

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 502

BY SENATORS DRENNAN, CLINE, MAYNARD, AND RUCKER

[Introduced February 7, 2018; Referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §30-21A-1, §30-21A-2, §30-21A-3, §30-21A-4, §30-21A-5, §30-21A-6, §30-
 3 21A-7, §30-21A-8, §30-21A-9, §30-21A-10, §30-21A-11, and §30-21A-12, all relating to
 4 creating the Patient Safety Evidence-Based Prescribing Act; providing for the preparation
 5 for prescriptive authority and authorization; providing for certification renewal; providing
 6 for the compliance with state and federal statutes; requiring notification to the Board of
 7 Pharmacy; establishing prescribing standards; providing for collaboration with primary
 8 care providers; providing for the amending and potential conflict with other code provision;
 9 defining terms; providing a short title; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. THE PATIENT SAFETY EVIDENCE-BASED PRESCRIBING ACT.

§30-21A-1. Short title.

1 This article shall be known, and may be cited as the Patient Safety Evidence-Based
 2 Prescribing Act.

§30-21A-2. Definitions.

1 As used in this article, unless the context clearly requires otherwise:

2 “Board” means the board of examiners of psychologists created by §30-21-1 et seq. of
 3 this code.

4 “Device” has the same meaning as provided in other sections of state law where the term
 5 “device” is used.

6 “Drug” has the same meaning as provided in other sections of state law where the term
 7 “drug” is used.

8 “Evidence-based” means studies that have been reviewed and reported by the Cochrane
 9 Collaborative and published in the Cochrane Review.

10 “Health service provider” means a licensed psychologist who is duly trained and
 11 experienced in the delivery of preventive, assessment, diagnostic, and therapeutic intervention

12 services relative to the psychological and physical health of consumers and who has done all of
13 the following:

14 (A) Completed an internship and supervised experience in health care settings; and

15 (B) Been licensed as a psychologist at the independent practice level.

16 “Licensed psychologist” means an individual to whom a license has been issued pursuant
17 to the provisions of this article, which license is in force and has not been suspended or revoked.

18 “Medical psychologist” means a health service provider who has received from the board,
19 pursuant to this article, a valid certificate granting prescriptive authority, and the certificate has
20 not been revoked or suspended. The title “medical psychologist” shall not be restricted only to
21 those psychologists who have been certified by the board to prescribe psychotropic medications
22 and may be used by other licensed psychologists who demonstrate training and experience in
23 the specialty.

24 “Narcotics” mean natural and synthetic opioid analgesics, and their derivatives used to
25 relieve pain.

26 “Prescription” has the same meaning provided and used in other provisions of this code
27 where the term “prescription” is used. “Prescription” also means an oral, written, or electronic
28 transmission order that is:

29 (A) Given individually for the person or persons for whom ordered that includes all of the
30 following:

31 (i) The name or names and address of the patient or patients;

32 (ii) The name and quantity of the drug or device prescribed and the directions for use;

33 (iii) The date of issue;

34 (iv) Either rubber stamped, typed, or printed by hand or typeset, the name, address, and
35 telephone number of the prescriber, his or her license classification, and his or her federal registry
36 number, if a controlled substance is prescribed;

37 (v) A legible, clear notice of the condition for which the drug is being prescribed, if
38 requested by the patient or patients; and

39 (vi) If in writing, signed by the prescriber issuing the order.

40 (B) "Electronic transmission prescription" includes both image and data prescriptions.
41 "Electronic image transmission prescription" means any prescription order for which a facsimile
42 of the order is received by a pharmacy from a licensed prescriber. "Electronic data transmission
43 prescription" means any prescription order, other than an electronic image transmission
44 prescription, that is electronically transmitted from a licensed prescriber to a pharmacy.; and

45 (C) The use of commonly used abbreviations shall not invalidate an otherwise valid
46 prescription.

47 "Prescriptive authority" means the authority to prescribe, discontinue, order, administer,
48 and/or dispense without charge, drugs or controlled substances recognized for or customarily
49 used in the inpatient or outpatient diagnosis, treatment, and the evaluation and management of
50 individuals with psychiatric, mental, cognitive, nervous, emotional, addictive, developmental or
51 behavioral disorders, excluding narcotics and order or utilize other procedures, consultations,
52 devices and tests related thereto.

