

1 **H. B. 2327**

2
3 (By Delegates Swartzmiller, Moye, Sumner, Skaff and Boggs)

4 [Introduced February 13, 2013; referred to the
5 Committee on Health and Human Resources then the Judiciary.]

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8 A BILL to amend and reenact §60A-9-5 of the Code of West Virginia,
9 1931, as amended, relating to adding the county sheriff, or
10 his or her designee, to those law-enforcement officials who
11 are granted access to certain confidential pharmaceutical
12 information relating to the monitoring of certain controlled
13 substances.

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

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

17 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

18 **§60A-9-5. Confidentiality; limited access to records; period of**
19 **retention; no civil liability for required reporting.**

20 (a) (1) The information required by this article to be kept by
21 the State Board of Pharmacy is confidential and not subject to the
22 provisions of chapter twenty-nine-b of this code or obtainable as
23 discovery in civil matters absent a court order and is open to

1 inspection only by inspectors and agents of the State Board of
2 Pharmacy, members of the West Virginia State Police expressly
3 authorized by the Superintendent of the West Virginia State Police
4 to have access to the information, the elected sheriff of each
5 county or his or her designee, authorized agents of local
6 law-enforcement agencies as members of a federally affiliated drug
7 task force, authorized agents of the federal Drug Enforcement
8 Administration, duly authorized agents of the Bureau for Medical
9 Services, duly authorized agents of the Office of the Chief Medical
10 Examiner for use in post-mortem examinations, duly authorized
11 agents of licensing boards of practitioners in this state and other
12 states authorized to prescribe Schedules II, III and IV controlled
13 substances, prescribing practitioners and pharmacists and persons
14 with an enforceable court order or regulatory agency administrative
15 subpoena: *Provided,* That all law-enforcement personnel who have
16 access to the Controlled Substances Monitoring Program database
17 shall be granted access in accordance with applicable state laws
18 and Board of Pharmacy legislative rules, shall be certified as a
19 West Virginia law-enforcement officer and shall have successfully
20 completed United States Drug Enforcement Administration Diversion
21 Training and National Association of Drug Diversion Investigation
22 Training. All information released by the State Board of Pharmacy
23 must be related to a specific patient or a specific individual or
24 entity under investigation by any of the above parties except that

1 practitioners who prescribe or dispense controlled substances may
2 request specific data related to their Drug Enforcement
3 Administration controlled substance registration number or for the
4 purpose of providing treatment to a patient: *Provided, however,*
5 That the West Virginia Controlled Substances Monitoring Program
6 Database Review Committee established in subsection (b) of this
7 section is authorized to query the database to comply with said
8 subsection.

9 (2) Subject to the provisions of subdivision (1) of this
10 subsection, the board shall also review the West Virginia
11 Controlled Substance Monitoring Program database and issue reports
12 that identify abnormal or unusual practices of patients who exceed
13 parameters as determined by the advisory committee established in
14 this section. The board shall communicate with prescribers and
15 dispensers to more effectively manage the medications of their
16 patients in the manner recommended by the advisory committee. All
17 other reports produced by the board shall be kept confidential.
18 The board shall maintain the information required by this article
19 for a period of not less than five years. Notwithstanding any
20 other provisions of this code to the contrary, data obtained under
21 the provisions of this article may be used for compilation of
22 educational, scholarly or statistical purposes, and may be shared
23 with the West Virginia Department of Health and Human Resources for
24 those purposes, as long as the identities of persons or entities

1 and any personally identifiable information, including protected
2 health information, contained therein shall be redacted, scrubbed
3 or otherwise irreversibly destroyed in a manner that will preserve
4 the confidential nature of the information. No individual or
5 entity required to report under section four of this article ~~may be~~
6 is subject to a claim for civil damages or other civil relief for
7 the reporting of information to the Board of Pharmacy as required
8 under and in accordance with the provisions of this article.

9 (3) The board shall establish an advisory committee to
10 develop, implement and recommend parameters to be used in
11 identifying abnormal or unusual usage patterns of patients in this
12 state. This advisory committee shall:

13 (A) Consist of the following members: A physician licensed by
14 the West Virginia Board of Medicine, a dentist licensed by the West
15 Virginia Board of Dental Examiners, a physician licensed by the
16 West Virginia Board of Osteopathy, a licensed physician certified
17 by the American Board of Pain Medicine, a licensed physician board
18 certified in medical oncology recommended by the West Virginia
19 State Medical Association, a licensed physician board certified in
20 palliative care recommended by the West Virginia Center on End of
21 Life Care, a pharmacist licensed by the West Virginia Board of
22 Pharmacy, a licensed physician member of the West Virginia Academy
23 of Family Physicians, an expert in drug diversion and such other
24 members as determined by the board.

