services provider dispenses a controlled substance listed in Schedule II, III, IV, V or an opioid antagonist;

(2) A prescription for the controlled substance or opioid antagonist is filled by:

(A) A pharmacist or pharmacy in this state;

(B) A hospital, or other health care facility, for outpatient use; or

(C) A pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state; and

(3) A pharmacist or pharmacy sells an opioid antagonist.

(b) The above individuals shall in a manner prescribed by rules promulgated by the Board of Pharmacy pursuant to this article, report the following information, as applicable:

(1) The name, address, pharmacy prescription number and Drug Enforcement Administration controlled substance registration number of the dispensing pharmacy or the dispensing physician or dentist;

(2) The full legal name, address and birth date of the person for whom the prescription is written;

(3) The name, address and Drug Enforcement Administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II, III, and IV controlled substance or opioid antagonist dispensed;

(5) The quantity and dosage of the Schedule II, III, and IV controlled substance or opioid antagonist dispensed;

(6) The date the prescription was written and the date filled;

(7) The number of refills, if any, authorized by the prescription;

(8) If the prescription being dispensed is being picked up by someone other than the patient on behalf of the patient, information about the person picking up the prescription as set forth on the person's government-issued photo identification card shall be retained in either print or electronic form until such time as otherwise directed by rule promulgated by the Board of Pharmacy; and

(9) The source of payment for the controlled substance dispensed.

~~(b)~~ (c) Whenever a medical services provider treats a patient for an overdose that has occurred as a result of illicit or prescribed medication, the medical service provider shall report the full legal name, address and birth date of the person who is being treated, including any known ancillary evidence of the overdose. The Board of Pharmacy shall coordinate with the Division of Justice and Community Services and the Office of Drug Control Policy regarding the collection of overdose data.

~~(c)~~ (d) The Board of Pharmacy may prescribe by rule promulgated pursuant to this article the form to be used in prescribing a Schedule II, III, and IV substance or opioid antagonist if, in the determination of the Board of Pharmacy, the administration of the requirements of this section would be facilitated.

~~(d)~~ (e) Products regulated by the provisions of §60A-10-1 *et seq*. shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.

~~(e)~~ (f) Reporting required by this section is not required for a drug administered directly to a patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to

a patient by a practitioner. The quantity dispensed by a prescribing practitioner to his or her own patient may not exceed an amount adequate to treat the patient for a maximum of 72 hours with no greater than two 72-hour cycles dispensed in any 15-day period of time.

~~(f)~~ (g) The Board of Pharmacy shall notify a physician prescribing buprenorphine or buprenorphine/naloxone within 60 days of the availability of an abuse deterrent or a practitioner-administered form of buprenorphine or buprenorphine/naloxone if approved by the Food and Drug Administration as provided in FDA Guidance to Industry. Upon receipt of the notice, a physician may switch their patients using buprenorphine or buprenorphine/naloxone to the abuse deterrent or a practitioner-administered form of the drug.

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

(a)(1) The information required by this article to be kept by the Board of Pharmacy is confidential and not subject to the provisions of §29B-1-1 *et seq.*of this code or obtainable as discovery in civil matters absent a court order and is open to inspection only by inspectors and agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as members of a federally affiliated drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services, duly authorized agents of the Office of the Chief Medical Examiner for use in post-mortem examinations, duly authorized agents of the Office of Health Facility Licensure and Certification for use in certification, licensure and regulation of health facilities, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III, and IV controlled substances, prescribing practitioners and pharmacists, a dean of any medical school or his or her designee located in this state to access prescriber level data to monitor prescribing practices of faculty members, prescribers and residents enrolled in a degree program at the school where he or she serves as dean, a physician

reviewer designated by an employer of medical providers to monitor prescriber level information of prescribing practices of physicians, advance practice registered nurses or physician assistant in their employ, and a chief medical officer of a hospital or a physician designated by the chief executive officer of a hospital who does not have a chief medical officer, for prescribers who have admitting privileges to the hospital or prescriber level information, and persons with an enforceable court order or regulatory agency administrative subpoena. All law-enforcement personnel who have access to the Controlled Substances Monitoring Program database shall be granted access in accordance with applicable state laws and the Board of Pharmacy's rules, shall be certified as a West Virginia law-enforcement officer and shall have successfully completed training approved by the Board of Pharmacy. All information released by the Board of Pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe or dispense controlled substances may request specific data related to their Drug Enforcement Administration controlled substance registration number or for the purpose of providing treatment to a patient: *Provided*, That the West Virginia Controlled Substances Monitoring Program Database Review Committee established in subsection (b) of this section is authorized to query the database to comply with said subsection.

