

**H. B. 2447**

(By Delegates Ferro, Varner and Kominar)  
[Introduced January 13, 2011; referred to the  
Committee on Health and Human Resources then the  
Judiciary.]

A BILL to amend and reenact §55-7B-2 of the Code of West Virginia,  
1931, as amended, relating to adding pharmacist and pharmacy  
to the definition of "health care provider" as used in the  
Medical Professional Liability Act.

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

That §55-7B-2 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.**

**§55-7B-2. Definitions.**

(a) "Board" means the state Board of Risk and Insurance  
Management.

(b) "Collateral source" means a source of benefits or  
advantages for economic loss that the claimant has received from:

(1) Any federal or state act, public program or insurance  
which provides payments for medical expenses, disability benefits,

1 including workers' compensation benefits, or other similar  
2 benefits. Benefits payable under the Social Security Act are not  
3 considered payments from collateral sources except for Social  
4 Security disability benefits directly attributable to the medical  
5 injury in question;

6 (2) Any contract or agreement of any group, organization,  
7 partnership or corporation to provide, pay for or reimburse the  
8 cost of medical, hospital, dental, nursing, rehabilitation, therapy  
9 or other health care services or provide similar benefits;

10 (3) Any group accident, sickness or income disability  
11 insurance, any casualty or property insurance (including automobile  
12 and homeowners' insurance) which provides medical benefits, income  
13 replacement or disability coverage, or any other similar insurance  
14 benefits, except life insurance, to the extent that someone other  
15 than the insured, including the insured's employer, has paid all or  
16 part of the premium or made an economic contribution on behalf of  
17 the plaintiff; or

18 (4) Any contractual or voluntary wage continuation plan  
19 provided by an employer or otherwise or any other system intended  
20 to provide wages during a period of disability.

21 (c) "Consumer price index" means the most recent consumer  
22 price index for all consumers published by the United States  
23 Department of Labor.

24 (d) "Emergency condition" means any acute traumatic injury or  
25 acute medical condition which, according to standardized criteria

1 for triage, involves a significant risk of death or the  
2 precipitation of significant complications or disabilities,  
3 impairment of bodily functions, or, with respect to a pregnant  
4 woman, a significant risk to the health of the unborn child.

5 (e) "Health care" means any act or treatment performed or  
6 furnished, or which should have been performed or furnished, by any  
7 health care provider for, to or on behalf of a patient during the  
8 patient's medical care, treatment or confinement.

9 (f) "Health care facility" means any clinic, hospital, nursing  
10 home or assisted living facility, including personal care home,  
11 residential care community and residential board and care home, or  
12 behavioral health care facility or comprehensive community mental  
13 health/mental retardation center, in and licensed by the State of  
14 West Virginia and any state-operated institution or clinic  
15 providing health care.

16 (g) "Health care provider" means a person, partnership,  
17 corporation, professional limited liability company, health care  
18 facility or institution licensed by, or certified in, this state or  
19 another state, to provide health care or professional health care  
20 services, including, but not limited to, a physician, osteopathic  
21 physician, hospital, pharmacist, pharmacy, dentist, registered or  
22 licensed practical nurse, optometrist, podiatrist, chiropractor,  
23 physical therapist, psychologist, emergency medical services  
24 authority or agency, or an officer, employee or agent thereof  
25 acting in the course and scope of ~~such~~ that officer's, employee's

1 or agent's employment.

2 (h) "Medical injury" means injury or death to a patient  
3 arising or resulting from the rendering of or failure to render  
4 health care.

5 (i) "Medical professional liability" means any liability for  
6 damages resulting from the death or injury of a person for any tort  
7 or breach of contract based on health care services rendered, or  
8 which should have been rendered, by a health care provider or  
9 health care facility to a patient.

10 (j) "Medical professional liability insurance" means a  
11 contract of insurance or any actuarially sound self-funding program  
12 that pays for the legal liability of a health care facility or  
13 health care provider arising from a claim of medical professional  
14 liability. In order to qualify as medical professional liability  
15 insurance for purposes of this article, a self-funding program for  
16 an individual physician must meet the requirements and minimum  
17 standards set forth in section twelve of this article.

18 (k) "Noneconomic loss" means losses, including, but not  
19 limited to, pain, suffering, mental anguish and grief.

20 (l) "Patient" means a natural person who receives or should  
21 have received health care from a licensed health care provider  
22 under a contract, expressed or implied.

23 (m) "Plaintiff" means a patient or representative of a patient  
24 who brings an action for medical professional liability under this  
25 article.

1           (n) "Representative" means the spouse, parent, guardian,  
2 trustee, attorney or other legal agent of another.

NOTE: The purpose of this bill is to include pharmacists and pharmacies in the definition of health care provider related to the Medical Professional Liability Act.

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