53 "Primary care provider" means a licensed physician, nurse practitioner or any other
54 healthcare provider licensed by a state to legally act as a primary care provider of physical health

55 "Psychologist" is a person represents himself or herself to be a psychologist when the
56 person holds himself or herself out to the public by any title or description of services incorporating
57 the words "psychology," "psychological," "psychologist," "psychology consultation," "psychology
58 consultant," "psychometry," "psychometrics" or "psychometrist," "psychotherapy,"
59 "psychotherapist," "psychoanalysis," or "psychoanalyst," or when the person holds himself or
60 herself out to be trained, experienced, or an expert in the field of psychology.

§30-21A-3. The practice of psychology.

1 The practice of psychology does not include any of the following:

- 2 (1) Prescribing drugs or devices, except by medical psychologists who have received a
3 certificate to prescribe medications;
4 (2) Performing surgery; or
5 (3) Administering electroconvulsive therapy.

§30-21A-4. Preparation for prescriptive authority and certification.

1 (a) The board shall establish and administer a certification process to grant psychologists
2 prescriptive authority. Each medical psychologist-in-training shall be registered with the board
3 during the supervised clinical training and shall prescribe under the supervision and license of a
4 qualified prescriber.

5 (b) The board shall develop procedures for the administration of an appropriate, valid and
6 recognized examination and approved by the board. The board shall charge applicants
7 reasonable fees for the issuance of, and renewal of, a certificate to cover the costs of
8 administering the certification process and the examination. These fees shall be deposited in a
9 Psychology Fund.

10 (c) Each applicant for certification as a “medical psychologist” shall show by official
11 transcript or other official evidence satisfactory to the board that he or she has successfully
12 completed the following through an organized Sequence of Basic Training in Human Systems
13 and psychopharmacological courses. Coursework shall be consistent with the following:

- 14 (1) Coursework in basic anatomy and physiology;
15 (2) Coursework in biochemistry;
16 (3) Coursework in basic pharmacology;
17 (4) Coursework in clinical medicine;
18 (5) Coursework in diseases of the cardiac system;
19 (6) Coursework in diseases of the hepatic and renal systems;
20 (7) Coursework in diseases of the respiratory system;
21 (8) Coursework interpreting laboratory studies and physical assessment;

22 (9) Coursework in psychotropic pharmacotherapy; and

23 (10) Coursework interpreting pharmacological research and prescribing ethics.

24 (d) At its discretion, the board may certify a psychologist from a federal or other state
25 jurisdiction that has authorized the psychologist to prescribe if the board determines that the
26 psychologist has practiced with competence. Also, the board may, in its discretion, certify a
27 psychologist to practice as a medical psychologist if the psychologist has lawfully prescribed in
28 any branch of the military or under another professional license which authorizes prescribing and
29 the training and experience under the other license is consistent with the training standards
30 required for a medical psychologist. At the discretion of the board, approved programs may give
31 credit for required didactic science courses taken in other educational institutions that would meet
32 the educational requirements of the program.

33 (e) A licensed psychologist who possesses an unrestricted board certification issued by
34 the American Board of Medical Psychology shall be deemed to have met all of the requirements
35 for a certificate authorizing prescriptive authority under this article.

36 (f) A licensed psychologist who presents the board with either a post doctoral master of
37 science degree in clinical psychopharmacology or a professional certificate in clinical
38 psychopharmacology that was issued prior to the start date of this legislation shall be deemed to
39 have met the educational requirements of this section.

40 (g) Relevant supervised clinical experience to be determined by each state and consistent
41 with obtaining skills and applied knowledge that relates to prescribing psychotropic medications.
42 The following clinical competencies of the supervisory experience are recommended:

43 (1) Possess knowledge of a comprehensive physical examination and mental status
44 evaluation;

45 (2) Possess knowledge and ability to systematically evaluate and document each of the
46 major body systems;

47 (3) Ability to systematically conduct a patient and family medical history and to
48 communicate the findings in written and verbal form;

49 (4) Ability to order and interpret appropriate tests (e.g., psychometric, laboratory and
50 radiological) to aid in the prescribing of a medication;

51 (5) Use of appropriate processes, including established diagnostic criteria (e.g., ICD-9), to
52 determine primary and alternate diagnose;

53 (6) Ability to utilize all available data to select the most appropriate treatment alternatives;

54 (7) Developing and understanding how a medical psychologist works with other
55 professionals in an advisory or collaborative manner to effect treatment of a patient;

56 (8) Application, monitoring and modification, as needed, of treatments; and

57 (9) The ability to evaluate and utilize unbiased pharmacological and
58 psychopharmacological research studies resulting in safer and better care for patients.

