

ENROLLED

H. B. 2733

(By Delegates Ellington and Householder)

[Passed March 12, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §60A-2-208 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-9-3, §60A-9-4, §60A-9-4a and §60A-9-5 of said code; and to amend and reenact §60A-10-16 of said code, all relating to removing certain combinations of drugs containing hydrocodone from Schedule III of the controlled substances law; updating the controlled substances monitoring law and extending the expiration date of provisions relating to the Multi-/State Real-Time Tracking System.

Be it enacted by the Legislature of West Virginia:

That §60A-2-208 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-9-3, §60A-9-4, §60A-9-4a and §60A-9-5 of said code be amended and reenacted; and that §60A-10-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-208. Schedule III.

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

1 (b) *Stimulants*. -- Unless specifically excepted or unless listed in another schedule, any
2 material, compound, mixture or preparation which contains any quantity of the following substances
3 having a stimulant effect on the central nervous system, including its salts, isomers (whether optical,
4 position or geometric) and salts of such isomers whenever the existence of the salts, isomers and
5 salts of isomers is possible within the specific chemical designation:

6 (1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant
7 substances listed in Schedule II which compounds, mixtures or preparations were listed on August
8 25, 1971, as excepted compounds under 21 C.F.R. §C.F.R. §1308.32, and any other drug of the
9 quantitative composition shown in that list for those drugs or which is the same except that it
10 contains a lesser quantity of controlled substances;

11 (2) Benzphetamine;

12 (3) Chlorphentermine;

13 (4) Clortermine;

14 (5) Phendimetrazine.

15 (c) *Depressants*. -- Unless specifically excepted or unless listed in another schedule, any
16 material, compound, mixture or preparation which contains any quantity of the following substances
17 having a depressant effect on the central nervous system:

18 (1) Any compound, mixture or preparation containing:

19 (A) Amobarbital;

20 (B) Secobarbital;

21 (C) Pentobarbital; or any salt of pentobarbital and one or more other active medicinal
22 ingredients which are not listed in any schedule;

- 1 (2) Any suppository dosage form containing:
- 2 (A) Amobarbital;
- 3 (B) Secobarbital;
- 4 (C) Pentobarbital; or any salt of any of these drugs and approved by the food and drug
- 5 administration for marketing only as a suppository;
- 6 (3) Any substance which contains any quantity of a derivative of barbituric acid or any salt
- 7 of barbituric acid;
- 8 (4) Aprobarbital;
- 9 (5) Butabarbital (secbutabarbital);
- 10 (6) Butalbital (including, but not limited to, Fioricet);
- 11 (7) Butobarbital (butethal);
- 12 (8) Chlorhexadol;
- 13 (9) Embutramide;
- 14 (10) Gamma Hydroxybutyric Acid preparations;
- 15 (11) Ketamine, its salts, isomers and salts of isomers [Some other names for ketamine:
- 16 (+-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone];
- 17 (12) Lysergic acid;
- 18 (13) Lysergic acid amide;
- 19 (14) Methyprylon;
- 20 (15) Sulfondiethylmethane;
- 21 (16) Sulfonethylmethane;
- 22 (17) Sulfonmethane;

- 1 (18) Thiamylal;
- 2 (19) Thiopental;
- 3 (20) Tiletamine and zolazepam or any salt of tiletamine and zolazepam; some trade or other
4 names for a tiletamine-zolazepam combination product: Telazol; some trade or other names for
5 tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; some trade or other names for zolazepam:
6 4-(2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one,
7 flupyrazapon; and
- 8 (21) Vinbarbital.
- 9 (d) Nalorphine.
- 10 (e) *Narcotic drugs*. -- Unless specifically excepted or unless listed in another schedule:
- 11 (1) Any material, compound, mixture or preparation containing any of the following narcotic
12 drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth
13 below:
- 14 (A) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams
15 per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
- 16 (B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams
17 per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
18
- 19 (C) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90
20 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized
21 therapeutic amounts;
- 22 (D) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15

1 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized
2 therapeutic amounts;

3 (E) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more
4 than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized
5 therapeutic amounts;

6 (F) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one
7 or more active, nonnarcotic ingredients in recognized therapeutic amounts.

8 (2) Any material, compound, mixture or preparation containing buprenorphine or its salts
9 (including, but not limited to, Suboxone).

10 (f) *Anabolic steroids*. -- Unless specifically excepted or unless listed in another schedule, any
11 material, compound, mixture, or preparation containing any quantity of anabolic steroids, including
12 its salts, isomers and salts of isomers whenever the existence of the salts of isomers is possible
13 within the specific chemical designation.

14 (g) Human growth hormones.

15 (h) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United
16 States food and drug administration approved drug product. (Some other names for dronabinol:
17 (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or
18 (-)-delta-9-(trans)-tetrahydrocannabinol).

19 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

20 **§60A-9-3. Reporting system requirements; implementation; central repository requirement.**

21 (a) The Board of Pharmacy shall implement a program wherein a central repository is
22 established and maintained which shall contain such information as is required by the provisions of

1 this article regarding Schedule II, III, and IV controlled substance prescriptions written or filled in
2 this state. In implementing this program, the Board of Pharmacy shall consult with the West
3 Virginia State Police, the licensing boards of practitioners affected by this article and affected
4 practitioners.

