

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4263

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

[BY REQUEST OF THE EXECUTIVE]

[Introduced January 23, 2018; Referred
to the Committee on Prevention and Treatment of
Substance Abuse then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-54-1, §16-54-2, §16-54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, §16-
 3 54-8, and §16-54-9; to amend and reenact §30-3-14 of said code; to amend and reenact
 4 §30-3A-1, §30-3A-2, §30-3A-3, and §30-3A-4 of said code; to amend and reenact §30-4-
 5 19 of said code; to amend and reenact §30-5-6 of said code; to amend and reenact §30-
 6 7-11 of said code; to amend and reenact §30-8-18 of said code; to amend and reenact
 7 §30-14-12a of said code; to amend and reenact §30-36-2 of said code; to amend and
 8 reenact §60A-2-204, §60A-2-206, and §60A-2-210 of said code; and to amend and
 9 reenact §60A-9-4, §60A-9-5, and §60A-9-5a of said code, all relating to reducing the use
 10 of opiates; providing reports to licensing boards regarding abnormal prescribing practices;
 11 requiring the Board of Pharmacy to report quarterly to various licensing boards; permitting
 12 the investigation and discipline for abnormal prescribing and dispensing of prescription
 13 drugs, adding substances to Schedule I, II and IV of the Uniform Controlled Substances
 14 Act; and allowing licensing boards who regulate prescribers to investigate abnormal
 15 prescribing and dispensing of prescription drugs based upon information.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 54. OPIOID REDUCTION ACT.

§16-54-1. Definitions.

1 (a) As used in this section:

2 “Acute pain” means a time limited pain caused by a specific disease or injury.

3 “Chronic pain” means a noncancer nonend of life pain lasting more than three months or
 4 longer than the duration of normal tissue healing.

5 “Health care practitioner” means

6 (A) A physician licensed pursuant to §30-3-1 et seq. or §30-14-1 et seq of this code;

7 (B) A physician assistant with prescriptive authority as set forth in §30-3E-1 et seq of this
8 code;

9 (C) An advanced practice registered nurse with prescriptive authority as set forth in §30-
10 7-15a of this code;

11 (D) A dentist licensed pursuant to §30-4-1 et seq. of this code; and

12 (E) An optometrist licensed pursuant to §30-8-1 et seq. of this code.

13 (4) "Office" means the office of Drug Control Policy.

§16-54-2. Voluntary nonopiate advance directive form.

1 The office shall establish a voluntary nonopiate advance directive form. The form shall be
2 available on the office's website. The form shall indicate to a health care practitioner that an
3 individual may not be administered or offered a prescription or medication order for an opiate.
4 The form may be submitted to the Board of Pharmacy and the board shall make a notation of the
5 directive on the controlled substance monitoring database. The indication may also be added to
6 the individual's electronic health record. An individual may revoke the voluntary nonopiate
7 advance directive form for any reason and may do so by written or oral means.

§16-54-3. Opioid Prescription Notifications.

1 Prior to issuing a prescription for an opioid, a practitioner shall:

2 (1) Consult with the patient regarding the quantity of the opioid and a patient's option to fill
3 the prescription in a lesser quantity; and

4 (2) Inform the patient of the risks associated with the opioid prescribed.

§16-54-4. Opioid prescription limitations.

1 (a) When issuing a prescription for an opiate to an adult patient seeking treatment in an
2 emergency room setting for outpatient use, a health care practitioner may not issue a prescription
3 for more than a three-day supply.

4 (b) A health care practitioner may not issue an opiate prescription to a minor for more than
5 a three-day supply and shall discuss with the parent or guardian of the minor the risks associated

6 with opiate use and the reasons why the prescription is necessary.

7 (c) A dentist or an optometrist may not issue an opiate prescription for more than a three-
8 day supply at any time.

9 (d) A physician may not issue an opiate prescription for more than a seven-day supply.

10 The prescription shall be for the lowest effective dose.

11 (e) Prior to issuing an initial opiate prescription, a practitioner shall:

12 (1) Take and document the results of a thorough medical history, including the patient's
13 experience with nonopioid medication and nonpharmacological pain management
14 approaches and substance abuse history;

15 (2) Conduct, as appropriate, and document the results of a physical examination;

16 (3) Develop a treatment plan, with particular attention focused on determining the
17 cause of the patient's pain; and

18 (4) Access relevant prescription monitoring information under the controlled
19 substances monitoring database.

§16-54-5. Subsequent prescriptions; limitations.

1 (a) No less than six days after issuing the initial prescription as set forth in section four of
2 this article, the practitioner, after consultation with the patient, may issue a subsequent
3 prescription for an opiate to the patient if:

4 (1) The subsequent prescription would not be deemed an initial prescription under this
5 section;

6 (2) The practitioner determines the prescription is necessary and appropriate to the
7 patient's treatment needs and documents the rationale for the issuance of the subsequent
8 prescription; and

9 (3) The practitioner determines that issuance of the subsequent prescription does not
10 present an undue risk of abuse, addiction, or diversion and documents that determination.

11 (b) Prior to issuing the subsequent prescription of the course of treatment, a practitioner

12 shall discuss with the patient, or the patient's parent or guardian if the patient is under 18 years
13 of age, the risks associated with the drug being prescribed. This discussion shall include:

14 (1) The risks of addiction and overdose associated with opioid drugs and the dangers of
15 taking opioid drugs with alcohol, benzodiazepines, and other central nervous system depressants;

16 (2) The reasons why the prescription is necessary;

17 (3) Alternative treatments that may be available; and

18 (4) Risks associated with the use of the drugs being prescribed, specifically that opioids
19 are highly addictive, even when taken as prescribed, that there is a risk of developing a physical
20 or psychological dependence on the controlled substance, and that the risks of taking more
21 opioids than prescribed, or mixing sedatives, benzodiazepines, or alcohol with opioids, can result
22 in fatal respiratory depression.

23 (c) The discussion as set forth in subdivision (b) of this section shall be included in a
24 notation in the patient's medical record.

§16-54-6. Ongoing treatment; referral to chronic pain clinic.

1 (a) At the time of the issuance of the third prescription for a prescription opiate, the
2 practitioner shall refer to a chronic pain clinic.

3 (b) If the patient remains a patient of the practitioner and the practitioner continues to
4 prescribe an opiate for pain, the practitioner shall:

5 (1) Review, at a minimum of every three months, the course of treatment, any new
6 information about the etiology of the pain, and the patient's progress toward treatment objectives
7 and document the results of that review;

8 (2) Assess the patient prior to every renewal to determine whether the patient is
9 experiencing problems associated with physical and psychological dependence and document
10 the results of that assessment;

11 (3) Periodically make reasonable efforts, unless clinically contraindicated, to either stop
12 the use of the controlled substance, decrease the dosage, try other drugs or treatment modalities

13 in an effort to reduce the potential for abuse or the development of physical or psychological
14 dependence and document with specificity the efforts undertaken; and

15 (4) Review the Controlled Substance Monitoring Database as required by §60A-9-1 et
16 seq. of this code.

§16-54-7. Exceptions.

1 This article does not apply to a prescription for a patient who is currently in active treatment
2 for cancer, receiving hospice care from a licensed hospice or palliative care, or is a resident of a
3 long-term care facility, or to any medications that are being prescribed for use in the treatment of
4 substance abuse or opioid dependence.

§16-54-8. Treatment of chronic pain.

1 (a) When patients seek treatment for any of the myriad conditions that cause chronic pain,
2 a health care practitioner shall recommend physical therapy, occupational therapy, acupuncture,
3 massage therapy, or chiropractic care before starting a patient on an opioid.

4 (b) An insurance provider, Medicaid, and PEIA shall provide time-limited coverage for
5 physical therapy, occupational therapy, and chiropractic care when ordered by a health care
6 practitioner to treat conditions that cause chronic pain.

§16-54-9. Discipline.

1 A violation of this article is grounds for disciplinary action by the board that regulates the
2 health care practitioner who commits the violation.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists;

1 (a) The board may independently initiate disciplinary proceedings as well as initiate
2 disciplinary proceedings based on information received from medical peer review committees,
3 physicians, podiatrists, hospital administrators, professional societies, the Board of Pharmacy as

4 required by §60A-9-1 et seq. of this code and others.

5 The board may initiate investigations as to professional incompetence or other reasons
6 for which a licensed physician or podiatrist may be adjudged unqualified based upon criminal
7 convictions; complaints by citizens, pharmacists, physicians, podiatrists, peer review committees,
8 hospital administrators, professional societies or others; or unfavorable outcomes arising out of
9 medical professional liability. The board shall initiate an investigation if it receives notice that
10 three or more judgments, or any combination of judgments and settlements resulting in five or
11 more unfavorable outcomes arising from medical professional liability have been rendered or
12 made against the physician or podiatrist within a five-year period. The board may not consider
13 any judgments or settlements as conclusive evidence of professional incompetence or conclusive
14 lack of qualification to practice.

15 (b) Upon request of the board, any medical peer review committee in this state shall report
16 any information that may relate to the practice or performance of any physician or podiatrist known
17 to that medical peer review committee. Copies of the requests for information from a medical peer
18 review committee may be provided to the subject physician or podiatrist if, in the discretion of the
19 board, the provision of ~~such~~ the copies will not jeopardize the board's investigation. In the event
20 that copies are provided, the subject physician or podiatrist is allowed fifteen days to comment on
21 the requested information and ~~such~~ the comments must be considered by the board.

22 The chief executive officer of every hospital shall, within sixty days after the completion of
23 the hospital's formal disciplinary procedure and also within sixty days after the commencement of
24 and again after the conclusion of any resulting legal action, report in writing to the board the name
25 of any member of the medical staff or any other physician or podiatrist practicing in the hospital
26 whose hospital privileges have been revoked, restricted, reduced or terminated for any cause,
27 including resignation, together with all pertinent information relating to ~~such~~ the action. The chief
28 executive officer shall also report any other formal disciplinary action taken against any physician
29 or podiatrist by the hospital upon the recommendation of its medical staff relating to professional

30 ethics, medical incompetence, medical professional liability, moral turpitude or drug or alcohol
31 abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend
32 staff or section meetings need not be reported. Voluntary cessation of hospital privileges for
33 reasons unrelated to professional competence or ethics need not be reported.

34 Any managed care organization operating in this state which provides a formal peer review
35 process shall report in writing to the board, within sixty days after the completion of any formal
36 peer review process and also within sixty days after the commencement of and again after the
37 conclusion of any resulting legal action, the name of any physician or podiatrist whose
38 credentialing has been revoked or not renewed by the managed care organization. The managed
39 care organization shall also report in writing to the board any other disciplinary action taken
40 against a physician or podiatrist relating to professional ethics, professional liability, moral
41 turpitude or drug or alcohol abuse within sixty days after completion of a formal peer review
42 process which results in the action taken by the managed care organization. For purposes of this
43 subsection, "managed care organization" means a plan that establishes, operates or maintains a
44 network of health care providers who have entered into agreements with and been credentialed
45 by the plan to provide health care services to enrollees or insureds to whom the plan has the
46 ultimate obligation to arrange for the provision of or payment for health care services through
47 organizational arrangements for ongoing quality assurance, utilization review programs or dispute
48 resolutions.

49 Any professional society in this state comprised primarily of physicians or podiatrists which
50 takes formal disciplinary action against a member relating to professional ethics, professional
51 incompetence, medical professional liability, moral turpitude or drug or alcohol abuse shall report
52 in writing to the board within sixty days of a final decision the name of the member, together with
53 all pertinent information relating to the action.

54 Every person, partnership, corporation, association, insurance company, professional
55 society or other organization providing professional liability insurance to a physician or podiatrist

56 in this state, including the state Board of Risk and Insurance Management, shall submit to the
57 board the following information within thirty days from any judgment or settlement of a civil or
58 medical professional liability action excepting product liability actions: The name of the insured;
59 the date of any judgment or settlement; whether any appeal has been taken on the judgment and,
60 if so, by which party; the amount of any settlement or judgment against the insured; and other
61 information required by the board.

62 Within thirty days from the entry of an order by a court in a medical professional liability
63 action or other civil action in which a physician or podiatrist licensed by the board is determined
64 to have rendered health care services below the applicable standard of care, the clerk of the court
65 in which the order was entered shall forward a certified copy of the order to the board.

66 Within thirty days after a person known to be a physician or podiatrist licensed or otherwise
67 lawfully practicing medicine and surgery or podiatry in this state or applying to be licensed is
68 convicted of a felony under the laws of this state or of any crime under the laws of this state
69 involving alcohol or drugs in any way, including any controlled substance under state or federal
70 law, the clerk of the court of record in which the conviction was entered shall forward to the board
71 a certified true and correct abstract of record of the convicting court. The abstract shall include
72 the name and address of the physician or podiatrist or applicant, the nature of the offense
73 committed and the final judgment and sentence of the court.

74 Upon a determination of the board that there is probable cause to believe that any person,
75 partnership, corporation, association, insurance company, professional society or other
76 organization has failed or refused to make a report required by this subsection, the board shall
77 provide written notice to the alleged violator stating the nature of the alleged violation and the time
78 and place at which the alleged violator shall appear to show good cause why a civil penalty should
79 not be imposed. The hearing shall be conducted in accordance with article five, chapter twenty-
80 nine-a of this code. After reviewing the record of the hearing, if the board determines that a
81 violation of this subsection has occurred, the board shall assess a civil penalty of not less than

82 \$1,000 nor more than \$10,000 against the violator. The board shall notify any person so assessed
83 of the assessment in writing and the notice shall specify the reasons for the assessment. If the
84 violator fails to pay the amount of the assessment to the board within thirty days, the Attorney
85 General may institute a civil action in the circuit court of Kanawha County to recover the amount
86 of the assessment. In any civil action, the court's review of the board's action shall be conducted
87 in accordance with §29A-5-4 of this code. ~~Notwithstanding any other provision of this article to~~
88 ~~the contrary, when there are conflicting views by recognized experts as to whether any alleged~~
89 ~~conduct breaches an applicable standard of care, the evidence must be clear and convincing~~
90 ~~before the board may find that the physician or podiatrist has demonstrated a lack of professional~~
91 ~~competence to practice with a reasonable degree of skill and safety for patients~~

92 Any person may report to the board relevant facts about the conduct of any physician or
93 podiatrist in this state which in the opinion of that person amounts to medical professional liability
94 or professional incompetence.

95 The board shall provide forms for filing reports pursuant to this section. Reports submitted
96 in other forms shall be accepted by the board.

97 The filing of a report with the board pursuant to any provision of this article, any
98 investigation by the board or any disposition of a case by the board does not preclude any action
99 by a hospital, other health care facility or professional society comprised primarily of physicians
100 or podiatrists to suspend, restrict or revoke the privileges or membership of the physician or
101 podiatrist.