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

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

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

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

20 (b) The Board of Pharmacy shall create a West Virginia
21 Controlled Substances Monitoring Program Database Review Committee
22 of individuals consisting of two prosecuting attorneys from West
23 Virginia counties, two physicians with specialties which require
24 extensive use of controlled substances and a pharmacist who is

1 trained in the use and abuse of controlled substances. The review
2 committee may determine that an additional physician who is an
3 expert in the field under investigation be added to the team when
4 the facts of a case indicate that the additional expertise is
5 required. The review committee, working independently, may query
6 the database based on parameters established by the advisory
7 committee. The review committee may make determinations on a
8 case-by-case basis on specific unusual prescribing or dispensing
9 patterns indicated by outliers in the system or abnormal or unusual
10 usage patterns of controlled substances by patients which the
11 review committee has reasonable cause to believe necessitates
12 further action by law enforcement or the licensing board having
13 jurisdiction over the prescribers or dispensers under
14 consideration. The review committee shall also review notices
15 provided by the chief medical examiner pursuant to subsection (h),
16 section ten, article twelve, chapter sixty-one of this code and
17 determine on a case-by-case basis whether a practitioner who
18 prescribed or dispensed a controlled substance resulting in or
19 contributing to the drug overdose may have breached professional or
20 occupational standards or committed a criminal act when prescribing
21 the controlled substance at issue to the decedent. Only in those
22 cases in which there is reasonable cause to believe a breach of
23 professional or occupational standards or a criminal act may have
24 occurred, the review committee shall notify the appropriate

1 professional licensing agency having jurisdiction over the
2 applicable prescriber or dispenser and appropriate law-enforcement
3 agencies and provide pertinent information from the database for
4 their consideration. The number of cases identified shall be
5 determined by the review committee based on a number that can be
6 adequately reviewed by the review committee. The information
7 obtained and developed may not be shared except as provided in this
8 article and is not subject to the provisions of chapter twenty-
9 nine-b of this code or obtainable as discovering in civil matters
10 absent a court order.

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

19 (d) The board shall promulgate rules with advice and consent
20 of the advisory committee, in accordance with the provisions of
21 article three, chapter twenty-nine-a of this code on or before June
22 1, 2013. The legislative rules must include, but shall not be
23 limited to, the following matters: (1) Identifying parameters used
24 in identifying abnormal or unusual prescribing or dispensing

1 patterns; (2) processing parameters and developing reports of
2 abnormal or unusual prescribing or dispensing patterns for
3 patients, practitioners and dispensers; (3) establishing the
4 information to be contained in reports and the process by which the
5 reports will be generated and disseminated; and (4) setting up
6 processes and procedures to ensure that the privacy,
7 confidentiality, and security of information collected, recorded,
8 transmitted and maintained by the review committee is not disclosed
9 except as provided in this section.

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

15 (f) Persons or entities with access to the West Virginia
16 Controlled Substances Monitoring Program database pursuant to this
17 section may, pursuant to rules promulgated by the Board of
18 Pharmacy, delegate appropriate personnel to have access to said
19 database;

20 (g) Good faith reliance by a practitioner on information
21 contained in the West Virginia Controlled Substances Monitoring
22 Program database in prescribing or dispensing or refusing or
23 declining to prescribe or dispense a schedule II, III or IV
24 controlled substance ~~shall constitute~~ is an absolute defense in any

1 civil or criminal action brought due to prescribing or dispensing
2 or refusing or declining to prescribe or dispense; and

3 (h) A prescribing or dispensing practitioner may notify law
4 enforcement of a patient who, in the prescribing or dispensing
5 practitioner's judgment, may be in violation of section four
6 hundred ten, article four of this chapter, based on information
7 obtained and reviewed from the controlled substances monitoring
8 database. A prescribing or dispensing practitioner who makes a
9 notification pursuant to this subsection is immune from any civil,
10 administrative or criminal liability that otherwise might be
11 incurred or imposed because of the notification if the notification
12 is made in good faith.

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

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

NOTE: The purpose of this bill is to add the county sheriff,
or his or her designee, to those law-enforcement officials who are
granted access to certain confidential pharmaceutical information

to identify unusual or abnormal drug practices.

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