5 (b) The program authorized by subsection (a) of this section shall be designed to minimize
6 inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection
7 and storage of the required information. The board shall allow reporting of the required information
8 by electronic data transfer where feasible, and where not feasible, on reporting forms promulgated
9 by the board. The information required to be submitted by the provisions of this article shall be
10 required to be filed no more frequently than within twenty-four hours.

11 (c) (1) The board shall provide for the electronic transmission of the information required to
12 be provided by this article by and through the use of a toll-free telephone line.

13 (2) A dispenser, who does not have an automated record-keeping system capable of
14 producing an electronic report in the established format may request a waiver from electronic
15 reporting. The request for a waiver shall be made to the board in writing and shall be granted if the
16 dispenser agrees in writing to report the data by submitting a completed "Pharmacy Universal Claim
17 Form" as defined by legislative rule.

18 **§60A-9-4. Required information.**

19 (a) Whenever a medical services provider dispenses a controlled substance listed in Schedule
20 II, III or IV as established under the provisions of article two of this chapter or whenever a
21 prescription for the controlled substance is filled by: (i) A pharmacist or pharmacy in this state; (ii)
22 a hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist licensed

1 by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state,
2 the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner
3 prescribed by rules promulgated by the board under this article, report the following information, as
4 applicable:

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

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

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

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

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

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

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

17 (8) If the prescription being dispensed is being picked up by someone other than the patient
18 on behalf of the patient, the first name, last name and middle initial, address and birth date of the
19 person picking up the prescription as set forth on the person's government-issued photo
20 identification card shall be retained in either print or electronic form until such time as otherwise
21 directed by rule promulgated by the board; and

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

1 (b) The board may prescribe by rule promulgated under this article the form to be used in
2 prescribing a Schedule II, III, and IV substance if, in the determination of the board, the
3 administration of the requirements of this section would be facilitated.

4 (c) Products regulated by the provisions of article ten of this chapter shall be subject to
5 reporting pursuant to the provisions of this article to the extent set forth in said article.

6 (d) Reporting required by this section is not required for a drug administered directly to a
7 patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a
8 patient by a practitioner: *Provided*, That the quantity dispensed may not exceed an amount adequate
9 to treat the patient for a maximum of seventy-two hours with no greater than two seventy-two-hour
10 cycles dispensed in any fifteen-day period of time.

11 **§60A-9-4a. Verification of identity.**

12 Prior to releasing a Schedule II, III, or IV controlled substance sold at retail, a pharmacist or
13 pharmacy shall verify the full legal name, address and birth date of the person picking up the
14 controlled substance dispensed by requiring the presentation of a valid government-issued photo
15 identification card. This information shall be reported in accordance with the provisions of this
16 article.

17 **§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for
18 required reporting.**

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

1 Virginia State Police to have access to the information, authorized agents of local law-enforcement
2 agencies as members of a federally affiliated drug task force, authorized agents of the federal Drug
3 Enforcement Administration, duly authorized agents of the Bureau for Medical Services, duly
4 authorized agents of the Office of the Chief Medical Examiner for use in post-mortem examinations,
5 duly authorized agents of licensing boards of practitioners in this state and other states authorized
6 to prescribe Schedules II, III, and IV controlled substances, prescribing practitioners and pharmacists
7 and persons with an enforceable court order or regulatory agency administrative subpoena:
8 *Provided*, That all law-enforcement personnel who have access to the Controlled Substances
9 Monitoring Program database shall be granted access in accordance with applicable state laws and
10 the board's legislative rules, shall be certified as a West Virginia law-enforcement officer and shall
11 have successfully completed training approved by the board. All information released by the board
12 must be related to a specific patient or a specific individual or entity under investigation by any of
13 the above parties except that practitioners who prescribe or dispense controlled substances may
14 request specific data related to their Drug Enforcement Administration controlled substance
15 registration number or for the purpose of providing treatment to a patient: *Provided, however*, That
16 the West Virginia Controlled Substances Monitoring Program Database Review Committee
17 established in subsection (b) of this section is authorized to query the database to comply with said
18 subsection.

19 (2) Subject to the provisions of subdivision (1) of this subsection, the board shall also review
20 the West Virginia Controlled Substance Monitoring Program database and issue reports that identify
21 abnormal or unusual practices of patients who exceed parameters as determined by the advisory
22 committee established in this section. The board shall communicate with prescribers and dispensers

1 to more effectively manage the medications of their patients in the manner recommended by the
2 advisory committee. All other reports produced by the board shall be kept confidential. The board
3 shall maintain the information required by this article for a period of not less than five years.
4 Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions
5 of this article may be used for compilation of educational, scholarly or statistical purposes, and may
6 be shared with the West Virginia Department of Health and Human Resources for those purposes,
7 as long as the identities of persons or entities and any personally identifiable information, including
8 protected health information, contained therein shall be redacted, scrubbed or otherwise irreversibly
9 destroyed in a manner that will preserve the confidential nature of the information. No individual
10 or entity required to report under section four of this article may be subject to a claim for civil
11 damages or other civil relief for the reporting of information to the board as required under and in
12 accordance with the provisions of this article.