102 (c) The board may deny an application for license or other authorization to practice
103 medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed
104 or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board
105 as unqualified due to any of the following reasons:

106 (1) Attempting to obtain, obtaining, renewing or attempting to renew a license to practice
107 medicine and surgery or podiatry by bribery, fraudulent misrepresentation or through known error

108 of the board;

109 (2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves
110 moral turpitude or directly relates to the practice of medicine. Any plea of nolo contendere is a
111 conviction for the purposes of this subdivision;

112 (3) False or deceptive advertising;

113 (4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine
114 and surgery or podiatry contrary to law;

115 (5) Making or filing a report that the person knows to be false; intentionally or negligently
116 failing to file a report or record required by state or federal law; willfully impeding or obstructing
117 the filing of a report or record required by state or federal law; or inducing another person to do
118 any of the foregoing. The reports and records covered in this subdivision mean only those that
119 are signed in the capacity as a licensed physician or podiatrist;

120 (6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund,
121 commission, credit or other form of profit or valuable consideration for the referral of patients to
122 any person or entity in connection with providing medical or other health care services or clinical
123 laboratory services, supplies of any kind, drugs, medication or any other medical goods, services
124 or devices used in connection with medical or other health care services;

125 (7) Unprofessional conduct by any physician or podiatrist in referring a patient to any
126 clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest
127 unless the physician or podiatrist discloses in writing ~~such~~ the interest to the patient. The written
128 disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having
129 any laboratory work or assignment performed or any pharmacy for purposes of purchasing any
130 prescribed drug or any other medical goods or devices used in connection with medical or other
131 health care services;

132 As used in this subdivision, "proprietary interest" does not include an ownership interest
133 in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate

134 under a lease arrangement that is not conditional upon the income or gross receipts of the clinical
135 laboratory or pharmacy;

136 (8) Exercising influence within a patient-physician relationship for the purpose of engaging
137 a patient in sexual activity;

138 (9) Making a deceptive, untrue or fraudulent representation in the practice of medicine and
139 surgery or podiatry;

140 (10) Soliciting patients, either personally or by an agent, through the use of fraud,
141 intimidation or undue influence;

142 (11) Failing to keep written records justifying the course of treatment of a patient, including,
143 but not limited to, patient histories, examination and test results and treatment rendered, if any;

144 (12) Exercising influence on a patient in such a way as to exploit the patient for financial
145 gain of the physician or podiatrist or of a third party. Any influence includes, but is not limited to,
146 the promotion or sale of services, goods, appliances or drugs;

147 (13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription
148 drug, including any controlled substance under state or federal law, other than in good faith and
149 in a therapeutic manner in accordance with accepted medical standards and in the course of the
150 physician's or podiatrist's professional practice. A physician who discharges his or her
151 professional obligation to relieve the pain and suffering and promote the dignity and autonomy of
152 dying patients in his or her care and, in so doing, exceeds the average dosage of a pain relieving
153 controlled substance, as defined in Schedules II and III of the Uniform Controlled Substance Act,
154 does not violate this article;

155 (14) Performing any procedure or prescribing any therapy that, by the accepted standards
156 of medical practice in the community, would constitute experimentation on human subjects
157 without first obtaining full, informed and written consent;

158 (15) Practicing or offering to practice beyond the scope permitted by law or accepting and
159 performing professional responsibilities that the person knows or has reason to know he or she

160 is not competent to perform;

161 (16) Delegating professional responsibilities to a person when the physician or podiatrist
162 delegating the responsibilities knows or has reason to know that the person is not qualified by
163 training, experience or licensure to perform them;

164 (17) Violating any provision of this article or a rule or order of the board or failing to comply
165 with a subpoena or subpoena duces tecum issued by the board;

166 (18) Conspiring with any other person to commit an act or committing an act that would
167 tend to coerce, intimidate or preclude another physician or podiatrist from lawfully advertising his
168 or her services;

169 (19) Gross negligence in the use and control of prescription forms;

170 (20) Professional incompetence;

171 (21) The inability to practice medicine and surgery or podiatry with reasonable skill and
172 safety due to physical or mental impairment, including deterioration through the aging process,
173 loss of motor skill or abuse of drugs or alcohol. A physician or podiatrist adversely affected under
174 this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he or
175 she may resume the competent practice of medicine and surgery or podiatry with reasonable skill
176 and safety to patients. In any proceeding under this subdivision, neither the record of proceedings
177 nor any orders entered by the board shall be used against the physician or podiatrist in any other
178 proceeding; or

179 (22) Knowingly failing to report to the board any act of gross misconduct committed by
180 another licensee of the board.

181 (d) The board shall deny any application for a license or other authorization to practice
182 medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license
183 of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is
184 found guilty by any court of competent jurisdiction of any felony involving prescribing, selling,
185 administering, dispensing, mixing or otherwise preparing any prescription drug, including any

186 controlled substance under state or federal law, for other than generally accepted therapeutic
187 purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the
188 court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the
189 same effect as a verdict or plea of guilt. Upon application of a physician that has had his or her
190 license revoked because of a drug related felony conviction, upon completion of any sentence of
191 confinement, parole, probation or other court-ordered supervision and full satisfaction of any fines,
192 judgments or other fees imposed by the sentencing court, the board may issue the applicant a
193 new license upon a finding that the physician is, except for the underlying conviction, otherwise
194 qualified to practice medicine: *Provided*, That the board may place whatever terms, conditions or
195 limitations it deems appropriate upon a physician licensed pursuant to this subsection.

196 (e) The board may refer any cases coming to its attention to an appropriate committee of
197 an appropriate professional organization for investigation and report. Except for complaints
198 related to obtaining initial licensure to practice medicine and surgery or podiatry in this state by
199 bribery or fraudulent misrepresentation, any complaint filed more than two years after the
200 complainant knew, or in the exercise of reasonable diligence should have known, of the existence
201 of grounds for the complaint shall be dismissed: *Provided*, That in cases of conduct alleged to be
202 part of a pattern of similar misconduct or professional incapacity that, if continued, would pose
203 risks of a serious or substantial nature to the physician's or podiatrist's current patients, the
204 investigating body may conduct a limited investigation related to the physician's or podiatrist's
205 current capacity and qualification to practice and may recommend conditions, restrictions or
206 limitations on the physician's or podiatrist's license to practice that it considers necessary for the
207 protection of the public. Any report shall contain recommendations for any necessary disciplinary
208 measures and shall be filed with the board within ninety days of any referral. The
209 recommendations shall be considered by the board and the case may be further investigated by
210 the board. The board after full investigation shall take whatever action it considers appropriate,
211 as provided in this section.

212 (f) The investigating body, as provided in subsection (e) of this section, may request and
213 the board under any circumstances may require a physician or podiatrist or person applying for
214 licensure or other authorization to practice medicine and surgery or podiatry in this state to submit
215 to a physical or mental examination by a physician or physicians approved by the board. A
216 physician or podiatrist submitting to an examination has the right, at his or her expense, to
217 designate another physician to be present at the examination and make an independent report to
218 the investigating body or the board. The expense of the examination shall be paid by the board.
219 Any individual who applies for or accepts the privilege of practicing medicine and surgery or
220 podiatry in this state is considered to have given his or her consent to submit to all examinations
221 when requested to do so in writing by the board and to have waived all objections to the
222 admissibility of the testimony or examination report of any examining physician on the ground that
223 the testimony or report is privileged communication. If a person fails or refuses to submit to an
224 examination under circumstances which the board finds are not beyond his or her control, failure
225 or refusal is prima facie evidence of his or her inability to practice medicine and surgery or podiatry
226 competently and in compliance with the standards of acceptable and prevailing medical practice.

227 (g) In addition to any other investigators it employs, the board may appoint one or more
228 licensed physicians to act for it in investigating the conduct or competence of a physician.

229 (h) In every disciplinary or licensure denial action, the board shall furnish the physician or
230 podiatrist or applicant with written notice setting out with particularity the reasons for its action.
231 Disciplinary and licensure denial hearings shall be conducted in accordance with article five,
232 chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and
233 the rules of evidence for trial courts of record in this state shall apply to all hearings. A transcript
234 of all hearings under this section shall be made, and the respondent may obtain a copy of the
235 transcript at his or her expense. The physician or podiatrist has the right to defend against any
236 charge by the introduction of evidence, the right to be represented by counsel, the right to present
237 and cross-examine witnesses and the right to have subpoenas and subpoenas duces tecum

238 issued on his or her behalf for the attendance of witnesses and the production of documents. The
239 board shall determine by a preponderance of the evidence that a violation of this code or the
240 legislative rules promulgated occurred. The board shall make all its final actions public. The order
241 shall contain the terms of all action taken by the board.

242 (i) In disciplinary actions in which probable cause has been found by the board, the board
243 shall, within twenty days of the date of service of the written notice of charges or sixty days prior
244 to the date of the scheduled hearing, whichever is sooner, provide the respondent with the
245 complete identity, address and telephone number of any person known to the board with
246 knowledge about the facts of any of the charges; provide a copy of any statements in the
247 possession of or under the control of the board; provide a list of proposed witnesses with
248 addresses and telephone numbers, with a brief summary of his or her anticipated testimony;
249 provide disclosure of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West
250 Virginia Rules of Civil Procedure; provide inspection and copying of the results of any reports of
251 physical and mental examinations or scientific tests or experiments; and provide a list and copy
252 of any proposed exhibit to be used at the hearing: *Provided*, That the board shall not be required
253 to furnish or produce any materials which contain opinion work product information or would be a
254 violation of the attorney-client privilege. Within twenty days of the date of service of the written
255 notice of charges, the board shall disclose any exculpatory evidence with a continuing duty to do
256 so throughout the disciplinary process. Within thirty days of receipt of the board's mandatory
257 discovery, the respondent shall provide the board with the complete identity, address and
258 telephone number of any person known to the respondent with knowledge about the facts of any
259 of the charges; provide a list of proposed witnesses with addresses and telephone numbers, to
260 be called at hearing, with a brief summary of his or her anticipated testimony; provide disclosure
261 of any trial expert pursuant to the requirements of Rule 26(b)(4) of the West Virginia Rules of Civil
262 Procedure; provide inspection and copying of the results of any reports of physical and mental
263 examinations or scientific tests or experiments; and provide a list and copy of any proposed exhibit

264 to be used at the hearing.

265 (j) Whenever it finds any person unqualified because of any of the grounds set forth in
266 subsection (c) of this section, the board may enter an order imposing one or more of the following:

267 (1) Deny his or her application for a license or other authorization to practice medicine and
268 surgery or podiatry;

269 (2) Administer a public reprimand;

270 (3) Suspend, limit or restrict his or her license or other authorization to practice medicine
271 and surgery or podiatry for not more than five years, including limiting the practice of that person
272 to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

273 (4) Revoke his or her license or other authorization to practice medicine and surgery or
274 podiatry or to prescribe or dispense controlled substances for any period of time, including for the
275 life of the licensee, that the board may find to be reasonable and necessary according to evidence
276 presented in a hearing before the board or its designee;

277 (5) Require him or her to submit to care, counseling or treatment designated by the board
278 as a condition for initial or continued licensure or renewal of licensure or other authorization to
279 practice medicine and surgery or podiatry;

280 (6) Require him or her to participate in a program of education prescribed by the board;

281 (7) Require him or her to practice under the direction of a physician or podiatrist designated
282 by the board for a specified period of time; and

283 (8) Assess a civil fine of not less than \$1,000 nor more than \$10,000.

284 (k) Notwithstanding the provisions of section eight, article one of this chapter, if the board
285 determines the evidence in its possession indicates that a physician's or podiatrist's continuation
286 in practice or unrestricted practice constitutes an immediate danger to the public, the board may
287 take any of the actions provided in subsection (j) of this section on a temporary basis and without
288 a hearing if institution of proceedings for a hearing before the board are initiated simultaneously
289 with the temporary action and begin within fifteen days of the action. The board shall render its

290 decision within five days of the conclusion of a hearing under this subsection.

291 (l) Any person against whom disciplinary action is taken pursuant to this article has the
292 right to judicial review as provided in §29-A-5-1 *et seq.* and §29-A-6-1 *et seq.* of this code:
293 *Provided,* That a circuit judge may also remand the matter to the board if it appears from
294 competent evidence presented to it in support of a motion for remand that there is newly
295 discovered evidence of such a character as ought to produce an opposite result at a second
296 hearing on the merits before the board and:

297 (1) The evidence appears to have been discovered since the board hearing; and

298 (2) The physician or podiatrist exercised due diligence in asserting his or her evidence
299 and that due diligence would not have secured the newly discovered evidence prior to the appeal.

300 A person may not practice medicine and surgery or podiatry or deliver health care services
301 in violation of any disciplinary order revoking, suspending or limiting his or her license while any
302 appeal is pending. Within sixty days, the board shall report its final action regarding restriction,
303 limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice
304 privileges or other disciplinary action against any physician or podiatrist to all appropriate state
305 agencies, appropriate licensed health facilities and hospitals, insurance companies or
306 associations writing medical malpractice insurance in this state, the American Medical
307 Association, the American Podiatry Association, professional societies of physicians or podiatrists
308 in the state and any entity responsible for the fiscal administration of Medicare and Medicaid.

309 (m) Any person against whom disciplinary action has been taken under this article shall,
310 at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume the
311 practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a
312 suspension, limitation or restriction period the physician or podiatrist may resume practice if the
313 board has so ordered.

314 (n) Any entity, organization or person, including the board, any member of the board, its
315 agents or employees and any entity or organization or its members referred to in this article, any

316 insurer, its agents or employees, a medical peer review committee and a hospital governing
317 board, its members or any committee appointed by it acting without malice and without gross
318 negligence in making any report or other information available to the board or a medical peer
319 review committee pursuant to law and any person acting without malice and without gross
320 negligence who assists in the organization, investigation or preparation of any such report or
321 information or assists the board or a hospital governing body or any committee in carrying out any
322 of its duties or functions provided by law is immune from civil or criminal liability, except that the
323 unlawful disclosure of confidential information possessed by the board is a misdemeanor as
324 provided in this article.

325 (o) A physician or podiatrist may request in writing to the board a limitation on or the
326 surrendering of his or her license to practice medicine and surgery or podiatry or other appropriate
327 sanction as provided in this section. The board may grant the request and, if it considers it
328 appropriate, may waive the commencement or continuation of other proceedings under this
329 section. A physician or podiatrist whose license is limited or surrendered or against whom other
330 action is taken under this subsection may, at reasonable intervals, petition for removal of any
331 restriction or limitation on or for reinstatement of his or her license to practice medicine and
332 surgery or podiatry.