(2) Subject to the provisions of subdivision (1) of this subsection, the Board of Pharmacy shall also review the West Virginia Controlled Substance Monitoring Program database and issue reports that identify abnormal or unusual practices of patients and practitioners with prescriptive authority who exceed parameters as determined by the advisory committee established in this section. The Board of Pharmacy shall communicate with practitioners and dispensers to more effectively manage the medications of their patients in the manner recommended by the advisory committee. All other reports produced by the Board of Pharmacy shall be kept confidential. The Board of Pharmacy shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly or

statistical purposes, and may be shared with the West Virginia Department of Health and Human Resources for those purposes, as long as the identities of persons or entities and any personally identifiable information, including protected health information, contained therein shall be redacted, scrubbed or otherwise irreversibly destroyed in a manner that will preserve the confidential nature of the information. No individual or entity required to report under section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information to the Board of Pharmacy as required under and in accordance with the provisions of this article.

(3) The Board of Pharmacy shall establish an advisory committee to develop, implement and recommend parameters to be used in identifying abnormal or unusual usage patterns of patients and practitioners with prescriptive authority in this state. This advisory committee shall:

(A) Consist of the following members: A physician licensed by the West Virginia Board of Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed by the West Virginia Board of Osteopathic Medicine, a licensed physician certified by the American Board of Pain Medicine, a licensed physician board certified in medical oncology recommended by the West Virginia State Medical Association, a licensed physician board certified in palliative care recommended by the West Virginia Center on End of Life Care, a pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the West Virginia Academy of Family Physicians, an expert in drug diversion and such other members as determined by the Board of Pharmacy.

(B) Recommend parameters to identify abnormal or unusual usage patterns of controlled substances for patients in order to prepare reports as requested in accordance with subdivision (2) of this subsection.

(C) Make recommendations for training, research and other areas that are determined by the committee to have the potential to reduce inappropriate use of prescription drugs in this state, including, but not limited to, studying issues related to diversion of controlled substances used for

the management of opioid addiction.

(D) Monitor the ability of medical services providers, health care facilities, pharmacists and pharmacies to meet the 24-hour reporting requirement for the Controlled Substances Monitoring Program set forth in section three of this article, and report on the feasibility of requiring real-time reporting.

(E) Establish outreach programs with local law enforcement to provide education to local law enforcement on the requirements and use of the Controlled Substances Monitoring Program database established in this article.

(b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring Program Database Review Committee of individuals consisting of two prosecuting attorneys from West Virginia counties, two physicians with specialties which require extensive use of controlled substances and a pharmacist who is trained in the use and abuse of controlled substances. The review committee may determine that an additional physician who is an expert in the field under investigation be added to the team when the facts of a case indicate that the additional expertise is required. The review committee, working independently, may query the database based on parameters established by the advisory committee. The review committee may make determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers in the system or abnormal or unusual usage patterns of controlled substances by patients which the review committee has reasonable cause to believe necessitates further action by law enforcement or the licensing board having jurisdiction over the practitioners or dispensers under consideration. The licensing board having jurisdiction over the practitioner or dispenser under consideration shall report back to the Board of Pharmacy regarding any findings, investigation or discipline resulting from the findings of the review committee within 30 days of resolution of any action taken by the licensing board resulting from the information provided by the Board of Pharmacy. The review committee shall also review notices provided by the chief medical examiner pursuant to §61-12-10(h) of this code and determine on a case-by-case basis

whether a practitioner who prescribed or dispensed a controlled substance resulting in or contributing to the drug overdose may have breached professional or occupational standards or committed a criminal act when prescribing the controlled substance at issue to the decedent. Only in those cases in which there is reasonable cause to believe a breach of professional or occupational standards or a criminal act may have occurred, the review committee shall notify the appropriate professional licensing agency having jurisdiction over the applicable practitioner or dispenser and appropriate law-enforcement agencies and provide pertinent information from the database for their consideration. The number of cases identified shall be determined by the review committee based on a number that can be adequately reviewed by the review committee. The information obtained and developed may not be shared except as provided in this article and is not subject to the provisions of §29B-1-1 *et seq.* of this code or obtainable as discovering in civil matters absent a court order.

(c) The Board of Pharmacy is responsible for establishing and providing administrative support for the advisory committee and the West Virginia Controlled Substances Monitoring Program Database Review Committee. The advisory committee and the review committee shall elect a chair by majority vote. Members of the advisory committee and the review committee may not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory committee, after consultation with the licensing boards set forth in subdivision (4) of this section and in accordance with the provisions of §29A-3-1 *et seq*. The Legislature finds that as a result of the changes made to this section during the course of the 2018 Regular Session of the Legislature constitutes an emergency and the Board of Pharmacy shall promulgate emergency rules pursuant to the provisions of §29A-3-15 to incorporate these modifications. The legislative rules must include, but shall not be limited to, the following matters:

(1) Identifying parameters used in identifying abnormal or unusual prescribing or

dispensing patterns;

