

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Senate Bill 627

BY SENATORS TAKUBO, MAYNARD, MULLINS,

STOLLINGS, TRUMP AND PLYMALE

[Passed March 10, 2016;

in effect 90 days from passage]

1 AN ACT to amend and reenact §30-3A-2 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §55-7-23 of said code, all relating to permitting physicians to decline
3 prescribing controlled substance in certain circumstances; limiting disciplinary action by a
4 licensing board on a health care provider with prescriptive authority for declining to
5 prescribe, or declining to continue to prescribe, any controlled substance in certain
6 circumstances; and providing that a health care provider with prescriptive authority is not
7 liable to a patient or third party for declining to prescribe, or declining to continue to
8 prescribe, any controlled substance in certain circumstances.

Be it enacted by the Legislature of West Virginia:

1 That §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that §55-7-23 of said code be amended and reenacted, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-2. Limitation on disciplinary sanctions or criminal punishment related to management of pain.

1 (a) A physician is not subject to disciplinary sanctions by a licensing board or criminal
2 punishment by the state for prescribing, administering or dispensing pain-relieving controlled
3 substances for the purpose of alleviating or controlling pain if:

4 (1) In the case of a dying patient experiencing pain, the physician practices in accordance
5 with an accepted guideline as defined in section one of this article and discharges his or her
6 professional obligation to relieve the dying patient's pain and promote the dignity and autonomy
7 of the dying patient; or

8 (2) In the case of a patient who is not dying and is experiencing pain, the physician
9 discharges his or her professional obligation to relieve the patient's pain, if the physician can
10 demonstrate by reference to an accepted guideline that his or her practice substantially complied

11 with that accepted guideline. Evidence of substantial compliance with an accepted guideline may
12 be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted
13 guideline is not sufficient alone to support disciplinary or criminal action.

14 (b) A health care provider, as defined in section two, article seven-b, chapter fifty-five of
15 this code, with prescriptive authority is not subject to disciplinary sanctions by a licensing board
16 or criminal punishment by the state for declining to prescribe, or declining to continue to prescribe,
17 any controlled substance to a patient which the health care provider with prescriptive authority is
18 treating if the health care provider with prescriptive authority in the exercise of reasonable prudent
19 judgment believes the patient is misusing the controlled substance in an abusive manner or
20 unlawfully diverting a controlled substance legally prescribed for their use. (c) A licensed
21 registered professional nurse is not subject to disciplinary sanctions by a licensing board or
22 criminal punishment by the state for administering pain-relieving controlled substances to alleviate
23 or control pain, if administered in accordance with the orders of a licensed physician.

24 (d) A licensed pharmacist is not subject to disciplinary sanctions by a licensing board or
25 criminal punishment by the state for dispensing a prescription for a pain-relieving controlled
26 substance to alleviate or control pain, if dispensed in accordance with the orders of a licensed
27 physician.

28 (e) For purposes of this section, the term “disciplinary sanctions” includes both remedial
29 and punitive sanctions imposed on a licensee by a licensing board, arising from either formal or
30 informal proceedings.

31 (f) The provisions of this section apply to the treatment of all patients for pain, regardless
32 of the patient’s prior or current chemical dependency or addiction. The board may develop and
33 issue policies or guidelines establishing standards and procedures for the application of this article
34 to the care and treatment of persons who are chemically dependent or addicted.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-23. Prescription drugs and medical devices; limiting health care providers' liability exposure.

1 (a) No health care provider, as defined in section two, article seven-b of this chapter, is
2 liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription
3 drug or use of a medical device that was prescribed or used by the health care provider in
4 accordance with instructions approved by the U. S. Food and Drug Administration regarding the
5 dosage and administration of the drug, the indications for which the drug should be taken or device
6 should be used, and the contraindications against taking the drug or using the device: *Provided,*
7 That the provisions of this section do not apply if: (1) The health care provider had actual
8 knowledge that the drug or device was inherently unsafe for the purpose for which it was
9 prescribed or used; or (2) a manufacturer of the drug or device publicly announces changes in
10 the dosage or administration of the drug or changes in contraindications against taking the drug
11 or using the device and the health care provider fails to follow the publicly announced changes
12 and the failure proximately caused or contributed to the plaintiff's injuries or damages.

13 (b) A health care provider with prescriptive authority is not liable to a patient or third party
14 for declining to prescribe, or declining to continue to prescribe, any controlled substance to a
15 patient which the health care provider with prescriptive authority is treating if the health care
16 provider with prescriptive authority in the exercise of reasonable prudent judgment believes the
17 patient is misusing the controlled substance in an abusive manner or unlawfully diverting a
18 controlled substance legally prescribed for their use.

19 (c) The provisions of this section are not intended to create a new cause of action.