333 (p) In every case considered by the board under this article regarding discipline or
334 licensure, whether initiated by the board or upon complaint or information from any person or
335 organization, the board shall make a preliminary determination as to whether probable cause
336 exists to substantiate charges of disqualification due to any reason set forth in subsection (c) of
337 this section. If probable cause is found to exist, all proceedings on the charges shall be open to
338 the public who are entitled to all reports, records and nondeliberative materials introduced at the
339 hearing, including the record of the final action taken: *Provided*, That any medical records, which
340 were introduced at the hearing and which pertain to a person who has not expressly waived his
341 or her right to the confidentiality of the records, may not be open to the public nor is the public

342 entitled to the records.

343 (q) If the board receives notice that a physician or podiatrist has been subjected to
344 disciplinary action or has had his or her credentials suspended or revoked by the board, a hospital
345 or a professional society, as defined in subsection (b) of this section, for three or more incidents
346 during a five-year period, the board shall require the physician or podiatrist to practice under the
347 direction of a physician or podiatrist designated by the board for a specified period of time to be
348 established by the board.

349 (r) Notwithstanding any other provisions of this article, the board may, at any time, on its
350 own motion, or upon motion by the complainant, or upon motion by the physician or podiatrist, or
351 by stipulation of the parties, refer the matter to mediation. The board shall obtain a list from the
352 West Virginia State Bar's mediator referral service of certified mediators with expertise in
353 professional disciplinary matters. The board and the physician or podiatrist may choose a
354 mediator from that list. If the board and the physician or podiatrist are unable to agree on a
355 mediator, the board shall designate a mediator from the list by neutral rotation. The mediation
356 shall not be considered a proceeding open to the public and any reports and records introduced
357 at the mediation shall not become part of the public record. The mediator and all participants in
358 the mediation shall maintain and preserve the confidentiality of all mediation proceedings and
359 records. The mediator may not be subpoenaed or called to testify or otherwise be subject to
360 process requiring disclosure of confidential information in any proceeding relating to or arising out
361 of the disciplinary or licensure matter mediated: *Provided*, That any confidentiality agreement and
362 any written agreement made and signed by the parties as a result of mediation may be used in
363 any proceedings subsequently instituted to enforce the written agreement. The agreements may
364 be used in other proceedings if the parties agree in writing.

365 (s) A physician licensed under this article may not be disciplined for providing expedited
366 partner therapy in accordance with §16-4F-1 *et seq.* of this code.

367 (t) Whenever the board receives credible information that a licensee of the board is

368 engaging or has engaged in criminal activity or the commitment of a crime under state or federal
369 law, the board shall report the information, to the extent that sensitive or confidential information
370 may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority
371 and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting
372 required under federal law for reporting actions relating to health care providers to the United
373 States Department of Health and Human Services.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.

1 For the purposes of this article, the words or terms defined in this section have the
2 meanings ascribed to them. These definitions are applicable unless a different meaning clearly
3 appears from the context.

4 (1) An “accepted guideline” is a care or practice guideline for pain management developed
5 by a nationally recognized clinical or professional association or a specialty society or
6 government-sponsored agency that has developed practice or care guidelines based on original
7 research or on review of existing research and expert opinion. An accepted guideline also
8 includes policy or position statements relating to pain management issued by any West Virginia
9 board included in chapter thirty of the West Virginia Code with jurisdiction over various health care
10 practitioners. Guidelines established primarily for purposes of coverage, payment or
11 reimbursement do not qualify as accepted practice or care guidelines when offered to limit
12 treatment options otherwise covered by the provisions of this article.

13 (2) “Board” or “licensing board” means the West Virginia Board of Medicine, the West
14 Virginia Board of Osteopathy, the West Virginia Board of Registered Nurses ~~or~~, the West Virginia
15 Board of Pharmacy, the West Virginia Board of Dentistry, or the West Virginia Board of Optometry.

16 (3) “Nurse” means a registered nurse licensed in the State of West Virginia pursuant to
17 the provisions of article seven of this chapter.

18 (4) “Pain” means an unpleasant sensory and emotional experience associated with actual

19 or potential tissue damage or described in terms of ~~such~~ the damage.

20 (5) "Pain-relieving controlled substance" includes, but is not limited to, an opioid or other
21 drug classified as a Schedule II through V controlled substance and recognized as effective for
22 pain relief, and excludes any drug that has no accepted medical use in the United States or lacks
23 accepted safety for use in treatment under medical supervision including, but not limited to, any
24 drug classified as a Schedule I controlled substance.

25 (6) "Pharmacist" means a registered pharmacist licensed in the State of West Virginia
26 pursuant to the provisions of article five of this chapter.

27 ~~(7) "Physician" means a physician licensed in the State of West Virginia pursuant to the
28 provisions of article three or article fourteen of this chapter~~

29 (7) "Prescriber" means:

30 (A) A physician licensed pursuant to §30-3-1 et seq. or §30-14-1 et seq. of this code;

31 (B) An advanced practice registered nurse with prescriptive authority as set forth in §30-
32 7-15a of this code;

33 (C) A dentist licensed pursuant to §30-4-1 et seq. of this code; and

34 (D) An optometrist licensed pursuant to §30-8-1 et seq. of this code.

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

1 (a) A ~~physician~~ prescriber is not subject to disciplinary sanctions by a licensing board or
2 criminal punishment by the state for prescribing, administering or dispensing pain-relieving
3 controlled 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 prescriber discharges his or her professional obligation to relieve the patient's pain, if the
10 ~~physician~~ prescriber can demonstrate by reference to an accepted guideline that his or her
11 practice substantially complied with that accepted guideline. Evidence of substantial compliance
12 with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence
13 of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or
14 criminal action.

15 (b) A health care provider, as defined in §55-7B-2 of this code, with prescriptive authority
16 is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state
17 for declining to prescribe, or declining to continue to prescribe, any controlled substance to a
18 patient which the health care provider with prescriptive authority is treating if the health care
19 provider with prescriptive authority in the exercise of reasonable prudent judgment believes the
20 patient is misusing the controlled substance in an abusive manner or unlawfully diverting a
21 controlled substance legally prescribed for their use.

22 (c) A licensed registered professional nurse is not subject to disciplinary sanctions by a
23 licensing board or criminal punishment by the state for administering pain-relieving controlled
24 substances to alleviate or control pain, if administered in accordance with the orders of a licensed
25 physician.

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

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

33 (f) The provisions of this section apply to the treatment of all patients for pain, regardless
34 of the patient's prior or current chemical dependency or addiction. The board may develop and

35 issue policies or guidelines establishing standards and procedures for the application of this article
36 to the care and treatment of persons who are chemically dependent or addicted.

§30-3A-3. Acts subject to discipline or prosecution.

1 (a) Nothing in this article shall prohibits disciplinary action or criminal prosecution of a
2 ~~physician~~ prescriber for:

3 (1) Failing to maintain complete, accurate, and current records documenting the physical
4 examination and medical history of the patient, the basis for the clinical diagnosis of the patient,
5 and the treatment plan for the patient;

6 (2) Writing a false or fictitious prescription for a controlled substance scheduled in article
7 two, chapter sixty-a of this code; or

8 (3) Prescribing, administering, or dispensing a controlled substance in violation of the
9 provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21
10 U.S.C. §§801, *et seq.* or chapter sixty-a of this code; or

11 (4) Diverting controlled substances prescribed for a patient to the physician's own personal
12 use; or

13 (5) Abnormal prescribing or dispensing patterns, or both, as identified by the controlled
14 substance monitoring program set forth in §60A-9-1 *et seq.* of this code. These prescribing and
15 dispensing patterns may be discovered either in the report filed with the appropriate board as
16 required by §60A-9-4(d) of this code following notice as set forth in §30-3A-3a of this code or,
17 through an inquiry of the controlled substances monitoring database by the appropriate licensing
18 board.

19 (b) Nothing in this article may prohibit disciplinary action or criminal prosecution of a nurse
20 or pharmacist for:

21 (1) Administering or dispensing a controlled substance in violation of the provisions of the
22 federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, *et seq.*
23 or chapter sixty-a of this code; or

24 (2) Diverting controlled substances prescribed for a patient to the nurse's or pharmacist's
25 own personal use.

§30-3A-4. Construction of article Abnormal prescribing practices.

1 This article may not be construed to legalize, condone, authorize or approve mercy killing
2 or assisted suicide

3 (a) Upon receipt of the quarterly report set forth in §60A-9-1 et seq. of this code, the
4 licensing board shall notify the prescriber that he or she has been identified as a potentially
5 abnormal prescriber. The board may take no disciplinary action based upon the first notice.

6 (b) Upon receipt of a second consecutive quarterly report containing the same or
7 substantially similar prescribing patterns the licensing board shall commence an investigation into
8 the alleged abnormal prescribing practices of the prescriber.

9 (c) Upon receipt of a third consecutive quarterly report containing the same or substantially
10 similar prescribing patterns the board shall commence disciplinary actions, if appropriate,
11 pursuant to its disciplinary process. If a third consecutive quarterly report no longer lists the same
12 or substantially similar prescribing practices the investigation set forth in subsection (b) of this
13 section shall cease.

14 (d) A licensing board may upon receipt of credible and reliable information independent of
15 the quarterly report as set forth in §60A-9-1 et seq. of this code initiate an investigation into any
16 alleged abnormal prescribing or dispensing practices of a licensee.

17 (e) The licensing boards and prescribers have all rights and responsibilities in their practice
18 acts.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

**§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary
action.**

1 (a) The board may initiate a complaint upon receipt of the quarterly report from the Board
2 of Pharmacy as required by §60A-9-1 et seq. of this code or upon receipt of credible information

3 and shall, upon the receipt of a written complaint of any person, cause an investigation to be
4 made to determine whether grounds exist for disciplinary action under this article or the legislative
5 rules promulgated pursuant to this article.

6 (b) After reviewing any information obtained through an investigation, the board shall
7 determine if probable cause exists that the licensee, certificate holder or permittee has violated
8 subsection (g) of this section or rules promulgated pursuant to this article.

9 (c) Upon a finding of probable cause to go forward with a complaint, the board shall provide
10 a copy of the complaint to the licensee, certificate holder or permittee.

11 (d) Upon a finding that probable cause exists that the licensee, certificate holder or
12 permittee has violated subsection (g) of this section or rules promulgated pursuant to this article,
13 the board may enter into a consent decree or hold a hearing for disciplinary action against the
14 licensee, certificate holder or permittee. Any hearing shall be held in accordance with the
15 provisions of this article and shall require a violation to be proven by a preponderance of the
16 evidence.

17 (e) A member of the complaint committee or the executive director of the board may issue
18 subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the
19 investigation of allegations against any person regulated by the article.

20 (f) Any member of the board or its executive director may sign a consent decree or other
21 legal document on behalf of the board.

22 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
23 suspend, restrict or revoke the license, certificate or permit of, or impose probationary conditions
24 upon or take disciplinary action against, any licensee, certificate holder or permittee for any of the
25 following reasons:

26 (1) Obtaining a board authorization by fraud, misrepresentation or concealment of material
27 facts;

28 (2) Being convicted of a felony or a misdemeanor crime of moral turpitude;

29 (3) Being guilty of unprofessional conduct which placed the public at risk, as defined by
30 legislative rule of the board;

31 (4) Intentional violation of a lawful order or legislative rule of the board;

32 (5) Having had a board authorization revoked or suspended, other disciplinary action
33 taken, or an application for a board authorization denied by the proper authorities of another
34 jurisdiction;

35 (6) Aiding or abetting unlicensed practice;

36 (7) Engaging in an act while acting in a professional capacity which has endangered or is
37 likely to endanger the health, welfare or safety of the public;

38 (8) Having an incapacity that prevents a licensee from engaging in the practice of dentistry
39 or dental hygiene, with reasonable skill, competence and safety to the public;

40 (9) Committing fraud in connection with the practice of dentistry or dental hygiene;

41 (10) Failing to report to the board one's surrender of a license or authorization to practice
42 dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of
43 those authorities or bodies for conduct that would constitute grounds for action as defined in this
44 section;

45 (11) Failing to report to the board any adverse judgment, settlement or award arising from
46 a malpractice claim arising related to conduct that would constitute grounds for action as defined
47 in this section;

48 (12) Being guilty of unprofessional conduct as contained in the American Dental
49 Association principles of ethics and code of professional conduct. The following acts are
50 conclusively presumed to be unprofessional conduct:

51 (A) Being guilty of any fraud or deception;

52 (B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

53 (C) Abusing alcohol or drugs;

54 (D) Violating any professional confidence or disclosing any professional secret;

- 55 (E) Being grossly immoral;
- 56 (F) Harassing, abusing, intimidating, insulting, degrading or humiliating a patient
57 physically, verbally or through another form of communication;
- 58 (G) Obtaining any fee by fraud or misrepresentation;
- 59 (H) Employing directly or indirectly, or directing or permitting any suspended or unlicensed
60 person so employed, to perform operations of any kind or to treat lesions of the human teeth or
61 jaws or correct malimposed formations thereof;
- 62 (I) Practicing, or offering or undertaking to practice dentistry under any firm name or trade
63 name not approved by the board;
- 64 (J) Having a professional connection or association with, or lending his or her name to
65 another, for the illegal practice of dentistry, or professional connection or association with any
66 person, firm or corporation holding himself or herself, themselves or itself out in any manner
67 contrary to this article;
- 68 (K) Making use of any advertising relating to the use of any drug or medicine of unknown
69 formula;
- 70 (L) Advertising to practice dentistry or perform any operation thereunder without causing
71 pain;
- 72 (M) Advertising professional superiority or the performance of professional services in a
73 superior manner;
- 74 (N) Advertising to guarantee any dental service;
- 75 (O) Advertising in any manner that is false or misleading in any material respect;
- 76 (P) Soliciting subscriptions from individuals within or without the state for, or advertising
77 or offering to individuals within or without the state, a course or instruction or course materials in
78 any phase, part or branch of dentistry or dental hygiene in any journal, newspaper, magazine or
79 dental publication, or by means of radio, television or United States mail, or in or by any other
80 means of contacting individuals: *Provided*, That the provisions of this paragraph may not be

81 construed so as to prohibit:

82 (i) An individual dentist or dental hygienist from presenting articles pertaining to
83 procedures or technique to state or national journals or accepted dental publications; or

84 (ii) Educational institutions approved by the board from offering courses or instruction or
85 course materials to individual dentists and dental hygienists from within or without the state; or

86 (Q) Engaging in any action or conduct which would have warranted the denial of the
87 license.

