

H. B. 2892

(By Delegates Manypenny, Swartzmiller, D. Poling,
Caputo, Perdue, Frazier, Moore,
Morgan and Barill)

[Introduced January 27, 2011; referred to the
Committee on Health and Human Resources then the
Judiciary.]

A BILL to amend and reenact §60A-9-5 of the Code of West Virginia,
1931, as amended, relating to permitting specific law
enforcement officials access to certain confidential
pharmaceutical information to identify unusual prescription
drug behavior; requiring the State Board of Pharmacy to issue
periodic reports to certain law-enforcement officials that
identify abnormal prescription practices; and granting
rulemaking authority.

Be it enacted by the Legislature of West Virginia:

That §60A-9-5 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

**§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 State Board of Pharmacy is confidential and is open to
inspection only by inspectors and agents of the State 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, the elected sheriff of each

1 county, authorized agents of local law-enforcement agencies as a
2 member of a drug task force, authorized agents of the federal Drug
3 Enforcement Administration, duly authorized agents of the Bureau
4 for Medical Services and the Workers' Compensation Commission, duly
5 authorized agents of the Office of the Chief Medical Examiner for
6 use in post-mortem examinations, duly authorized agents of
7 licensing boards of practitioners in this state and other states
8 authorized to prescribe Schedules II, III and IV controlled
9 substances, prescribing practitioners and pharmacists and persons
10 with an enforceable court order or regulatory agency administrative
11 subpoena: *Provided,* That ~~all information released by the State~~
12 ~~Board of Pharmacy must be related to a specific patient or a~~
13 ~~specific individual or entity under investigation by any of the~~
14 ~~above parties except that practitioners who prescribe controlled~~
15 ~~substances may request specific data related to their Drug~~
16 ~~Enforcement Administration controlled substance registration number~~
17 ~~or for the purpose of providing treatment to a patient~~
18 practitioners who prescribe controlled substances may request
19 specific data related to their Drug Enforcement Administration
20 controlled substance registration number or for the purpose of
21 providing treatment to a patient.

22 (2) The board shall review the West Virginia Controlled
23 Substances Monitoring Program database and issue a quarterly report
24 to persons identified in this subsection that identifies or "red
25 flags" abnormal or unusual practices of both medical professionals
26 and patients who exceed pre-determined parameters. The report shall
27 also identify or "red flag" individuals who have exceeded their

1 limit of pseudoephedrine. All reports and information received by
2 these individuals from the board shall be kept confidential and may
3 only used in furtherance of their law enforcement responsibilities
4 regarding abnormal prescription and dispensing practices. The
5 board shall maintain the information required by this article for
6 a period of not less than five years. Notwithstanding any other
7 provisions of this code to the contrary, data obtained under the
8 provisions of this article may be used for compilation of
9 educational, scholarly or statistical purposes as long as the
10 identities of persons or entities remain confidential. No
11 individual or entity required to report under section four of this
12 article may be subject to a claim for civil damages or other civil
13 relief for the reporting of information to the Board of Pharmacy as
14 required under and in accordance with the provisions of this
15 article.

16 (3) The board, in conjunction with other appropriate boards,
17 agencies, committees or commissions such as the Controlled
18 Substances Advisory Board, shall establish the parameters
19 identified in subdivision (2) of this subsection.

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

25 (c) Persons or entities with access to the West Virginia
26 Controlled Substances Monitoring Program database pursuant to this
27 section may, pursuant to rules promulgated by the Board of

1 Pharmacy, delegate appropriate personnel to have access to said
2 database;

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

10 (e) The Board of Pharmacy is hereby authorized to promulgate
11 an emergency rule under chapter twenty-nine-a to effectuate the
12 amendments to this section enacted during the 2010 and 2011 Regular
13 ~~Session~~ Sessions of the Legislature.

14 (f) Nothing in the article shall be construed to require a
15 practitioner to access the West Virginia Controlled Substances
16 Monitoring Program database.

NOTE: The purpose of this bill is to permit specific law enforcement officials access to certain confidential pharmaceutical information to identify unusual or abnormal drug practices of both patients and professionals. The bill also grants rulemaking authority

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