

H. B. 2454

(By Delegates Ferro, Pethtel, Fluharty, Storch, Trecoast and L. Phillips)

[Introduced January 28, 2015 ; 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, including workers’ compensation benefits, or other similar

1 benefits. Benefits payable under the Social Security Act are not considered payments from collateral
2 sources except for Social Security disability benefits directly attributable to the medical injury in
3 question;

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

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

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

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

16 (d) "Emergency condition" means any acute traumatic injury or acute medical condition
17 which, according to standardized criteria for triage, involves a significant risk of death or the
18 precipitation of significant complications or disabilities, impairment of bodily functions, or, with
19 respect to a pregnant woman, a significant risk to the health of the unborn child.

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

1 (f) “Health care facility” means any clinic, hospital, nursing home or assisted living facility,
2 including personal care home, residential care community and residential board and care home, or
3 behavioral health care facility or comprehensive community mental health/mental retardation center,
4 in and licensed by the State of West Virginia and any state-operated institution or clinic providing
5 health care.

6 (g) “Health care provider” means a person, partnership, corporation, professional limited
7 liability company, health care facility or institution licensed by, or certified in, this state or another
8 state, to provide health care or professional health care services, including, but not limited to, a
9 physician, osteopathic physician, hospital, pharmacist, pharmacy, dentist, registered or licensed
10 practical nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, emergency
11 medical services authority or agency, or an officer, employee or agent thereof acting in the course
12 and scope of ~~such~~ that officer's, employee's or agent's employment.

13 (h) “Medical injury” means injury or death to a patient arising or resulting from the rendering
14 of or failure to render health care.

15 (i) “Medical professional liability” means any liability for damages resulting from the death
16 or injury of a person for any tort or breach of contract based on health care services rendered, or
17 which should have been rendered, by a health care provider or health care facility to a patient.

18 (j) “Medical professional liability insurance” means a contract of insurance or any actuarially
19 sound self-funding program that pays for the legal liability of a health care facility or health care
20 provider arising from a claim of medical professional liability. In order to qualify as medical
21 professional liability insurance for purposes of this article, a self-funding program for an individual
22 physician must meet the requirements and minimum standards set forth in section twelve of this

1 article.

2 (k) “Noneconomic loss” means losses, including, but not limited to, pain, suffering, mental
3 anguish and grief.

4 (l) “Patient” means a natural person who receives or should have received health care from
5 a licensed health care provider under a contract, expressed or implied.

6 (m) “Plaintiff” means a patient or representative of a patient who brings an action for medical
7 professional liability under this article.

8 (n) “Representative” means the spouse, parent, guardian, trustee, attorney or other legal agent
9 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.