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CAPITOL WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4419

(By Delegates Border, Perdue, Michael,
Douglas, Compton, H. White and Kominar)



Passed March 7, 2002

In Effect September 1, 2002

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OFFICE WEST VIRGINIA
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FOR

H. B. 4419

(BY DELEGATES BORDER, PERDUE, MICHAEL,
DOUGLAS, COMPTON, H. WHITE AND KOMINAR)

[Passed March 7, 2002; in effect September 1, 2002.]

AN ACT to amend article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred ten; and to amend and reenact sections one, two, three, four, five, six and seven, article nine of said chapter, all relating to monitoring controlled substances generally; creating the criminal offense of withholding information from a practitioner that a patient has obtained a prescription for a controlled substance from another practitioner; establishing of a controlled substance monitoring program; and establishing criminal penalties for the misuse of information or the submission of false information.

Be it enacted by the Legislature of West Virginia:

That article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four hundred ten; and that sections one, two, three, four, five, six and seven, article nine of said chapter be amended and reenacted, all to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-410. Prohibited acts — Withholding information from practitioner; additional controlled substances; penalties.

1 (a) It is unlawful for a patient, with the intent to deceive and
2 obtain a prescription for a controlled substance, to withhold
3 information from a practitioner that the patient has obtained a
4 prescription for a controlled substance of a similar therapeutic
5 use in a concurrent time period from another practitioner.

6 (b) Any person who violates this section is guilty of a
7 misdemeanor and, upon conviction thereof, may be confined in
8 the county or regional jail for not more than six months, or
9 fined not more than one thousand dollars, or both fined and
10 imprisoned.

11 (c) The offense established by this section is in addition to
12 and a separate and distinct offense from any other offense set
13 forth in this code.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-1. Short title.

1 This article shall be referred to as the West Virginia
2 controlled substances monitoring act.

§60A-9-2. Establishment of program; purpose.

1 There is hereby established a West Virginia controlled
2 substances monitoring act the purpose of which is to require the
3 recordation and retention in a single repository of information
4 regarding the prescribing, dispensing and consumption of
5 certain controlled substances.

**§60A-9-3. Reporting system requirements; implementation;
central repository requirement.**

1 (a) On or before the first day of September, two thousand
2 two, the board of pharmacy shall implement a program wherein
3 a central repository is established and maintained which shall
4 contain such information as is required by the provisions of this
5 article regarding Schedule II, III and IV controlled substance
6 prescriptions written or filled in this state. In implementing this
7 program, the board of pharmacy shall consult with the West
8 Virginia state police, the licensing boards of practitioners
9 affected by this article and affected practitioners.

10 (b) The program authorized by subsection (a) of this section
11 shall be designed to minimize inconvenience to patients,
12 prescribing practitioners and pharmacists while effectuating the
13 collection and storage of the required information. The state
14 board of pharmacy shall allow reporting of the required
15 information by electronic data transfer where feasible, and
16 where not feasible, on reporting forms promulgated by the
17 board of pharmacy. The information required to be submitted
18 by the provisions of this article shall be required to be filed no
19 more frequently than once a week.

20 (c)(1) The state board of pharmacy shall provide for the
21 electronic transmission of the information required to be
22 provided by this article by and through the use of a toll-free
23 telephone line.

24 (2) A dispenser, who does not have an automated
25 recordkeeping system capable of producing an electronic report

26 in the established format may request a waiver from electronic
27 reporting. The request for a waiver shall be made to the state
28 board of pharmacy in writing and shall be granted if the
29 dispenser agrees in writing to report the data by submitting a
30 completed "Pharmacy Universal Claim Form" as defined by
31 legislative rule.

§60A-9-4. Required information.

1 (a) Whenever a medical services provider dispenses a
2 controlled substance listed in the provisions of section two
3 hundred six, article two of this chapter, or whenever a prescrip-
4 tion for the controlled substance is filled by: (i) A pharmacist
5 or pharmacy in this state; (ii) a hospital, or other health care
6 facility, for out-patient use; or (iii) a pharmacy or pharmacist,
7 licensed by the board of pharmacy, but situated outside this
8 state for delivery to a person residing in this state, the medical
9 services provider, health care facility, pharmacist or pharmacy
10 shall, in a manner prescribed by rules promulgated by the board
11 of pharmacy under this article, report the following informa-
12 tion, as applicable:

13 (1) The name, address, pharmacy prescription number and
14 DEA controlled substance registration number of the dispensing
15 pharmacy;

16 (2) The name, address and birth date of the person for
17 whom the prescription is written;

18 (3) The name, address and drug enforcement administration
19 controlled substances registration number of the practitioner
20 writing the prescription;

21 (4) The name and national drug code number of the
22 Schedule II, III and IV controlled substance dispensed;

23 (5) The quantity and dosage of the Schedule II, III and IV
24 controlled substance dispensed;

25 (6) The date the prescription was filled; and

26 (7) The number of refills, if any, authorized by the prescrip-
27 tion.

28 (b) The board of pharmacy may prescribe by rule promul-
29 gated under this article the form to be used in prescribing a
30 Schedule II, III and IV substance if, in the determination of the
31 board, the administration of the requirements of this section
32 would be facilitated.