§30-21A-5. Renewal of certification.

1 The board shall set forth the requirements for renewal of a certificate of a medical
2 psychologist for each license renewal period. Each applicant for renewal of a certificate for
3 prescriptive authority shall present evidence of having completed approved mandatory continuing
4 education in the areas of medical psychology, psychopharmacology, and related prescribing
5 practice as set forth by the board. Twenty continuing education units per certification period are
6 recommended.

§30-21A-6. Complying with federal and state statutes.

1 (a) Each medical psychologist shall hold an unrestricted license to practice psychology
2 and shall comply with all state and federal rules and regulations relating to the prescribing,
3 dispensing, and recordkeeping for drugs or devices. If the board determines that it facilitates
4 administration of this act to identify a medical psychologist by another name that is consistent with
5 other jurisdictions, it may do so.

6 (b) A written order of a "medical psychologist" shall include his or her identification number

7 assigned by the board indicating certification to prescribe.

8 (c) A “medical psychologist” may not delegate the prescribing of medication to any other
9 person except for a supervised trainee in a recognized clinical training program that is preparing
10 a medical psychologist to prescribe medications.

11 (d) Records of all prescriptions shall be maintained in client records.

§30-21A-7. Board of Pharmacy notification.

1 (a) The board shall routinely transmit to the Board of Pharmacy a list of medical
2 psychologists containing, at a minimum, all of the following information:

3 (1) The name of the psychologist;

4 (2) The unique identification number indicating certification to prescribe; and

5 (3) The effective date of prescriptive authority.

6 (b) The board shall promptly forward to the Board of Pharmacy within 30 days of acquiring
7 the names and identification numbers of psychologists added to or deleted from the annual list of
8 psychologists certified to prescribe.

9 (c) The board shall notify the Board of Pharmacy within 30 days upon termination,
10 suspension, or reinstatement of a psychologist's authority to prescribe.

§30-21A-8. Suspension and revocation of prescriptive authority.

1 The board may refuse to issue any registration, certification or license, or may issue a
2 registration or license with terms and conditions, or may suspend or revoke the registration or
3 license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of
4 unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

5 (1) Conviction of a crime substantially related to the qualifications, functions or duties of a
6 psychologist or psychological assistant;

7 (2) Use of any controlled substance of the state's Health and Safety Code, or dangerous
8 drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any

9 other person, or the public, or to an extent that this use impairs his or her ability to perform the
10 work of a psychologist with safety to the public;

11 (3) Fraudulently or neglectfully misrepresenting the type or status of license or registration
12 actually held;

13 (4) Impersonating another person holding a psychology license or allowing another person
14 to use his or her license or registration;

15 (5) Using fraud or deception in applying for a license or registration or in passing the
16 examination provided for in this article;

17 (6) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or
18 remuneration, whether monetary or otherwise, for the referral of patients;

19 (7) Willful, unauthorized communication of information received in professional
20 confidence;

21 (8) Violating any rule of professional conduct promulgated by the board and set forth in
22 regulations duly adopted under this article;

23 (9) Being grossly negligent in the practice of his or her profession;

24 (10) Violating any of the provisions of this article or regulations duly adopted thereunder;

25 (11) The aiding or abetting of any person to engage in the unlawful practice of psychology;

26 (12) The suspension, revocation or imposition of probationary conditions by another state

27 or country of a license or certificate to practice psychology or as a psychological assistant issued

28 by that state or country to a person also holding a license or registration issued under this article

29 if the act for which the disciplinary action was taken constitutes a violation of this section;

30 (13) The commission of any dishonest, corrupt, or fraudulent act;

31 (14) Prescribing outside the parameters required in this article;

32 (15) Any act of sexual abuse, or sexual relations with a patient, or sexual misconduct

33 which is substantially related to the qualifications, functions or duties of a psychologist or

34 psychological assistant;

35 (16) Functioning outside of his or her particular field or fields of competence as established
36 by his or her education, training, and experience;

37 (17) Willful failure to submit, on behalf of an applicant for licensure, verification of
38 supervised experience to the board;

39 (18) Repeated acts of negligence; and

40 (19) Violating any law or statute relating to prescribing or dispensing drugs

§30-21A-9. Prescribing standards.