88 (13) Knowing or suspecting that a licensee is incapable of engaging in the practice of
89 dentistry or dental hygiene, with reasonable skill, competence and safety to the public, and failing
90 to report any relevant information to the board;

91 (14) Using or disclosing protected health information in an unauthorized or unlawful
92 manner;

93 (15) Engaging in any conduct that subverts or attempts to subvert any licensing
94 examination or the administration of any licensing examination;

95 (16) Failing to furnish to the board or its representatives any information legally requested
96 by the board or failing to cooperate with or engaging in any conduct which obstructs an
97 investigation being conducted by the board;

98 (17) Announcing or otherwise holding himself or herself out to the public as a specialist or
99 as being specially qualified in any particular branch of dentistry or as giving special attention to
100 any branch of dentistry or as limiting his or her practice to any branch of dentistry without first
101 complying with the requirements established by the board for the specialty and having been
102 issued a certificate of qualification in the specialty by the board;

103 (18) Failing to report to the board within seventy-two hours of becoming aware thereof any
104 life threatening occurrence, serious injury or death of a patient resulting from dental treatment or
105 complications following a dental procedure;

106 (19) Failing to report to the board any driving under the influence and/or driving while

107 intoxicated offense; or

108 (20) Violation of any of the terms or conditions of any order entered in any disciplinary
109 action.

110 (h) For the purposes of subsection (g) of this section, effective July 1, 2013, disciplinary
111 action may include:

112 (1) Reprimand;

113 (2) Probation;

114 (3) Restrictions;

115 (4) Suspension;

116 (5) Revocation;

117 (6) Administrative fine, not to exceed \$1,000 per day per violation;

118 (7) Mandatory attendance at continuing education seminars or other training;

119 (8) Practicing under supervision or other restriction; or

120 (9) Requiring the licensee or permittee to report to the board for periodic interviews for a
121 specified period of time.

122 (i) In addition to any other sanction imposed, the board may require a licensee or permittee
123 to pay the costs of the proceeding.

124 (j) The board may defer disciplinary action with regard to an impaired licensee who
125 voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice dental
126 care and to enter an approved treatment and monitoring program in accordance with the board's
127 legislative rule: *Provided*, That this subsection does not apply to a licensee who has been
128 convicted of, pleads guilty to, or enters a plea of nolo contendere to an offense relating to a
129 controlled substance in any jurisdiction.

130 (k) A person authorized to practice under this article who reports or otherwise provides
131 evidence of the negligence, impairment or incompetence of another member of this profession to
132 the board or to any peer review organization is not liable to any person for making the report if

133 the report is made without actual malice and in the reasonable belief that the report is warranted
134 by the facts known to him or her at the time.

**ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS
AND PHARMACIES.**

§30-5-6. Powers and duties of the board.

1 (a) (1) The board has all the powers and duties set forth in this article, by rule, in §30-1-1
2 *et seq.* of this code and elsewhere in law, including the power to:

3 ~~(a)~~ (2) Hold meetings;

4 ~~(b)~~ (3) Establish additional requirements for a license, permit and registration;

5 ~~(c)~~ (4) Establish procedures for submitting, approving and rejecting applications for a
6 license, permit and registration;

7 ~~(d)~~ (5) Determine the qualifications of any applicant for a license, permit and registration;

8 ~~(e)~~ (6) Establish a fee schedule;

9 ~~(f)~~ (7) Issue, renew, deny, suspend, revoke or reinstate a license, permit, and registration;

10 ~~(g)~~ (8) Prepare, conduct, administer and grade written, oral or written and oral
11 examinations for a license and registration and establish what constitutes passage of the
12 examination;

13 ~~(h)~~ (9) Contract with third parties to administer the examinations required under the
14 provisions of this article;

15 ~~(i)~~ (10) Maintain records of the examinations the board or a third party administers,
16 including the number of persons taking the examination and the pass and fail rate;

17 ~~(j)~~ (11) Regulate mail order pharmacies

18 ~~(k)~~ (12) Maintain an office, and hire, discharge, establish the job requirements and fix the
19 compensation of employees and contract with persons necessary to enforce the provisions of this
20 article. Inspectors shall be licensed pharmacists;

21 (†) (13) Investigate alleged violations of the provisions of this article, legislative rules,
22 orders and final decisions of the board;

23 (‡) (14) Conduct disciplinary hearings of persons regulated by the board;

24 (†) (15) Determine disciplinary action and issue orders;

25 (†) (16) Institute appropriate legal action for the enforcement of the provisions of this
26 article;

27 (†) (17) Maintain an accurate registry of names and addresses of all persons regulated by
28 the board;

29 (†) (18) Keep accurate and complete records of its proceedings, and certify the same as
30 may be necessary and appropriate;

31 (†) (19) Propose rules in accordance with the provisions of article three, chapter twenty-
32 nine-a of this code to implement the provisions of this article;

33 (†) (20) Sue and be sued in its official name as an agency of this state;

34 (†) (21) Confer with the Attorney General or his or her assistant in connection with legal
35 matters and questions; and

36 (†) (22) Take all other actions necessary and proper to effectuate the purposes of this
37 article.

38 (b) The board is exempt from state purchasing laws, legislative rules, and policies for the
39 purposes of spending grant money if the grant is in relation to substance use and controlled
40 substances.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11. Denial, revocation, or suspension of license; grounds for discipline.

1 (a) The board ~~shall have the power to~~ may deny, revoke or suspend any license to practice
2 registered professional nursing issued or applied for in accordance with ~~the provisions of~~ this
3 article, or to otherwise discipline a licensee or applicant upon proof that he or she:

4 (1) Is or was guilty of fraud or deceit in procuring or attempting to procure a license to

5 practice registered professional nursing; or

6 (2) Has been convicted of a felony; or

7 (3) Is unfit or incompetent by reason of negligence, habits, or other causes; or

8 (4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or

9 (5) Is mentally incompetent; or

10 (6) Is guilty of conduct derogatory to the morals or standing of the profession of registered

11 nursing; or

12 (7) Is practicing or attempting to practice registered professional nursing without a license

13 or reregistration; or

14 (8) Has demonstrated abnormal prescribing or dispensing practices pursuant to §30-3A-
15 4 of this code; or

16 ~~(8)~~ (9) Has willfully or repeatedly violated any of the provisions of this article.

17 (b) An advanced practice registered nurse licensed under this article may not be
18 disciplined for providing expedited partner therapy in accordance with §16-4F-1 *et seq.* of this
19 code.

ARTICLE 8. OPTOMETRISTS.

§30-8-18. Complaints; investigations; due process procedure; grounds for disciplinary action.

1 (a) The board may upon its own motion based on credible information or based upon the
2 quarterly report from the Board of Pharmacy as required by §60A-9-1 *et seq.* of this code, and
3 shall upon the written complaint of any person cause an investigation to be made to determine
4 whether grounds exist for disciplinary action under this article or the legislative rules of the board.

5 (b) Upon initiation or receipt of the complaint, the board shall provide a copy of the
6 complaint to the licensee, certificate holder or permittee.

7 (c) After reviewing any information obtained through an investigation, the board shall
8 determine if probable cause exists that the licensee or permittee has violated subsection (g) of

9 this section or rules promulgated pursuant to this article.

10 (d) Upon a finding that probable cause exists that the licensee or permittee has violated
11 subsection (g) of this section or rules promulgated pursuant to this article, the board may enter
12 into a consent decree or hold a hearing for the suspension or revocation of the license, certificate
13 or permit or the imposition of sanctions against the licensee, certificate holder or permittee. Any
14 hearing shall be held in accordance with ~~the provisions of this article, and the provisions of §29A-~~
15 ~~5-1 et seq. and §29A-6-1 et seq.~~ of this code.

16 (e) Any member of the board or the executive secretary of the board may issue subpoenas
17 and subpoenas duces tecum on behalf of the board to obtain testimony and documents to aid in
18 the investigation of allegations against any person regulated by this article.

19 (f) Any member of the board or its executive secretary may sign a consent decree or other
20 legal document on behalf of the board.

21 (g) The board may, after notice and opportunity for hearing, deny or refuse to renew,
22 suspend or revoke the license, certificate or permit of, impose probationary conditions upon or
23 take disciplinary action against, any licensee, certificate holder or permittee for any of the following
24 reasons once a violation has been proven by a preponderance of the evidence:

25 (1) Obtaining a license, certificate or permit by fraud, misrepresentation or concealment
26 of material facts;

27 (2) Being convicted of a felony or other crime involving moral turpitude;

28 (3) Being guilty of unprofessional conduct which placed the public at risk;

29 (4) Intentional violation of a lawful order;

30 (5) Having had an authorization to practice optometry revoked, suspended, other
31 disciplinary action taken, by the proper authorities of another jurisdiction;

32 (6) Having had an application to practice optometry denied by the proper authorities of
33 another jurisdiction;

34 (7) Exceeded the scope of practice of optometry;

- 35 (8) Aiding or abetting unlicensed practice;
- 36 (9) Engaging in an act while acting in a professional capacity which has endangered or is
37 likely to endanger the health, welfare or safety of the public; or
- 38 (10) False and deceptive advertising; this includes, but is not limited to, the following:
- 39 (A) Advertising "free examination of eyes," or words of similar import and meaning; or
- 40 (B) Advertising frames or mountings for glasses, contact lenses, or other optical devices
41 which does not accurately describe the same in all its component parts.
- 42 (h) For the purposes of subsection (g) of this section disciplinary action may include:
- 43 (1) Reprimand;
- 44 (2) Probation;
- 45 (3) Administrative fine, not to exceed \$1,000 per day per violation;
- 46 (4) Mandatory attendance at continuing education seminars or other training;
- 47 (5) Practicing under supervision or other restriction;
- 48 (6) Requiring the licensee or certificate holders to report to the board for periodic interviews
49 for a specified period of time; or
- 50 (7) Other corrective action considered by the board to be necessary to protect the public,
51 including advising other parties whose legitimate interests may be at risk.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

~~§30-14-12a. Initiation of suspension or revocation proceedings allowed and required;
reporting of information to board pertaining to professional malpractice and
professional incompetence required; penalties; probable cause determinations;
referrals to law enforcement authorities~~ **Complaint Proceedings.**

- 1 (a) The board may independently initiate suspension or revocation proceedings as well as
2 initiate suspension or revocation proceedings based on information received from any person,
3 including, but not limited to, the Board of Pharmacy as required by §60A-9-1 et seq. of this code.

- 4 The board shall initiate investigations as to professional incompetence or other reasons

5 for which a licensed osteopathic physician and surgeon may be adjudged unqualified if the board
6 receives notice that three or more judgments or any combination of judgments and settlements
7 resulting in five or more unfavorable outcomes arising from medical professional liability have
8 been rendered or made against ~~such~~ the osteopathic physician within a five-year period.

9 (b) Upon request of the board, any medical peer review committee in this state shall report
10 any information that may relate to the practice or performance of any osteopathic physician known
11 to that medical peer review committee. Copies of ~~such~~ the requests for information from a medical
12 peer review committee may be provided to the subject osteopathic physician if, in the discretion
13 of the board, the provision of ~~such~~ the copies will not jeopardize the board's investigation. ~~In the~~
14 ~~event that~~ If copies are provided, the subject osteopathic physician has fifteen days to comment
15 on the requested information and ~~such~~ the comments must be considered by the board.

16 After the completion of a hospital's formal disciplinary procedure and after any resulting
17 legal action, the chief executive officer of ~~such~~ the hospital shall report in writing to the board
18 within sixty days the name of any member of the medical staff or any other osteopathic physician
19 practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or
20 terminated for any cause, including resignation, together with all pertinent information relating to
21 ~~such~~ the action. The chief executive officer shall also report any other formal disciplinary action
22 taken against any osteopathic physician by the hospital upon the recommendation of its medical
23 staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude
24 or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis
25 or failure to attend staff or section meetings need not be reported.

26 Any professional society in this state comprised primarily of osteopathic physicians or
27 physicians and surgeons of other schools of medicine which takes formal disciplinary action
28 against a member relating to professional ethics, professional incompetence, professional
29 malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within
30 sixty days of a final decision the name of ~~such~~ the member, together with all pertinent information

31 relating to ~~such~~ the action.

32 Every person, partnership, corporation, association, insurance company, professional
33 society or other organization providing professional liability insurance to an osteopathic physician
34 in this state shall submit to the board the following information within thirty days from any
35 judgment, dismissal or settlement of a civil action or of any claim involving the insured: The date
36 of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment,
37 and, if so, by which party; the amount of any settlement or judgment against the insured; and such
38 other information required by the board.

39 Within thirty days after a person known to be an osteopathic physician licensed or
40 otherwise lawfully practicing medicine and surgery in this state or applying to be licensed is
41 convicted of a felony under the laws of this state, or of any crime under the laws of this state
42 involving alcohol or drugs in any way, including any controlled substance under state or federal
43 law, the clerk of the court of record in which the conviction was entered shall forward to the board
44 a certified true and correct abstract of record of the convicting court. The abstract shall include
45 the name and address of ~~such~~ the osteopathic physician or applicant, the nature of the offense
46 committed and the final judgment and sentence of the court.

47 Upon a determination of the board that there is probable cause to believe that any person,
48 partnership, corporation, association, insurance company, professional society or other
49 organization has failed or refused to make a report required by this subsection, the board shall
50 provide written notice to the alleged violator stating the nature of the alleged violation and the time
51 and place at which the alleged violator shall appear to show good cause why a civil penalty should
52 not be imposed. The hearing shall be conducted in accordance with the ~~provisions of~~ §29A-5-1
53 *et seq.* of this code. After reviewing the record of ~~such~~ the hearing, if the board determines that a
54 violation of this subsection has occurred, the board shall assess a civil penalty of not less than
55 \$1,000 nor more than \$10,000 against ~~such~~ the violator. The board shall notify anyone assessed
56 of the assessment in writing and the notice shall specify the reasons for the assessment. If the

57 violator fails to pay the amount of the assessment to the board within thirty days, the Attorney
58 General may institute a civil action in the circuit court of Kanawha County to recover the amount
59 of the assessment. In any such civil action, the court's review of the board's action shall be
60 conducted in accordance with ~~the provisions of~~ §29A-5-4 of this code.

61 Any person may report to the board relevant facts about the conduct of any osteopathic
62 physician in this state which in the opinion of ~~such~~ the person amounts to professional malpractice
63 or professional incompetence.

64 The board shall provide forms for filing reports pursuant to this section. Reports submitted
65 in other forms shall be accepted by the board.

66 The filing of a report with the board pursuant to any provision of this article, any
67 investigation by the board or any disposition of a case by the board does not preclude any action
68 by a hospital, other health care facility or professional society comprised primarily of osteopathic
69 physicians or physicians and surgeons of other schools of medicine to suspend, restrict or revoke
70 the privileges or membership of ~~such~~ the osteopathic physician.