33 (c) Reporting required by this section is not required for a
34 drug administered directly to a patient or a drug dispensed by
35 a practitioner at a facility licensed by the state: *Provided*, That
36 the quantity dispensed is limited to an amount adequate to treat
37 the patient for a maximum of seventy-two hours with no greater
38 than two seventy-two hour cycles in any fifteen day period of
39 time.

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

1 The information required by this article to be kept by the
2 state board of pharmacy is confidential and is open to inspec-
3 tion only by inspectors and agents of the state board of phar-
4 macy, members of the West Virginia state police expressly
5 authorized by the superintendent of the West Virginia state
6 police, to have access to the information, authorized agents of
7 the federal drug enforcement agency, duly authorized agents of
8 licensing boards of practitioners in this state and other states
9 authorized to prescribe Schedule II, III and IV controlled
10 substances, prescribing practitioners and pharmacists and
11 persons with an enforceable court order or regulatory agency
12 administrative subpoena: *Provided*, That all information

13 released by the state board of pharmacy must be related to a
14 specific patient or a specific individual or entity under investi-
15 gation by any of the above parties except that practitioners who
16 prescribe controlled substances may request specific data
17 related to their drug enforcement administration controlled
18 substance registration number or for the purpose of providing
19 treatment to a patient. The board shall maintain the information
20 required by this article for a period of not less than five years.
21 Notwithstanding any other provisions of this code to the
22 contrary, data obtained under the provisions of this article may
23 be used for compilation of educational, scholarly or statistical
24 purposes as long as the identities of persons or entities remain
25 confidential. No individual or entity required to report under
26 section four of this article may be subject to a claim for civil
27 damages or other civil relief for the reporting of information to
28 the board of pharmacy as required under and in accordance with
29 the provisions of this article.

§60A-9-6. Promulgation of rules.

1 The state board of pharmacy shall promulgate legislative
2 rules to effectuate the purposes of this article in accordance
3 with the provisions of chapter twenty-nine-a of this code.

§60A-9-7. Criminal penalties.

1 (a) Any person who is required to submit information to the
2 state board of pharmacy pursuant to the provisions of this
3 article who fails to do so as directed by the board shall be guilty
4 of a misdemeanor and, upon conviction thereof, shall be fined
5 not less than one hundred dollars nor more than five hundred
6 dollars.

7 (b) Any person who is required to submit information to the
8 state board of pharmacy pursuant to the provisions of this
9 article who knowingly and willfully refuses to submit to the
10 information required by this article shall be guilty of a misde-

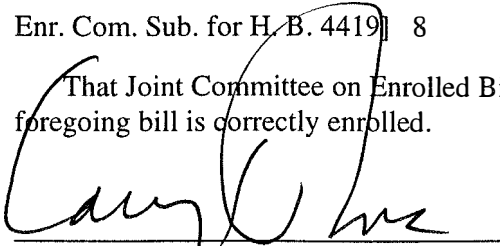
11 meanor and, upon conviction thereof, shall be confined in a
12 county or regional jail not more than six months or fined not
13 more than one thousand dollars, or both.

14 (c) Any person who is required by the provisions of this
15 article to submit information to the state board of pharmacy
16 who knowingly submits thereto information known to that
17 person to be false or fraudulent shall be guilty of a misde-
18 meanor and, upon conviction thereof, shall be confined in a
19 county or regional jail not more than one year or fined not more
20 than five thousand dollars, or both.

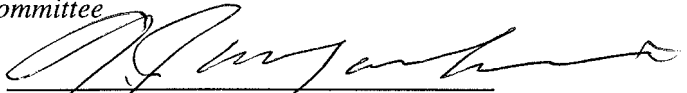
21 (d) Any person granted access to the information required
22 by the provisions of this article to be maintained by the state
23 board of pharmacy, who shall willfully disclose the information
24 required to be maintained by this article in a manner inconsis-
25 tent with a legitimate law-enforcement purpose, a legitimate
26 professional regulatory purpose, the terms of a court order or as
27 otherwise expressly authorized by the provisions of this article
28 shall be guilty of a misdemeanor and, upon conviction thereof,
29 shall be confined in a county or regional jail for not more than
30 six months or fined not more than one thousand dollars, or both.

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That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



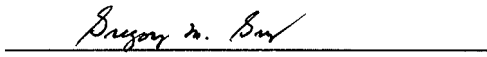
Chairman House Committee

Originating in the House.

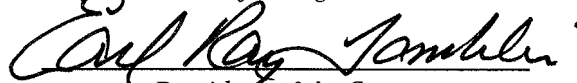
In effect September 1, 2002.



Clerk of the Senate



Clerk of the House of Delegates

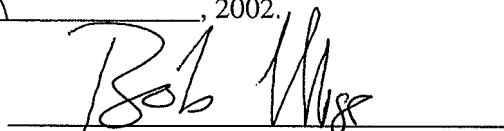


President of the Senate



Speaker of the House of Delegates

The within is approved this the 15
day of March, 2002.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/9/02

Time 5:50 pm