(2) Processing parameters and developing reports of abnormal or unusual prescribing or dispensing patterns for patients, practitioners and dispensers;

(3) Establishing the information to be contained in reports and the process by which the reports will be generated and disseminated; ~~and~~

(4) Dissemination of these reports at least quarterly to:

(A) The West Virginia Board of Medicine codified at §30-3-1 *et seq.*;

(B) The West Virginia Board of Osteopathic Medicine codified at §30-14-1 *et seq.*;

(C) The West Virginia Board of Examiners for Registered Professional Nurses codified at §30-7-1 *et seq.*;

(D) The West Virginia Board of Dentistry codified at §30-4-1 *et seq.*;

(E) The West Virginia Board of Optometry codified at §30-8-1 *et seq.*; and

(F) The West Virginia Board of Veterinary Medicine codified at §30-10-1 *et seq.*

~~(4)~~ (5) Setting up processes and procedures to ensure that the privacy, confidentiality, and security of information collected, recorded, transmitted and maintained by the review committee is not disclosed except as provided in this section.

(e) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program database pursuant to this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database.

(f) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or declining to prescribe or dispense a Schedule II, III, or IV controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense.

(g) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in the prescribing or dispensing practitioner's judgment, may be in violation of §60A-4-410, based

on information obtained and reviewed from the controlled substances monitoring database. A prescribing or dispensing practitioner who makes a notification pursuant to this subsection is immune from any civil, administrative or criminal liability that otherwise might be incurred or imposed because of the notification if the notification is made in good faith.

(h) Nothing in the article may be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program database except as provided in section five-a of this article.

(i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled Substance Monitoring Program to the Legislative Oversight Commission on Health and Human Resources Accountability with recommendations for needed legislation no later than January 1 of each year.

§60A-9-5a. Practitioner requirements to access database and conduct annual search of the database; required rulemaking.

(a) All practitioners, as that term is defined in §60A-2-101 who prescribe or dispense Schedule II, III or IV controlled substances shall register with the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or other electronic access to the program database: *Provided*, That compliance with the provisions of this subsection must be accomplished within thirty days of the practitioner obtaining a new license: *Provided, however,* That the Board of Pharmacy may renew a practitioner's license without proof that the practitioner meet the requirements of this subsection.

~~(b) Upon initially prescribing or dispensing any pain-relieving controlled substance for a patient for whom they are providing pain-relieving controlled substances as part of a course of treatment for chronic, nonmalignant pain but who are not suffering from a terminal illness and at least annually thereafter should the practitioner or dispenser continue to treat the patient with controlled substances,~~ all persons who prescribe any benzodiazepine to a patient, ~~all persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement~~

~~Administration registration identification number and, who are licensed by the Board of Medicine as set forth in §30-3-1 *et seq*., the Board of Registered Professional Nurses as set forth in §30-7-1 *et seq.*, the Board of Dental Examiners as set forth in §30-7-1 *et seq.*, and the Board of Osteopathic Medicine as set forth in §30-14-1 *et seq.* shall access the West Virginia Controlled Substances Monitoring Program database for information regarding specific patients. The information obtained from accessing the West Virginia Controlled Substances Monitoring Program database for the patient shall be documented in the patient's medical record maintained by a private prescriber or any inpatient facility licensed pursuant to the provisions of chapter sixteen of this code. A pain-relieving controlled substance shall be defined as set forth in §30-3A-1.~~

(b) All persons with prescriptive or dispensing authority and in possession of a valid Drug Enforcement Administration registration identification number and, who are licensed by the Board of Medicine as set forth in §30-3-1 *et seq*., the Board of Registered Professional Nurses as set forth in §30-7-1 *et seq.*, the Board of Dental Examiners as set forth in §30-7-1 *et seq.*, the Board of Osteopathic Medicine as set forth in §30-14-1 *et seq.,* the West Virginia Board of Veterinary Medicine as set forth in §30-10-1 *et seq.,* and the West Virginia Board of Optometrists as set forth in §30-8-1- et seq., upon initially prescribing or dispensing any schedule II controlled substance, any opioid or any benzodiazepine to a patient who is not suffering from a terminal illness, and at least annually thereafter should the practitioner or dispenser continue to treat the patient with a controlled substance, shall access the West Virginia Controlled Substances Monitoring Program database for information regarding specific patients. The information obtained from accessing the West Virginia Controlled Substances Monitoring Program database for the patient shall be documented in the patient's medical record maintained by a private prescriber or any inpatient facility licensed pursuant to the provisions of chapter sixteen of this code. A pain-relieving controlled substance shall be defined as set forth in §30-3A-1.

(c) The various board mentioned in subsection (b) of this section shall promulgate both

emergency and legislative rules pursuant to the provisions of §29A-3-1 *et seq*. to effectuate the provisions of this article.

NOTE: The purpose of this bill is to reduce the prescription drugs.

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