71 (c) In every case considered by the board under this article regarding suspension,
72 revocation or issuance of a license whether initiated by the board or upon complaint or information
73 from any person or organization, the board shall make a preliminary determination as to whether
74 probable cause exists to substantiate charges of cause to suspend, revoke or refuse to issue a
75 license as set forth in §30-14-11(a) of this code. If ~~such~~ probable cause is found to exist, all
76 proceedings on ~~such~~ the charges shall be open to the public who are entitled to all reports,
77 records, and nondeliberative materials introduced at ~~such~~ the hearing, including the record of the
78 final action taken: *Provided*, That any medical records, which were introduced at ~~such~~ the hearing
79 and which pertain to a person who has not expressly waived his or her right to the confidentiality
80 of ~~such~~ the records, shall not be open to the public nor is the public entitled to ~~such~~ the records.
81 If a finding is made that probable cause does not exist, the public has a right of access to the
82 complaint or other document setting forth the charges, the findings of fact and conclusions

83 supporting ~~such~~ the finding that probable cause does not exist, if the subject osteopathic physician
84 consents to ~~such~~ the access.

85 (d) If the board receives notice that an osteopathic physician has been subjected to
86 disciplinary action or has had his or her credentials suspended or revoked by the board, a medical
87 peer review committee, a hospital or professional society, as defined in subsection (b) of this
88 section, for three or more incidents in a five-year period, the board shall require the osteopathic
89 physician to practice under the direction of another osteopathic physician for a specified period to
90 be established by the board.

91 (e) Whenever the board receives credible information that a licensee of the board is
92 engaging or has engaged in criminal activity or the commitment of a crime under state or federal
93 law, the board shall report the information, to the extent that sensitive or confidential information
94 may be publicly disclosed under law, to the appropriate state or federal law-enforcement authority
95 and/or prosecuting authority. This duty exists in addition to and is distinct from the reporting
96 required under federal law for reporting actions relating to health care providers to the United
97 States Department of Health and Human Services.

ARTICLE 36. ACUPUNCTURISTS.

§30-36-2. Definitions.

1 (a) Unless the context in which used clearly requires a different meaning, as used in this
2 article:

3 (1) "Acupuncture" means a form of health care, based on a theory of energetic physiology,
4 that describes the interrelationship of the body organs or functions with an associated point or
5 combination of points.

6 (2) "Board" means the West Virginia Acupuncture Board.

7 (3) "License" means a license issued by the board to practice acupuncture.

8 (4) "Moxibustion" means the burning of mugwort on or near the skin to stimulate the
9 acupuncture point.

10 (5) "Practice acupuncture" means the use of oriental medical therapies for the purpose of
 11 normalizing energetic physiological functions including pain control, and for the promotion,
 12 maintenance and restoration of health.

13 (b) (1) "Practice acupuncture" includes:

14 ~~(1)~~ (A) Stimulation of points of the body by the insertion of acupuncture needles;

15 ~~(2)~~ (B) The application of moxibustion; and

16 ~~(3)~~ (C) Manual, mechanical, thermal or electrical therapies only when performed in
 17 accordance with the principles of oriental acupuncture medical theories.

18 (2) The practice of acupuncture does not include the procedure of auricular acupuncture
 19 when used in the context of a chemical dependency treatment program when the person is trained
 20 and approved by the National Acupuncture Detoxification Association or an equivalent certifying
 21 body.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

1 (a) Schedule I shall consist of the drugs and other substances, by whatever official name,
 2 common or usual name, chemical name, or brand name designated, listed in this section including
 3 their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence
 4 of these isomers, esters, ethers and salts is possible within the specific chemical designation.

5 (b) ~~Opiates. Unless specifically excepted or unless listed in another schedule, any of the~~
 6 ~~following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and~~
 7 ~~ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the~~
 8 ~~specific chemical designation (for purposes of subdivision (34) of this subsection only, the term~~
 9 ~~isomer includes the optical and geometric isomers)~~

10 ~~(4)~~ Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl) -4-piperidinyl]--

- 11 phenylacetamide);
- 12 ~~(2)~~ Acetylmethadol;
- 13 ~~(3)~~ Allylprodine;
- 14 ~~(4)~~ Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol,
- 15 levomethadyl acetate, or LAAM);
- 16 ~~(5)~~ Alphameprodine;
- 17 ~~(6)~~ Alphamethadol;
- 18 ~~(7)~~ Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl]
- 19 propionanilide; 1-(1-methyl-2-phenylethyl)-4-(– propanilido) piperidine);
- 20 ~~(8)~~ Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl- 4-piperidinyll--phenylpropanamide);
- 21 ~~(9)~~ Benzethidine;
- 22 ~~(10)~~ Betacetylmethadol;
- 23 ~~(11)~~ Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl) -4- piperidinyll-N-phenylpropanamide);
- 24 ~~(12)~~ Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2- hydroxy-2-phenethyl)-3-methyl-
- 25 4-piperidinyll-N-phenylpropanamide);
- 26 ~~(13)~~ Betameprodine;
- 27 ~~(14)~~ Betamethadol;
- 28 ~~(15)~~ Betaprodine;
- 29 ~~(16)~~ Clonitazene;
- 30 ~~(17)~~ Dextromoramide;
- 31 ~~(18)~~ Diampromide;
- 32 ~~(19)~~ Diethylthiambutene;
- 33 ~~(20)~~ Difenoxin;
- 34 ~~(21)~~ Dimenoxadol;
- 35 ~~(22)~~ Dimepheptanol;
- 36 ~~(23)~~ Dimethylthiambutene;

- 37 ~~(24)~~ Dioxaphetyl butyrate;
- 38 ~~(25)~~ Dipipanone;
- 39 ~~(26)~~ Ethylmethylthiambutene;
- 40 ~~(27)~~ Etonitazene;
- 41 ~~(28)~~ Etoxidine;
- 42 ~~(29)~~ Furethidine;
- 43 ~~(30)~~ Hydroxypethidine;
- 44 ~~(31)~~ Ketobemidone;
- 45 ~~(32)~~ Levomoramide;
- 46 ~~(33)~~ Levophenacymorphan;
- 47 ~~(34)~~ 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4- piperidyl]-N-phenylpropanamide);
- 48 ~~(35)~~ 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4- piperidinyl]-phenylpropanamide);
- 49 ~~(36)~~ Morpheridine;
- 50 ~~(37)~~ MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 51 ~~(38)~~ Noracymethadol;
- 52 ~~(39)~~ Norlevorphanol;
- 53 ~~(40)~~ Normethadone;
- 54 ~~(41)~~ Norpipanone;
- 55 ~~(42)~~ Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2- phenethyl)-4-piperidinyl] propanamide);
- 56 ~~(43)~~ PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 57 ~~(44)~~ Phenadoxone;
- 58 ~~(45)~~ Phenampromide;
- 59 ~~(46)~~ Phenomorphan;
- 60 ~~(47)~~ Phenoperidine;
- 61 ~~(48)~~ Piritramide;
- 62 ~~(49)~~ Proheptazine;

63 ~~(50)~~ Properidine;

64 ~~(51)~~ Propiram;

65 ~~(52)~~ Racemoramide;

66 ~~(53)~~ Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4- piperidinyl]-propanamide);

67 ~~(54)~~ Tilidine;

68 ~~(55)~~ Trimeperidine.

69 (c) *Opium derivatives*: ~~--Unless specifically excepted or unless listed in another schedule,~~
70 ~~any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever~~
71 ~~the existence of such salts, isomers and salts of isomers is possible within the specific chemical~~
72 ~~designation:~~

73 ~~(1)~~ Acetorphine;

74 ~~(2)~~ Acetyldihydrocodeine;

75 ~~(3)~~ Benzylmorphine;

76 ~~(4)~~ Codeine methylbromide;

77 ~~(5)~~ Codeine-N-Oxide;

78 ~~(6)~~ Cyprenorphine;

79 ~~(7)~~ Desomorphine;

80 ~~(8)~~ Dihydromorphine;

81 ~~(9)~~ Drotebanol;

82 ~~(10)~~ Etorphine (except HCl Salt);

83 ~~(11)~~ Heroin;

84 ~~(12)~~ Hydromorphenol;

85 ~~(13)~~ Methyldesorphine;

86 ~~(14)~~ Methyldihydromorphine;

87 ~~(15)~~ Morphine methylbromide;

88 ~~(16)~~ Morphine methylsulfonate;

89 ~~(17)~~ Morphine-N-Oxide;

90 ~~(18)~~ Myrophine;

91 ~~(19)~~ Nicocodeine;

92 ~~(20)~~ Nicomorphine;

93 ~~(21)~~ Normorphine;

94 ~~(22)~~ Pholcodine;

95 ~~(23)~~ Thebacon.

96 (d) *Hallucinogenic substances.* ~~— Unless specifically excepted or unless listed in another~~
97 ~~schedule, any material, compound, mixture or preparation, which contains any quantity of the~~
98 ~~following hallucinogenic substances, or which contains any of its salts, isomers and salts of~~
99 ~~isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within~~
100 ~~the specific chemical designation (for purposes of this subsection only, the term "isomer" includes~~
101 ~~the optical, position and geometric isomers):~~

102 ~~(1)~~ Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethy-
103 1H-indole-3-ethanamine; 3-(2- aminobutyl) indole; alpha-ET; and AET;

104 ~~(2)~~ 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-
105 dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

106 ~~(3)~~ 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-
107 dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

108 ~~(4)(A)~~ N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has
109 the acronym 25B-NBOMe.

110 ~~(B)~~ 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe)

111 ~~(C)~~ 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)

112 ~~(5)~~ 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-
113 methylphenethylamine; 2,5-DMA;

114 ~~(6)~~ 2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;

- 115 ~~(7)~~ 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);
- 116 ~~(8)~~ 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-
- 117 methylphenethylamine; paramethoxyamphetamine; PMA;
- 118 ~~(9)~~ 5-methoxy-3, 4-methylenedioxy-amphetamine;
- 119 ~~(10)~~ 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-
- 120 dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";
- 121 ~~(11)~~ 3,4-methylenedioxy amphetamine;
- 122 ~~(12)~~ 3,4-methylenedioxymethamphetamine (MDMA);
- 123 ~~(13)~~ 3,4-methylenedioxy-N-ethylamphetamine (also known as – ethyl-alpha-methyl-3,4
- 124 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);
- 125 ~~(14)~~ N-hydroxy-3,4-methylenedioxyamphetamine (also known as – hydroxy-alpha-methyl-
- 126 3,4 (methylenedioxy) phenethylamine, and – hydroxy MDA);
- 127 ~~(15)~~ 3,4,5-trimethoxy amphetamine;
- 128 ~~(15)~~~~(16)~~ 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);
- 129 ~~(17)~~ Alpha-methyltryptamine (other name: AMT);
- 130 ~~(18)~~ Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-
- 131 hydroxyindole;3-(2-dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-
- 132 dimethyltryptamine; mappine;
- 133 ~~(19)~~ Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;
- 134 ~~(20)~~ Dimethyltryptamine; some trade or other names: DMT;
- 135 ~~(21)~~ 5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);
- 136 ~~(22)~~ Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-
- 137 octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe
- 138 iboga;
- 139 ~~(23)~~ Lysergic acid diethylamide;
- 140 ~~(24)~~ Marihuana;

- 141 ~~(25)~~ Mescaline;
- 142 Mitragynine, 7-hydroxymitragynine (Kratom);
- 143 ~~(26)~~ Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-
- 144 tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;
- 145 ~~(27)~~ Peyote; meaning all parts of the plant presently classified botanically as *Lophophora*
- 146 *williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such
- 147 plant, and every compound, manufacture, salts, immediate derivative, mixture or preparation of
- 148 such plant, its seeds or extracts;
- 149 ~~(28)~~ N-ethyl-3-piperidyl benzilate;
- 150 ~~(29)~~ N-methyl-3-piperidyl benzilate;
- 151 ~~(30)~~ Psilocybin;
- 152 ~~(31)~~ Psilocyn;
- 153 ~~(32)~~ Tetrahydrocannabinols; synthetic equivalents of the substances contained in the
- 154 plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, immediate
- 155 derivatives and their isomers with similar chemical structure and pharmacological activity such as
- 156 the following:
- 157 delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;
- 158 delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;
- 159 delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;
- 160 (Since nomenclature of these substances is not internationally standardized, compounds
- 161 of these structures, regardless of numerical designation of atomic positions covered.)
- 162 ~~(33)~~ Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-
- 163 phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine,
- 164 cyclohexamine, PCE;
- 165 ~~(34)~~ Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-
- 166 phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

- 167 ~~(35)~~ Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-
168 cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine; TPCP, TCP;
- 169 ~~(36)~~ 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.
- 170 ~~(37)~~ 4-methylmethcathinone (Mephedrone);
- 171 ~~(38)~~ 3,4-methylenedioxypropylamphetamine (MDPV);
- 172 ~~(39)~~ 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);
- 173 ~~(40)~~ 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)
- 174 ~~(41)~~ 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)
- 175 ~~(42)~~ 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)
- 176 ~~(43)~~ 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)
- 177 ~~(44)~~ 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)
- 178 ~~(45)~~ 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)
- 179 ~~(46)~~ 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)
- 180 ~~(47)~~ 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)
- 181 ~~(48)~~ 3,4-Methylenedioxy-N-methylcathinone (Methylone)
- 182 ~~(49)~~ 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7, its optical isomers, salts and
183 salts of isomers
- 184 ~~(50)~~ 5-methoxy-N,N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-
185 (dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT)
- 186 ~~(51)~~ Alpha-methyltryptamine (other name: AMT)
- 187 ~~(52)~~ 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT)
- 188 ~~(53)~~ Synthetic Cannabinoids as follows:
- 189 (A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol {also known as CP
190 47,497 and homologues};
- 191 (B) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol {also known as CP
192 47,497-C8 homolog};

- 193 ~~(C)~~ [(6a*R*)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a-
- 194 tetrahydrobenzo[*c*]chromen-1-ol)] {also known as HU-210};
- 195 ~~(D)~~ (dexanabinol);
- 196 (6a*S*,10a*S*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-
- 197 tetrahydrobenzol[*c*]chromen-1-ol) {also known as HU-211};
- 198 ~~(E)~~ 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-018};
- 199 ~~(F)~~ 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-073};
- 200 ~~(G)~~ (2-methyl-1-propyl-1*H*-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-
- 201 015};
- 202 ~~(H)~~ (1-hexyl-1*H*-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};
- 203 ~~(I)~~ [1-[2-(4-morpholinyl) ethyl] -1*H*-indol-3-yl]-1-naphthalenyl-methanone {also known as
- 204 JWH-200};
- 205 ~~(J)~~ 1-(1-pentyl-1*H*-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};
- 206 ~~(K)~~ 2-((1*S*,2*S*,5*S*)-5-hydroxy-2- (3-hydroxypropyl)cyclohexyl) -5-(2-methyloctan-2-
- 207 yl)phenol {also known as CP 55,940};
- 208 ~~(L)~~ (4-methyl-1-naphthalenyl) (1-pentyl-1*H*-indol-3-yl) -methanone {also known as JWH-
- 209 122};
- 210 ~~(M)~~ (4-methyl-1-naphthalenyl) (1-pentyl-1*H*-indol-3-yl) -methanone {also known as JWH-
- 211 398};
- 212 ~~(N)~~ (4-methoxyphenyl)(1-pentyl-1*H*-indol-3-yl)methanone {also known as RCS-4};
- 213 ~~(O)~~ 1-(1-(2-cyclohexylethyl) -1*H*-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known
- 214 as RCS-8};
- 215 ~~(P)~~ 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);
- 216 ~~(Q)~~ 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201); and
- 217 ~~(R)~~ 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).
- 218 ~~(S4)~~ Synthetic cannabinoids: or any material, compound, mixture or preparation which

