

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 431

BY SENATORS COLE (MR. PRESIDENT) AND KESSLER

BY REQUEST OF THE EXECUTIVE

[Passed March 12, 2016; in effect 90 days from passage]

1 AN ACT to amend and reenact §16-46-3, §16-46-5 and §16-46-6 of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding thereto a new section, designated
3 §16-46-3a, all relating to authorizing pharmacist or pharmacy intern to dispense, pursuant
4 to a protocol, an opioid antagonist without a prescription; requiring Board of Pharmacy, in
5 consultation with Bureau for Public Health, to develop a protocol; requiring patient
6 counseling; requiring educational materials; requiring documentation of distribution of
7 opioid antagonists in West Virginia Controlled Substances Monitoring Program database;
8 revising existing reporting requirements; providing limited liability to pharmacist and
9 pharmacy interns; revising reporting requirements; and reorganizing existing code
10 language.

Be it enacted by the Legislature of West Virginia:

1 That §16-46-3, §16-46-5 and §16-46-6 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted; and that said code be amended by adding thereto a new section,
3 designated §16-46-3a, all to read as follows:

ARTICLE 46. ACCESS TO OPIOID ANTAGONISTS ACT.

§16-46-3. Licensed health care providers may prescribe opioid antagonists to initial responders and certain individuals; required educational materials; limited liability.

1 (a) All licensed health care providers in the course of their professional practice may offer
2 to initial responders a prescription for opioid antagonists, including a standing order, to be used
3 during the course of their professional duties as initial responders.

4 (b) All licensed health care providers in the course of their professional practice may offer
5 to a person considered by the licensed health care provider to be at risk of experiencing an opiate-
6 related overdose, or to a relative, friend, caregiver or person in a position to assist a person at
7 risk of experiencing an opiate-related overdose, a prescription for an opioid antagonist.

8 (c) All licensed health care providers who prescribe an opioid antagonist under this section
9 shall provide educational materials to any person or entity receiving such a prescription on opiate-

10 related overdose prevention and treatment programs, as well as materials on administering the
11 prescribed opioid antagonist.

**§16-46-3a. Pharmacist or pharmacy intern may dispense, pursuant to a protocol, opioid
antagonists without a prescription; patient counseling required; required
educational materials.**

1 (a) Pursuant to the protocol developed under subsection (f) of this section, a pharmacist
2 or pharmacy intern under the supervision of a pharmacist may dispense an opioid antagonist
3 without a prescription.

4 (b) A pharmacist or pharmacy intern who dispenses an opioid antagonist without a
5 prescription under this section shall provide patient counseling to the individual for whom the
6 opioid antagonist is dispensed regarding, but not limited to, the following topics: (1) The proper
7 administration of the opioid antagonist; (2) the importance of contacting emergency services as
8 soon as practicable either before or after administering the opioid antagonist; and (3) the risks
9 associated with failure to contact emergency services following administration of an opioid
10 antagonist. The patient counseling described in this section is mandatory and the person receiving
11 the opioid antagonist may not opt out.

12 (c) A pharmacist shall document the dispensing of an opioid antagonist without a
13 prescription as set forth in the protocol developed under subsection (f) of this section and the
14 reporting requirements set forth in subsection (a), section four, article nine, chapter sixty-a of this
15 code.

16 (d) All pharmacists or pharmacy interns who dispense an opioid antagonist under this
17 section shall provide educational materials to any person receiving such an opioid antagonist on
18 opiate-related overdose prevention and treatment programs, as well as materials on administering
19 the opioid antagonist.

20 (e) This section does not affect the authority of a pharmacist or pharmacy intern to fill or
21 refill a prescription for an opioid antagonist.

22 (f) To implement the provisions of this section, the Board of Pharmacy shall, after
23 consulting with the Bureau for Public Health: (1) Develop a protocol under which pharmacists or
24 pharmacy interns may dispense an opioid antagonist without a prescription; (2) specify
25 educational materials which shall be provided to the individual receiving the opioid antagonist;
26 and (3) develop a form, template or the like to be used by pharmacists and pharmacy interns
27 when dispensing the opioid antagonists without a prescription. The protocol developed by the
28 board may be updated or revised as necessary.

§16-46-5. Licensed health care providers limited liability related to opioid antagonist prescriptions.

1 (a) A licensed health care provider who is permitted by law to prescribe drugs, including
2 opioid antagonists, may, if acting in good faith, prescribe and subsequently dispense or distribute
3 an opioid antagonist without being subject to civil liability or criminal prosecution unless
4 prescribing the opioid antagonist was the result of the licensed health care providers gross
5 negligence or willful misconduct.

6 (b) For purposes of this chapter and chapter sixty-a of this code, any prescription written,
7 as described in section three of this article, shall be presumed as being issued for a legitimate
8 medical purpose in the usual course of professional practice unless the presumption is rebutted
9 by a preponderance of the evidence.

10 (c) Any person who possesses an opioid antagonist and administers it to a person whom
11 they believe to be suffering from an opioid-related overdose and who is acting in good faith is not,
12 as a result of his or her actions or omissions, subject to criminal prosecution arising from the
13 possession of an opioid antagonist or subject to any civil liability with respect to the administration
14 of or failure to administer the opioid antagonist unless the act or failure to act was the result of
15 gross negligence or willful misconduct.

16 (d) Any person who administers an opioid antagonist to a person whom they believe to be
17 suffering from an opioid-related overdose is required to seek additional medical treatment at a

18 medical facility for that person immediately following the administration of the opioid antagonist to
19 avoid further complications as a result of suspected opioid-related overdose.

20 (e) Any pharmacist or pharmacy intern who dispenses or refuses to dispense an opioid
21 antagonist under the provisions of this article who is acting in good faith and subject to the
22 requirements of section three-a of this article is not, as a result of his or her actions or omissions,
23 subject to civil liability or criminal prosecution unless dispensing the opioid antagonist was the
24 result of the pharmacist or pharmacy interns gross negligence or willful misconduct.

§16-46-6. Data collection and reporting requirements; training.

1 (a) Beginning March 1, 2016, and annually after that the following reports shall be
2 compiled:

3 (1) The Office of Emergency Medical Services shall collect data regarding each
4 administration of an opioid antagonist by an initial responder. The Office of Emergency Medical
5 Services shall report this information to the Legislative Oversight Commission on Health and
6 Human Resources Accountability, Joint Committee on Health and the West Virginia Bureau for
7 Behavioral Health and Health Facilities. The data collected and reported shall include:

8 (A) The number of training programs operating in an Office of Emergency Medical
9 Services-designated training center;

10 (B) The number of individuals who received training to administer an opioid antagonist;

11 (C) The number of individuals who received an opioid antagonist administered by an initial
12 responder;

13 (2) The West Virginia Board of Pharmacy shall query the West Virginia Controlled
14 Substances Monitoring Program database to compile all data related to the dispensing of opioid
15 antagonists and combine that data with any additional data maintained by the Board of Pharmacy
16 related to prescriptions for and distribution of opioid antagonists. By February 1 and annually
17 thereafter, the Board of Pharmacy shall provide a report of this information, excluding any
18 personally identifiable information, to the Legislative Oversight Commission on Health and Human

19 Resources Accountability, Joint Committee on Health and the West Virginia Bureau for Behavioral
20 Health and Health Facilities.

21 (b) To implement the provisions of this article, including establishing the standards for
22 certification and approval of opioid overdose prevention and treatment training programs and
23 protocols regarding a refusal to transport, the Office of Emergency Medical Services may
24 promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter
25 twenty-nine-a of this code and shall propose rules for legislative approval in accordance with the
26 provisions of said article.