1 Medical psychologists who are authorized to prescribe medications shall adhere to the
2 following prescribing standards:

3 (1) Medical psychologists shall consider prescribing a medication only after a patient has
4 been provided with information about the potential side effects and potential harm associated with
5 the specific medication recommended for that patient. Such information shall also include
6 information stating that the patient has the right to refuse any treatment recommended in the
7 treatment plan;

8 (2) A medical psychologist shall not prescribe a medication as a first line treatment for mild
9 to moderate mood disorders, sleep disorders, anxiety disorders and attentional deficit disorders.
10 Medications may be considered only after a suitable course of psychotherapy or behavioral
11 intervention has been completed and where little or no progress has occurred. If a medication
12 subsequently is prescribed, the patient shall also be provided with psychotherapy, counseling or
13 other suitable behavioral intervention while remaining on the medication;

14 (3) Should a medication become part of a patient's treatment regimen, the medical
15 psychologist shall not:

16 (A) Prescribe any medication that has not been evaluated and assessed to be effective
17 as reported in at least one study by the Cochrane Review;

18 (B) Prescribe any medication that is considered "off label." Off label is defined as any
19 medication that has not specifically been approved by the Federal Drug Administration for the

20 specific condition being experienced by the patient.

21 (C) Prescribe any active medication as a placebo;

22 (D) Prescribe more than two drugs for a patient's presenting disorder or symptoms;

23 (E) Prescribe a medication for the lifetime of the patient. Medications regimens must be
24 routinely evaluated and should be terminated if the patient's condition and symptoms are not
25 significantly improved within two months of treatment;

26 (F) Prescribe a medication above the upper limit of a dosage for which the medication has
27 been approved;

28 (G) Prescribe a medication that has not out performed a placebo or other medication in its
29 class. When assessing the performance of a medication, a medical psychologist shall utilize the
30 findings, if any, reported and published by the Cochrane Collaboration and if any other two articles
31 in peer reviewed professional journals have demonstrated a placebo is performing as well or
32 outperforming the medication; and

33 (H) Prescribing medications is an acquired proficiency and is not a practice specialty. A
34 medical psychologist's practice shall not comprise medication only services or comprise more
35 than 50 percent of an out-patient practice. Except in an emergency, a medical psychologist shall
36 not prescribe a medication for any patient that is not a regular patient of the medical psychologist.
37 A medical psychologist employed in an inpatient, emergency department or on-call setting shall
38 be exempted from this provision;

39 (4) A medical psychologist shall not accept any reward, perk or incentive from any
40 pharmaceutical manufacturer, distributor, or drug industry representative or third party connected
41 with the manufacture, promotion or sale of a medication; and

42 (5) A medical psychologist shall not accept any sample medications from any
43 pharmaceutical manufacturer, distributor, or drug industry representative or third party connected
44 with the manufacture or sale of a medication.

§30-21A-10. Collaboration with primary care providers.

1 Medical psychologists who are authorized to prescribe psychotropic medications shall
 2 adhere to the following:

3 (1) Any patient considered for medication shall first be evaluated and cleared by the
 4 patient's primary care provider as to the patient's physical health and any contraindication for a
 5 psychotropic medication under consideration. Should the patient not have a designated primary
 6 care provider, the medical psychologist shall make every attempt to arrange a suitable referral.

7 (2) Routinely, medical psychologists shall provide the patient's designated primary care
 8 provider with a report of the patient's condition and medication regimen no less than once per
 9 year while under the psychologist's care.

§30-21A-11. Amending other related statutes; conflict.

1 (a) All provisions in this code that authorize who may prescribe medications is hereby
 2 amended to include "medical psychologists".

3 (b) All provisions in this code that authorize who may take orders for a prescription is
 4 hereby amended to include "medical psychologists."

5 (c) This article is meant to be interpreted in conjunction with §30-21-1 et seq. of this code.
 6 However, if a conflict should arise between that article and this article, this article controls.

§§30-21A-12, Rulemaking.

1 The board shall propose rules for legislative approval in accordance with §29A-3-1 et seq.
 2 of this code to effectuate the purposes of this article.

NOTE: The purpose of this bill is to create the Patient Safety Evidence Based Prescribing Act. The bill establishes the practice of psychology. The bill provides for the preparation for prescriptive authority and authorization. The bill provides for certification renewal. The bill provides for the compliance with state and federal statutes. The bill requires notification to the Board of Pharmacy. The bill establishes prescribing standards. The bill provides for collaboration with primary care providers. The bill provides for the amending and potential conflict with other code provision. The bill defines terms. The bill provides a short title. The bill requires rulemaking.

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