219 ~~contains any quantity of the following substances, including their analogues, congeners,~~
220 ~~homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as~~
221 ~~follows:~~

222 ~~(A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-~~
223 ~~YL)phenol);~~

224 ~~(B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-~~
225 ~~6A,7,10, 10A-tetrahydrobenzo[C] chromen-1-OL)];~~

226 ~~(C) HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-~~
227 ~~methyloctan-2-YL)-6A,7,10,10atetrahydrobenzo[C]chromen-1-OL);~~

228 ~~(D) JWH-018, 1-pentyl-3-(1-naphthoyl)indole;~~

229 ~~(E) JWH-019, 1-hexyl-3-(1-naphthoyl)indole;~~

230 ~~(F) JWH-073, 1-butyl-3-(1-naphthoyl)indole;~~

231 ~~(G) JWH-200, (1-(2-morpholin-4-ylethyl)indol-3-yl)- Naphthalen-1-ylmethanone;~~

232 ~~(H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)indole.]~~

233 Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (5F-
234 ADB);

235 Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (5F-AMB);

236 Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (FUB-
237 AMB);

238 N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (5F-APINACA);

239 N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide
240 (ADB-FUBINACA);

241 Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate
242 (MDMB-CHMICA);

243 Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate
244 (MDMB-FUBINACA);

245 ~~(55) Synthetic cannabinoids including any material, compound, mixture or preparation that~~
246 ~~is not listed as a controlled substance in Schedule I through V, is not a federal Food and Drug~~
247 ~~Administration approved drug or used within legitimate and approved medical research and which~~
248 ~~contains any quantity of the following substances, their salts, isomers, whether optical positional~~
249 ~~or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless~~
250 ~~specifically exempted, whenever the existence of these salts, isomers, analogues, homologues~~
251 ~~and salts of isomers, analogues and homologues if possible within the specific chemical~~
252 ~~designation:~~

253 ~~(A) Tetrahydrocannabinols: meaning tetrahydrocannabinols which are naturally contained~~
254 ~~in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in~~
255 ~~the plant or in the resinous extractives of cannabis or synthetic substances, derivatives and their~~
256 ~~isomers with analogous chemical structure and or pharmacological activity such as the following:~~

- 257 ~~(i) DELTA-1 CIS OR trans tetrahydrocannabinol and their Optical isomers.~~
258 ~~(ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their optical isomers.~~
259 ~~(iii) DELTA-3,4 CIS or their trans tetrahydrocannabinol and their optical isomers.~~

260 ~~(56) Synthetic Phenethylamines (including their optical, positional, and geometric isomers,~~
261 ~~salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers):~~

262 ~~(A) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe/ 2C-I-~~
263 ~~NBOMe);~~

264 ~~(B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe/2C-~~
265 ~~C-NBOMe);~~

266 ~~(C) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe/~~
267 ~~2C-B-NBOMe);~~

268 ~~(57) Synthetic Opioids (including their isomers, esters, ethers, salts and salts of isomers,~~
269 ~~esters and ethers):~~

270 ~~(A) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl);~~

- 271 ~~(B)~~ furanyl fentanyl;
- 272 ~~(C)~~ 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-
- 273 47700);
- 274 ~~(D)~~ N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-
- 275 phenethylpiperidin-4-yl)-N-phenylbutanamide, (butyryl fentanyl);
- 276 ~~(E)~~ N-[1-[2-hydroxy-2-(thiophen-2-yl)ethylpiperidin-4-yl]-N-phenylpropionamide, also
- 277 known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidiny]-N-phenylpropanamide, (beta-
- 278 hydroxythiofentanyl).
- 279 N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (acryl fentanyl)
- 280 N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide (isobutyryl fentanyl)
- 281 N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide (cyclopropyl fentanyl)
- 282 2-(2,4-dichlorophenyl)-N-((1S,2S)-2-(dimethylamino)cyclohexyl)-N-methylacetamide
- 283 (also known as
- 284 U-48800)
- 285 Trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methyl-benzamide (also known as
- 286 U-49900)
- 287 Trans-3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzeneacetamide (also
- 288 known as
- 289 U-51754)
- 290 ~~(58)~~ Opioid Receptor Agonist ~~(including its isomers, esters, ethers, salts, and salts of~~
- 291 ~~isomers, esters and ethers):~~
- 292 (A) AH-7921 (3,4-dichloro-N-(1dimethylamino)cyclohexylmethyl]benzamide).
- 293 (B) Naphthoylindoles or any compound containing a 3-(-1- Naphthoyl) indole structure with
- 294 substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole
- 295 ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall
- 296 include the following:

297 ~~(i)~~ JWH 015;

298 ~~(ii)~~ JWH 018;

299 ~~(iii)~~ JWH 019;

300 ~~(iv)~~ JWH 073;

301 ~~(v)~~ JWH 081;

302 ~~(vi)~~ JWH 122;

303 ~~(vii)~~ JWH 200;

304 ~~(viii)~~ JWH 210;

305 ~~(ix)~~ JWH 398;

306 ~~(x)~~ AM 2201;

307 ~~(xi)~~ WIN 55,212.

308 ~~(59)~~ Naphylmethyloles or any compound containing a 1indol-3-yl-(1-naphthyl)
309 methane structure with a substition at the nitrogen atom of the indole ring whether or not further
310 substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to
311 any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

312 ~~(60)~~ Naphthoylpyrroles or any compound containing a 3-(1- Naphthoyl) pyrrole structure
313 with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted in the
314 pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. This
315 shall include, but not be limited to, JWH 147 and JWH 307.

316 ~~(64)~~ Naphthylmethyloles or any compound containing a Naphthylideneindene
317 structure with substitution at the 3- Position of the indene ring whether or not further substituted
318 in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.
319 This shall include, but not be limited to, JWH 176.

320 ~~(62)~~ Phenylacetyloles or any compound containing a 3- Phenylacetylindole structure
321 with substitution at the nitrogen atom of the indole ring whether or not further substituted in the
322 indole ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall

323 include the following:

324 ~~(A)~~ RCS-8, SR-18 OR BTM-8;

325 ~~(B)~~ JWH 250;

326 ~~(C)~~ JWH 203;

327 ~~(D)~~ JWH 251;

328 ~~(E)~~ JWH 302.

329 ~~(63)~~ Cyclohexylphenols or any compound containing a 2-(3- hydroxycyclohexyl) phenol
330 structure with a substitution at the 5-position of the phenolic ring whether or not substituted in the
331 cyclohexyl ring to any extent. This shall include the following:

332 ~~(A)~~ CP 47,497 and its homologues and analogs;

333 ~~(B)~~ Cannabicyclohexanol;

334 ~~(C)~~ CP 55,940.

335 ~~(64)~~ Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with
336 substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole
337 ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include
338 the following:

339 ~~(A)~~ AM 694;

340 ~~(B)~~ Pravadoline WIN 48,098;

341 ~~(C)~~ RCS 4;

342 ~~(D)~~ AM 679.

343 ~~(62)~~ [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-benzoxazin-6-
344 YL]-1-napthalenymethanone. This shall include WIN 55,212-2.

345 ~~(65)~~ Dibenzopyrans or any compound containing a 11-hydroxydelta 8-
346 tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210,
347 HU-211, JWH 051 and JWH 133.

348 ~~(66)~~ Adamantoylindoles or any compound containing a 3-(-1- Adamantoyl) indole structure

349 with substitution at the nitrogen atom of the indole ring whether or not further substituted in the
350 adamantoyl ring system to any extent. This shall include AM1248.

351 ~~(67)~~ Tetramethylcyclopropylindoles or any compound containing A 3-
352 tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring
353 whether or not further substituted in the indole ring to any extent and whether or not substituted
354 in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

355 ~~(68)~~ N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

356 ~~(69)~~ Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist
357 as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV
358 and V, not federal Food and Drug Administration approved drug or used within legitimate,
359 approved medical research. Since nomenclature of these substances is not internationally
360 standardized, any immediate precursor or immediate derivative of these substances shall be
361 covered.

362 ~~(70)~~ Tryptamines:

363 ~~(A)~~ 5-methoxy-N-methyl-N-isopropyltryptamine (5-MeO-MiPT)

364 ~~(B)~~ 4-hydroxy-N,N-diisopropyltryptamine (4-HO-DiPT)

365 ~~(C)~~ 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

366 ~~(D)~~ 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

367 ~~(E)~~ 4-acetoxy-N,N-diisopropyltryptamine (4-AcO-DiPT)

368 ~~(F)~~ 5-methoxy- α -methyltryptamine (5-MeO-AMT)

369 ~~(G)~~ 4-methoxy-N,N-Dimethyltryptamine (4-MeO-DMT)

370 ~~(H)~~ 4-hydroxy Diethyltryptamine (4-HO-DET)

371 ~~(I)~~ 5-methoxy-N,N-diallyltryptamine (5-MeO-DALT)

372 ~~(J)~~ 4-acetoxy-N,N-Dimethyltryptamine (4-AcO DMT)

373 ~~(K)~~ 4-hydroxy Diethyltryptamine (4-HO-DET)

374 (e) *Depressants*. -- ~~Unless specifically excepted or unless listed in another schedule, any~~

375 ~~material, compound, mixture, or preparation which contains any quantity of the following~~
376 ~~substances having a depressant effect on the central nervous system, including its salts, isomers~~
377 ~~and salts of isomers whenever the existence of such salts, isomers and salts of isomers is~~
378 ~~possible within the specific chemical designation:~~

379 ~~(1) Mecloqualone;~~

380 ~~(2) Methaqualone.~~

381 ~~(f) Stimulants. — Unless specifically excepted or unless listed in another schedule, any~~
382 ~~material, compound, mixture, or preparation which contains any quantity of the following~~
383 ~~substances having a stimulant effect on the central nervous system, including its salts, isomers~~
384 ~~and salts of isomers:~~

385 ~~(1) Aminorex; some other names: aminoxaphen; 2-amino-5- phenyl-2-oxazoline; or 4,5-~~
386 ~~dihydro-5-phenyl-2-oxazolamine;~~

387 ~~(2) Cathinone; some trade or other names: 2-amino-1-phenyl-1- propanone, alpha-~~
388 ~~aminopropiophenone, 2-aminopropiophenone and norephedrone;~~

389 ~~(3) Fenethylline;~~

390 ~~(4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical~~
391 ~~isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-~~
392 ~~(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1- one; alpha---~~
393 ~~methylaminopropiophenone; monomethylpropion; 3,4-methylenedioxypropylvalerone and/or~~
394 ~~mephedrone;3,4-methylenedioxypropylvalerone (MPVD); ephedrone; N-methylcathinone;~~
395 ~~methylcathinone; AL-464; AL-422; AL- 463 and UR1432;~~

396 ~~(5) (+-) cis-4-methylaminorex; ((+)-)cis-4,5-dihydro-4-methyl- 5-phenyl-2-oxazolamine);~~

397 ~~(6) N-ethylamphetamine;~~

398 ~~(7) N,N-dimethylamphetamine; also known as N,N-alpha- trimethyl-benzeneethanamine;~~
399 ~~N,N-alpha-trimethylphenethylamine.~~

400 ~~(8) Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and~~

401 salts of isomers.

402 ~~(9)~~ Substituted amphetamines:

403 ~~(A)~~ 2-Fluoroamphetamine

404 ~~(B)~~ 3-Fluoroamphetamine

405 ~~(C)~~ 4-Fluoroamphetamine

406 ~~(D)~~ 2-chloroamphetamine

407 ~~(E)~~ 3-chloroamphetamine

408 ~~(F)~~ 4-chloroamphetamine

409 ~~(G)~~ 2-Fluoromethamphetamine

410 ~~(H)~~ 3-Fluoromethamphetamine

411 ~~(I)~~ 4-Fluoromethamphetamine

412 ~~(J)~~ 4-chloromethamphetamine

413 (g) Temporary listing of substances subject to emergency scheduling. Any material,
414 compound, mixture or preparation which contains any quantity of the following substances:

415 ~~(1)~~ N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers,
416 salts, and salts of isomers.

417 ~~(2)~~ N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical
418 isomers, salts and salts of isomers.

419 ~~(3)~~ N-benzylpiperazine, also known as BZP.

420 ~~(4)~~ Cyclopentyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-
421 phenylcyclopentanecarboxamide);

422 ~~(5)~~ 4-fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]-
423 butyramide);

424 ~~(6)~~ Isobutyryl fentanyl (2-methyl-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-
425 propanamide);

426 ~~(7)~~ Methoxyacetyl fentanyl (2-methoxy-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]-

427 acetamide);

428 ~~(8)~~ 3-methylbutyryl fentanyl (N-[3-methyl-1-(2-phenylethyl)piperidin-4-yl]-N-

429 phenylbutyramide);

430 ~~(9)~~ 4-methoxybutyryl fentanyl (N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-

431 yl)butyramide);

432 ~~(10)~~ Ocfentanil (N-(2-fluorophenyl)-2-methoxy-N-[1-(2-phenylethyl)piperidin-4-yl]-

433 acetamide);

434 ~~(11)~~ Tetrahydrofuran fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-

435 carboxamide);

436 ~~(12)~~ Valeryl fentanyl (N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]pentanamide).

437 (h) The following controlled substances are included in Schedule I:

438 ~~(1)~~ Synthetic Cathinones or any compound, except bupropion or compounds listed under
439 a different schedule, or compounds used within legitimate and approved medical research,
440 structurally derived from 2- Aminopropan-1-one by substitution at the 1-position with Monocyclic
441 or fused polycyclic ring systems, whether or not the compound is further modified in any of the
442 following ways:

443 (A) By substitution in the ring system to any extent with Alkyl, alkylendioxy, alkoxy,
444 haloalkyl, hydroxyl or halide Substituents whether or not further substituted in the ring system by
445 one or more other univalent substituents.

446 (B) By substitution at the 3-position with an acyclic alkyl substituent.

447 (C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or
448 methoxybenzyl groups.

449 (D) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

450 ~~(2)~~ Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist
451 as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV
452 and V, not federal Food and Drug Administration approved drug or used within legitimate,

453 approved medical research.

§60A-2-206. Schedule II.

1 (a) Schedule II consists of the drugs and other substances, by whatever official name,
2 common or usual name, chemical name or brand name designated, listed in this section.

3 (b) *Substances, vegetable origin or chemical synthesis.* -- Unless specifically excepted or
4 unless listed in another schedule, any of the following substances whether produced directly or
5 indirectly by extraction from substances of vegetable origin, or independently by means of
6 chemical synthesis, or by a combination of extraction and chemical synthesis:

7 (~~F~~) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate
8 excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene,
9 naloxone and naltrexone, and their respective salts, but including the following:

10 (~~A~~) Raw opium;

11 (~~B~~) Opium extracts;

12 (~~C~~) Opium fluid;

13 (~~D~~) Powdered opium;

14 (~~E~~) Granulated opium;

15 (~~F~~) Tincture of opium;

16 (~~G~~) Codeine;

17 (~~H~~) Dihydroetorphine;

18 (~~I~~) Ethylmorphine;

19 (~~J~~) Etorphine hydrochloride;

20 (~~K~~) Hydrocodone;

21 (~~L~~) Hydromorphone;

22 (~~M~~) Metopon;

23 (~~N~~) Morphine;

24 (~~O~~) Oripavine;

- 25 ~~(P)~~ Oxycodone;
- 26 ~~(Q)~~ Oxymorphone; and
- 27 ~~(R)~~ Thebaine;
- 28 ~~(2)~~ Any salt, compound, derivative or preparation thereof which is chemically equivalent
- 29 or identical with any of the substances referred to in subdivision (1) of this subsection, except that
- 30 these substances shall not include the isoquinoline alkaloids of opium;
- 31 ~~(3)~~ Opium poppy and poppy straw;
- 32 ~~(4)~~ Coca leaves and any salt, compound, derivative or preparation of coca leaves
- 33 (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and
- 34 derivatives), and any salt, compound, derivative or preparation thereof which is chemically
- 35 equivalent or identical with any of these substances, except that the substances shall not include
- 36 decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine
- 37 or ecgonine;
- 38 ~~(5)~~ Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or
- 39 powder form which contains the phenanthrene alkaloids of the opium poppy).
- 40 (c) *Opiates*. -- Unless specifically excepted or unless in another schedule, any of the
- 41 following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and
- 42 ethers whenever the existence of such isomers, esters, ethers and salts is possible within the
- 43 specific chemical designation, dextrorphan and levopropoxyphene excepted:
- 44 ~~(1)~~ Alfentanil;
- 45 ~~(2)~~ Alphaprodine;
- 46 ~~(3)~~ Anileridine;
- 47 ~~(4)~~ Bezitramide;
- 48 ~~(5)~~ Bulk dextropropoxyphene (nondosage forms);
- 49 ~~(6)~~ Carfentanil;
- 50 ~~(7)~~ Dihydrocodeine;

- 51 ~~(8)~~ Diphenoxylate;
- 52 ~~(9)~~ Fentanyl;
- 53 ~~(10)~~ Isomethadone;
- 54 ~~(11)~~ Levo-alpha-acetylmethadol; some other names: levo-alpha-acetylmethadol,
55 levomethadyl acetate, LAAM;
- 56 ~~(12)~~ Levomethorphan;
- 57 ~~(13)~~ Levorphanol;
- 58 ~~(14)~~ Metazocine;
- 59 ~~(15)~~ Methadone;
- 60 ~~(16)~~ Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 61 ~~(17)~~ Moramide-Intermediate, 2-methyl-3-morpholino-1,
62 1-diphenylpropane-carboxylic acid;
- 63 ~~(18)~~ Pethidine; (meperidine);
- 64 ~~(19)~~ Pethidine-Intermediate-A, 4-cyano-1-methyl-4- phenylpiperidine;
- 65 ~~(20)~~ Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- 66 ~~(21)~~ Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 67 ~~(22)~~ Phenazocine;
- 68 ~~(23)~~ Piminodine;
- 69 ~~(24)~~ Racemethorphan;
- 70 ~~(25)~~ Racemorphan;
- 71 ~~(26)~~ Remifentanil;
- 72 ~~(27)~~ Sufentanil;
- 73 ~~(28)~~ Tapentadol
- 74 ~~(29)~~ Thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-2-
75 (thienyl)ethylpiperidine), including its isomers, esters, ethers, salts and salts of isomers, esters
76 and ethers.

77 (d) *Stimulants*. -- Unless specifically excepted or unless listed in another schedule, any
78 material, compound, mixture or preparation which contains any quantity of the following
79 substances having a stimulant effect on the central nervous system:

80 (1) Amphetamine, its salts, optical isomers and salts of its optical isomers;

81 (2) Methamphetamine, its salts, isomers and salts of its isomers;

82 (3) Methylphenidate;

83 (4) Phenmetrazine and its salts; and

84 (5) Lisdexamfetamine.

85 (e) *Depressants*. -- Unless specifically excepted or unless listed in another schedule, any
86 material, compound, mixture or preparation which contains any quantity of the following
87 substances having a depressant effect on the central nervous system, including its salts, isomers
88 and salts of isomers whenever the existence of such salts, isomers and salts of isomers is
89 possible within the specific chemical designation:

90 (1) Amobarbital;

91 (2) Glutethimide;

92 (3) Pentobarbital;

93 (4) Phencyclidine;

94 (5) Secobarbital.

95 (f) *Hallucinogenic substances*:

96 Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] if in an FDA approved oral solution

97 Nabilone: [Another name for nabilone: (+)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10,
98 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

99 (g) *Immediate precursors*. -- Unless specifically excepted or unless listed in another
100 schedule, any material, compound, mixture, or preparation which contains any quantity of the
101 following substances:

102 (1) Immediate precursor to amphetamine and methamphetamine:

- 103 ~~(A)~~ Phenylacetone;
- 104 ~~(B)~~ Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl
105 benzyl ketone;
- 106 ~~(2)~~ Immediate precursors to phencyclidine (PCP):
- 107 ~~(A)~~ 1-phenylcyclohexylamine; and
- 108 ~~(B)~~ 1-piperidinocyclohexanecarbonitrile (PCC).
- 109 ~~(3)~~ Immediate precursor to fentanyl:
- 110 4-anilino-N-phenethyl-4-piperidine (ANPP).

§60A-2-210. Schedule IV.

1 (a) Schedule IV shall consist of the drugs and other substances, by whatever official name,
2 common or usual name, chemical name, or brand name designated, listed in this section.

3 (b) *Narcotic drugs.* — Unless specifically excepted or unless listed in another schedule,
4 any material, compound, mixture or preparation containing any of the following narcotic drugs, or
5 their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth
6 below:

7 ~~(1)~~ Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine
8 sulfate per dosage unit;

9 ~~(2)~~ Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-
10 propionoxybutane).

11 (c) *Depressants.* — Unless specifically excepted or unless listed in another schedule, any
12 material, compound, mixture or preparation which contains any quantity of the following
13 substances, including its salts, isomers and salts of isomers whenever the existence of such salts,
14 isomers and salts of isomers is possible within the specific chemical designation:

15 ~~(1)~~ Alprazolam;

16 ~~(2)~~ Barbital;

17 ~~(3)~~ Bromazepam;

- 18 ~~(4)~~ Camazepam;
- 19 ~~(5)~~ Carisoprodol;
- 20 ~~(6)~~ Chloral betaine;
- 21 ~~(7)~~ Chloral hydrate;
- 22 ~~(8)~~ Chlordiazepoxide;
- 23 ~~(9)~~ Clobazam;
- 24 ~~(10)~~ Clonazepam;
- 25 ~~(11)~~ Clorazepate;
- 26 ~~(12)~~ Clotiazepam;
- 27 ~~(13)~~ Cloxazolam;
- 28 ~~(14)~~ Delorazepam;
- 29 ~~(15)~~ Diazepam;
- 30 ~~(16)~~ Dichloralphenazone;
- 31 ~~(17)~~ Estazolam;
- 32 ~~(18)~~ Ethchlorvynol;
- 33 ~~(19)~~ Ethinamate;
- 34 ~~(20)~~ Ethyl loflazepate;
- 35 ~~(21)~~ Fludiazepam;
- 36 ~~(22)~~ Flunitrazepam;
- 37 ~~(23)~~ Flurazepam;
- 38 ~~(24)~~ Fospropofol;
- 39 ~~(25)~~ Halazepam;
- 40 ~~(26)~~ Haloxazolam;
- 41 ~~(27)~~ Ketazolam;
- 42 ~~(28)~~ Loprazolam;
- 43 ~~(29)~~ Lorazepam;

- 44 ~~(30)~~ Lormetazepam;
- 45 ~~(31)~~ Mebutamate;
- 46 ~~(32)~~ Medazepam;
- 47 ~~(33)~~ Meprobamate;
- 48 ~~(34)~~ Methohexital;
- 49 ~~(35)~~ Methylphenobarbital (mephobarbital);
- 50 ~~(36)~~ Midazolam;
- 51 ~~(37)~~ Nimetazepam;
- 52 ~~(38)~~ Nitrazepam;
- 53 ~~(39)~~ Nordiazepam;
- 54 ~~(40)~~ Oxazepam;
- 55 ~~(41)~~ Oxazolam;
- 56 ~~(42)~~ Paraldehyde;
- 57 ~~(43)~~ Petrichloral;
- 58 ~~(44)~~ Phenobarbital;
- 59 ~~(45)~~ Pinazepam;
- 60 ~~(46)~~ Prazepam;
- 61 ~~(47)~~ Quazepam;
- 62 ~~(48)~~ Temazepam;
- 63 ~~(49)~~ Tetrazepam;
- 64 ~~(50)~~ Triazolam;
- 65 ~~(51)~~ Zaleplon;
- 66 ~~(52)~~ Zolpidem;
- 67 ~~(53)~~ Zopiclone'
- 68 ~~(54)~~ Suvorexant ([[(7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl] [5-
- 69 methyl-2-(2H-1,2,3-triazol-2-yl)phenyl]methanone).

70 (d) Any material, compound, mixture or preparation which contains any quantity of the
71 following substance, including its salts, isomers (whether optical, position or geometric) and salts
72 of such isomers whenever the existence of such salts, isomers and salts of isomers is possible:
73 Fenfluramine and Dexfenfluramine.

74 (e) *Stimulants*. — Unless specifically excepted or unless listed in another schedule, any
75 material, compound, mixture or preparation which contains any quantity of the following
76 substances having a stimulant effect on the central nervous system, including its salts, isomers
77 and salts of isomers:

78 ~~(1)~~ Cathine ((+)-norpseudoephedrine);

79 ~~(2)~~ Diethylpropion;

80 ~~(3)~~ Fencamfamin;

81 ~~(4)~~ Fenproporex;

82 ~~(5)~~ Mazindol;

83 ~~(6)~~ Mefenorex;

84 ~~(7)~~ Modafinil;

85 ~~(8)~~ Pemoline (including organometallic complexes and chelates thereof);

86 ~~(9)~~ Phentermine;

87 ~~(10)~~ Pipradrol;

88 ~~(11)~~ Sibutramine;

89 ~~(12)~~ SPA ((-)-1-dimethylamino-1,2-diphenylethane);

90 ~~(13)~~ Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl
91 [(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid);

92 (f) *Other substances*. — Unless specifically excepted or unless listed in another schedule,
93 any material, compound, mixture or preparation which contains any quantity of the following
94 substances, including its salts:

95 ~~(1)~~ Pentazocine;

96 ~~(2)~~ Butorphanol;
97 ~~(3)~~ Tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol); and
98 Gabapentin.

99 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled
100 substances and no product containing these compounds as a significant component shall be
101 possessed, bought or sold other than pursuant to a bona fide prescription or for industrial or
102 manufacturing purposes.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

1 ~~Whenever a medical services provider dispenses a controlled substance listed in~~
2 ~~Schedule II, III or IV as established under the provisions of article two of this chapter or an opioid~~
3 ~~antagonist, or whenever a prescription for the controlled substance or opioid antagonist is filled~~
4 ~~by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for~~
5 ~~outpatient use; or (iii) a pharmacy or pharmacist licensed by the Board of Pharmacy, but situated~~
6 ~~outside this state for delivery to a person residing in this state, the medical services provider,~~
7 ~~health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated~~
8 ~~by the Board of Pharmacy pursuant to this article, report the following information, as applicable~~

9 (a) The following individuals shall report the required information to the controlled
10 substance monitoring database when:

11 (1) A medical services provider dispenses a controlled substance listed in Schedule II, III,
12 IV, V or an opioid antagonist;

13 (2) A prescription for the controlled substance or opioid antagonist is filled by:

14 (A) A pharmacist or pharmacy in this state;

15 (B) A hospital, or other health care facility, for outpatient use; or

16 (C) A pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside
17 this state for delivery to a person residing in this state; and

18 (3) A pharmacist or pharmacy sells an opioid antagonist.

19 (b) The above individuals shall, in a manner prescribed by rules promulgated by the Board
20 of Pharmacy pursuant to this article, report the following information, as applicable:

21 (1) The name, address, pharmacy prescription number and Drug Enforcement
22 Administration controlled substance registration number of the dispensing pharmacy or the
23 dispensing physician or dentist;

24 (2) The full legal name, address and birth date of the person for whom the prescription is
25 written;

26 (3) The name, address and Drug Enforcement Administration controlled substances
27 registration number of the practitioner writing the prescription;

28 (4) The name and national drug code number of the Schedule II, III and IV controlled
29 substance or opioid antagonist dispensed;

30 (5) The quantity and dosage of the Schedule II, III and IV controlled substance or opioid
31 antagonist dispensed;

32 (6) The date the prescription was written and the date filled;

33 (7) The number of refills, if any, authorized by the prescription;

34 (8) If the prescription being dispensed is being picked up by someone other than the
35 patient on behalf of the patient, information about the person picking up the prescription as set
36 forth on the person's government-issued photo identification card shall be retained in either print
37 or electronic form until such time as otherwise directed by rule promulgated by the Board of
38 Pharmacy; and

39 (9) The source of payment for the controlled substance dispensed.

40 ~~(b)~~ (c) Whenever a medical services provider treats a patient for an overdose that has
41 occurred as a result of illicit or prescribed medication, the medical service provider shall report
42 the full legal name, address and birth date of the person who is being treated, including any known
43 ancillary evidence of the overdose. The Board of Pharmacy shall coordinate with the Division of

44 Justice and Community Services and the office of Drug Control Policy regarding the collection of
45 overdose data.

46 ~~(e)~~ (d) The Board of Pharmacy may prescribe by rule promulgated pursuant to this article
47 the form to be used in prescribing a Schedule II, III and IV substance or opioid antagonist if, in
48 the determination of the Board of Pharmacy, the administration of the requirements of this section
49 would be facilitated.

50 ~~(d)~~ (e) Products regulated by ~~the provisions of §60A-10-1 et seq.~~ of this code ~~shall be~~ are
51 subject to reporting pursuant to the provisions of this article to the extent set forth in ~~said~~ this
52 article.

53 ~~(e)~~ (f) Reporting required by this section is not required for a drug administered directly to
54 a patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to
55 a patient by a practitioner. The quantity dispensed by a prescribing practitioner to his or her own
56 patient may not exceed an amount adequate to treat the patient for a maximum of seventy-two
57 hours with no greater than two ~~72-~~ seventy-two-hour cycles dispensed in any fifteen-day period
58 of time.

59 ~~(f)~~ (g) The Board of Pharmacy shall notify a physician prescribing buprenorphine or
60 buprenorphine/naloxone within sixty days of the availability of an abuse deterrent form of
61 buprenorphine or buprenorphine/naloxone if approved by the Food and Drug Administration as
62 provided in FDA Guidance to Industry. Upon receipt of the notice, a physician may switch their
63 patients using buprenorphine or buprenorphine/naloxone to the abuse deterrent form of the drug.

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

1 (a)(1) The information required by this article to be kept by the Board of Pharmacy is
2 confidential and not subject to the provisions of chapter twenty-nine-b of this code or obtainable
3 as discovery in civil matters absent a court order and is open to inspection only by inspectors and
4 agents of the Board of Pharmacy, members of the West Virginia State Police expressly authorized

5 by the Superintendent of the West Virginia State Police to have access to the information,
6 authorized agents of local law-enforcement agencies as members of a federally affiliated drug
7 task force, authorized agents of the federal Drug Enforcement Administration, duly authorized
8 agents of the Bureau for Medical Services, duly authorized agents of the office of the Chief
9 Medical Examiner for use in post-mortem examinations, duly authorized agents of the office of
10 Health Facility Licensure and Certification for use in certification, licensure and regulation of health
11 facilities, duly authorized agents of licensing boards of practitioners in this state and other states
12 authorized to prescribe Schedules II, III and IV controlled substances, prescribing practitioners
13 and pharmacists, a dean of any medical school or his or her designee located in this state to
14 access prescriber level data to monitor prescribing practices of faculty members, prescribers and
15 residents enrolled in a degree program at the school where he or she serves as dean, a physician
16 reviewer designated by an employer of medical providers to monitor prescriber level information
17 of prescribing practices of physicians, advance practice registered nurses or physician assistant
18 in their employ, and a chief medical officer of a hospital or a physician designated by the chief
19 executive officer of a hospital who does not have a chief medical officer, for prescribers who have
20 admitting privileges to the hospital or prescriber level information, and persons with an
21 enforceable court order or regulatory agency administrative subpoena. All law-enforcement
22 personnel who have access to the Controlled Substances Monitoring Program database shall be
23 granted access in accordance with applicable state laws and the Board of Pharmacy's rules, shall
24 be certified as a West Virginia law-enforcement officer and shall have successfully completed
25 training approved by the Board of Pharmacy. All information released by the Board of Pharmacy
26 must be related to a specific patient or a specific individual or entity under investigation by any of
27 the above parties except that practitioners who prescribe or dispense controlled substances may
28 request specific data related to their Drug Enforcement Administration controlled substance
29 registration number or for the purpose of providing treatment to a patient: *Provided*, That the West
30 Virginia Controlled Substances Monitoring Program Database Review Committee established in

31 subsection (b) of this section is authorized to query the database to comply with said subsection.

32 (2) Subject to the provisions of subdivision (1) of this subsection, the Board of Pharmacy
33 shall also review the West Virginia Controlled Substance Monitoring Program database and issue
34 reports that identify abnormal or unusual practices of patients who exceed parameters as
35 determined by the advisory committee established in this section. The Board of Pharmacy shall
36 communicate with practitioners and dispensers to more effectively manage the medications of
37 their patients in the manner recommended by the advisory committee. All other reports produced
38 by the Board of Pharmacy shall be kept confidential. The Board of Pharmacy shall maintain the
39 information required by this article for a period of not less than five years. Notwithstanding any
40 other provisions of this code to the contrary, data obtained under the provisions of this article may
41 be used for compilation of educational, scholarly or statistical purposes, and may be shared with
42 the West Virginia Department of Health and Human Resources for those purposes, as long as
43 the identities of persons or entities and any personally identifiable information, including protected
44 health information, contained therein shall be redacted, scrubbed or otherwise irreversibly
45 destroyed in a manner that will preserve the confidential nature of the information. No individual
46 or entity required to report under section four of this article may be subject to a claim for civil
47 damages or other civil relief for the reporting of information to the Board of Pharmacy as required
48 under and in accordance with ~~the provisions of~~ this article.

49 (3) The Board of Pharmacy shall establish an advisory committee to develop, implement
50 and recommend parameters to be used in identifying abnormal or unusual usage patterns of
51 patients in this state. This advisory committee shall:

52 (A) Consist of the following members: A physician licensed by the West Virginia Board of
53 Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed
54 by the West Virginia Board of Osteopathic Medicine, a licensed physician certified by the
55 American Board of Pain Medicine, a licensed physician board certified in medical oncology
56 recommended by the West Virginia State Medical Association, a licensed physician board

57 certified in palliative care recommended by the West Virginia Center on End of Life Care, a
58 pharmacist licensed by the West Virginia Board of Pharmacy, a licensed physician member of the
59 West Virginia Academy of Family Physicians, an expert in drug diversion and such other members
60 as determined by the Board of Pharmacy.

61 (B) Recommend parameters to identify abnormal or unusual usage patterns of controlled
62 substances for patients in order to prepare reports as requested in accordance with subdivision
63 (2) of this subsection.

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

68 (D) Monitor the ability of medical services providers, health care facilities, pharmacists and
69 pharmacies to meet the 24-hour reporting requirement for the Controlled Substances Monitoring
70 Program set forth in section three of this article, and report on the feasibility of requiring real-time
71 reporting.

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

75 (b) The Board of Pharmacy shall create a West Virginia Controlled Substances Monitoring
76 Program Database Review Committee of individuals consisting of two prosecuting attorneys from
77 West Virginia counties, two physicians with specialties which require extensive use of controlled
78 substances and a pharmacist who is trained in the use and abuse of controlled substances. The
79 review committee may determine that an additional physician who is an expert in the field under
80 investigation be added to the team when the facts of a case indicate that the additional expertise
81 is required. The review committee, working independently, may query the database based on
82 parameters established by the advisory committee. The review committee may make

83 determinations on a case-by-case basis on specific unusual prescribing or dispensing patterns
84 indicated by outliers in the system or abnormal or unusual usage patterns of controlled
85 substances by patients which the review committee has reasonable cause to believe necessitates
86 further action by law enforcement or the licensing board having jurisdiction over the practitioners
87 or dispensers under consideration. The licensing board having jurisdiction over the practitioner or
88 dispenser under consideration shall report back to the Board of Pharmacy regarding any findings,
89 investigation or discipline resulting from the findings of the review committee within thirty days of
90 resolution of any action taken by the licensing board resulting from the information provided by
91 the Board of Pharmacy. The review committee shall also review notices provided by the chief
92 medical examiner pursuant to subsection (h), section ten, article twelve, chapter sixty-one of this
93 code and determine on a case-by-case basis whether a practitioner who prescribed or dispensed
94 a controlled substance resulting in or contributing to the drug overdose may have breached
95 professional or occupational standards or committed a criminal act when prescribing the
96 controlled substance at issue to the decedent. Only in those cases in which there is reasonable
97 cause to believe a breach of professional or occupational standards or a criminal act may have
98 occurred, the review committee shall notify the appropriate professional licensing agency having
99 jurisdiction over the applicable practitioner or dispenser and appropriate law-enforcement
100 agencies and provide pertinent information from the database for their consideration. The number
101 of cases identified shall be determined by the review committee based on a number that can be
102 adequately reviewed by the review committee. The information obtained and developed may not
103 be shared except as provided in this article and is not subject to the provisions of chapter twenty-
104 nine-b of this code or obtainable as discovering in civil matters absent a court order.

105 (c) The Board of Pharmacy is responsible for establishing and providing administrative
106 support for the advisory committee and the West Virginia Controlled Substances Monitoring
107 Program Database Review Committee. The advisory committee and the review committee shall
108 elect a chair by majority vote. Members of the advisory committee and the review committee may

109 not be compensated in their capacity as members but shall be reimbursed for reasonable
110 expenses incurred in the performance of their duties.

111 (d) The Board of Pharmacy shall promulgate rules with advice and consent of the advisory
112 committee, in accordance with ~~the provisions of~~ §29A-3-1 *et seq.* of this code. The legislative
113 rules must include, but ~~shall~~ may not be limited to, the following matters:

114 (1) Identifying parameters used in identifying abnormal or unusual prescribing or
115 dispensing patterns;

116 (2) Processing parameters and developing reports of abnormal or unusual prescribing or
117 dispensing patterns for patients, practitioners and dispensers;

118 (3) Establishing the information to be contained in reports and the process by which the
119 reports will be generated and disseminated; ~~and~~

120 (4) Dissemination of these reports at least quarterly to:

121 (A) The West Virginia Board of Medicine codified at §30-3-1 *et seq.* of this code;

122 (B) The West Virginia Board of Osteopathic Medicine codified at §30-14-1 *et seq.* of this
123 code;

124 (C) The West Virginia Board of Examiners for Registered Professional Nurses codified at
125 §30-7-1 *et seq.* of this code;

126 (D) The West Virginia Board of Dentistry codified at §30-4-1 *et seq.* of this code;

127 (E) The West Virginia Board of Optometry codified at §30-8-1 *et seq.* of this code; and

128 (G) The West Virginia Department of Health and Human Resources Office of Drug Control
129 Policy codified at §16-5T-1 *et seq.* of this code; and

130 ~~(4)~~ (5) Setting up processes and procedures to ensure that the privacy, confidentiality, and
131 security of information collected, recorded, transmitted and maintained by the review committee
132 is not disclosed except as provided in this section.

133 (e) Persons or entities with access to the West Virginia Controlled Substances Monitoring
134 Program database pursuant to this section may, pursuant to rules promulgated by the Board of

135 Pharmacy, delegate appropriate personnel to have access to said database.

136 (f) Good faith reliance by a practitioner on information contained in the West Virginia
137 Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or
138 declining to prescribe or dispense a Schedule II, III or IV controlled substance shall constitute an
139 absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing
140 or declining to prescribe or dispense.

141 (g) A prescribing or dispensing practitioner may notify law enforcement of a patient who,
142 in the prescribing or dispensing practitioner's judgment, may be in violation of §60A-4-410 of this
143 code, based on information obtained and reviewed from the controlled substances monitoring
144 database. A prescribing or dispensing practitioner who makes a notification pursuant to this
145 subsection is immune from any civil, administrative or criminal liability that otherwise might be
146 incurred or imposed because of the notification if the notification is made in good faith.

147 (h) Nothing in the article may be construed to require a practitioner to access the West
148 Virginia Controlled Substances Monitoring Program database except as provided in section five-
149 a of this article.

150 (i) The Board of Pharmacy shall provide an annual report on the West Virginia Controlled
151 Substance Monitoring Program to the Legislative Oversight Commission on Health and Human
152 Resources Accountability with recommendations for needed legislation no later than January 1 of
153 each year.

**§60A-9-5a. Practitioner requirements to access database and conduct annual search of the
database; search by licensing boards for investigative purposes; required
rulemaking.**

1 (a) All practitioners, as that term is defined in section one hundred one, article two of this
2 chapter who prescribe or dispense Schedule II, III or IV controlled substances shall register with
3 the West Virginia Controlled Substances Monitoring Program and obtain and maintain online or
4 other electronic access to the program database: *Provided*, That compliance with the provisions

5 of this subsection must be accomplished within thirty days of the practitioner obtaining a new
6 license: *Provided, however,* That the Board of Pharmacy may renew a practitioner's license
7 without proof that the practitioner meet the requirements of this subsection.

8 (b) Upon initially prescribing or dispensing any pain-relieving controlled substance for a
9 patient for whom they are providing pain-relieving controlled substances as part of a course of
10 treatment for chronic, nonmalignant pain but who are not suffering from a terminal illness and at
11 least annually thereafter should the practitioner or dispenser continue to treat the patient with
12 controlled substances, all persons with prescriptive or dispensing authority and in possession of
13 a valid Drug Enforcement Administration registration identification number and, who are licensed
14 by the board of Medicine as set forth in article three, chapter thirty of this code, the board of
15 Registered Professional Nurses as set forth in article seven of said chapter, the board of Dental
16 Examiners as set forth in article four of said chapter and the board of Osteopathic Medicine as
17 set forth in article fourteen of said chapter, and the West Virginia Board of Optometrists as set
18 forth in §30-8-1 et seq. of this code, shall access the West Virginia Controlled Substances
19 Monitoring Program database for information regarding specific patients. The information
20 obtained from accessing the West Virginia Controlled Substances Monitoring Program database
21 for the patient shall be documented in the patient's medical record maintained by a private
22 prescriber or any inpatient facility licensed pursuant to ~~the provisions of~~ chapter sixteen of this
23 code. A pain-relieving controlled substance shall be defined as set forth in §3-3A-1 of this code.

24 (c) The licensing boards mentioned in subsection (b) of this section shall have access to
25 the monitoring program database to search and query the database for purposes of investigating
26 the prescribing practices of any prescriber for whom the board has issued or may issue a license.
27 Any information obtained by the board shall be kept confidential and is subject to the same
28 disclosure requirements as set forth in §60A-9-5 of this code.

29 ~~(e)~~ (d) The various boards mentioned in subsection (b) of this section shall promulgate
30 both emergency and legislative rules pursuant to ~~the provisions of~~ §29A-3-1 et seq. of this code

31 to effectuate the provisions of this article.

NOTE: The purpose of this bill is to reduce the number of opioids. It requires reports to licensing boards regarding abnormal prescribing practices; requires the Board of Pharmacy to report quarterly to various licensing boards; and permits the investigation and discipline for abnormal prescribing and dispensing of prescription drugs. The bill adds substances to Schedule I, II and IV of the Uniform Controlled Substances Act. And the bill allows licensing boards who regulate prescribers to investigate abnormal prescribing and dispensing of prescription drugs based upon information.

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