13 (3) The board shall establish an advisory committee to develop, implement and recommend
14 parameters to be used in identifying abnormal or unusual usage patterns of patients in this state. This
15 advisory committee shall:

16 (A) Consist of the following members: A physician licensed by the West Virginia Board of
17 Medicine, a dentist licensed by the West Virginia Board of Dental Examiners, a physician licensed
18 by the West Virginia Board of Osteopathy, a licensed physician certified by the American Board of
19 Pain Medicine, a licensed physician board certified in medical oncology recommended by the West
20 Virginia State Medical Association, a licensed physician board certified in palliative care
21 recommended by the West Virginia Center on End of Life Care, a pharmacist licensed by the West
22 Virginia Board of Pharmacy, a licensed physician member of the West Virginia Academy of Family

1 Physicians, an expert in drug diversion and such other members as determined by the board.

2 (B) Recommend parameters to identify abnormal or unusual usage patterns of controlled
3 substances for patients in order to prepare reports as requested in accordance with subsection (a),
4 subdivision (2) of this section.

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

9 (D) Monitor the ability of medical services providers, health care facilities, pharmacists and
10 pharmacies to meet the twenty-four hour reporting requirement for the Controlled Substances
11 Monitoring Program set forth in section three of this article, and report on the feasibility of requiring
12 real-time reporting.

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

16 (b) The board shall create a West Virginia Controlled Substances Monitoring Program
17 Database Review Committee of individuals consisting of two prosecuting attorneys from West
18 Virginia counties, two physicians with specialties which require extensive use of controlled
19 substances and a pharmacist who is trained in the use and abuse of controlled substances. The
20 review committee may determine that an additional physician who is an expert in the field under
21 investigation be added to the team when the facts of a case indicate that the additional expertise is
22 required. The review committee, working independently, may query the database based on

1 parameters established by the advisory committee. The review committee may make determinations
2 on a case-by-case basis on specific unusual prescribing or dispensing patterns indicated by outliers
3 in the system or abnormal or unusual usage patterns of controlled substances by patients which the
4 review committee has reasonable cause to believe necessitates further action by law enforcement or
5 the licensing board having jurisdiction over the prescribers or dispensers under consideration. The
6 review committee shall also review notices provided by the chief medical examiner pursuant to
7 subsection (h), section ten, article twelve, chapter sixty-one of this code and determine on a
8 case-by-case basis whether a practitioner who prescribed or dispensed a controlled substance
9 resulting in or contributing to the drug overdose may have breached professional or occupational
10 standards or committed a criminal act when prescribing the controlled substance at issue to the
11 decedent. Only in those cases in which there is reasonable cause to believe a breach of professional
12 or occupational standards or a criminal act may have occurred, the review committee shall notify the
13 appropriate professional licensing agency having jurisdiction over the applicable prescriber or
14 dispenser and appropriate law-enforcement agencies and provide pertinent information from the
15 database for their consideration. The number of cases identified shall be determined by the review
16 committee based on a number that can be adequately reviewed by the review committee. The
17 information obtained and developed may not be shared except as provided in this article and is not
18 subject to the provisions of chapter twenty-nine-b of this code or obtainable as discovering in civil
19 matters absent a court order.

20 (c) The board is responsible for establishing and providing administrative support for the
21 advisory committee and the West Virginia Controlled Substances Monitoring Program Database
22 Review Committee. The advisory committee and the review committee shall elect a chair by

1 majority vote. Members of the advisory committee and the review committee may not be
2 compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred
3 in the performance of their duties.

4 (d) The board shall promulgate rules with advice and consent of the advisory committee, in
5 accordance with the provisions of article three, chapter twenty-nine-a of this code. The legislative
6 rules must include, but shall not be limited to, the following matters:

7 (1) Identifying parameters used in identifying abnormal or unusual prescribing or dispensing
8 patterns;

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

11 (3) Establishing the information to be contained in reports and the process by which the
12 reports will be generated and disseminated; and

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

16 (e) All practitioners, as that term is defined in section one hundred-one, article two of this
17 chapter who prescribe or dispense schedule II, III, or IV controlled substances shall have online or
18 other form of electronic access to the West Virginia Controlled Substances Monitoring Program
19 database;

20 (f) Persons or entities with access to the West Virginia Controlled Substances Monitoring
21 Program database pursuant to this section may, pursuant to rules promulgated by the board, delegate
22 appropriate personnel to have access to said database;

1 (g) Good faith reliance by a practitioner on information contained in the West Virginia
2 Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or
3 declining to prescribe or dispense a schedule II, III, or IV controlled substance shall constitute an
4 absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing
5 or declining to prescribe or dispense; and

6 (h) A prescribing or dispensing practitioner may notify law enforcement of a patient who, in
7 the prescribing or dispensing practitioner's judgment, may be in violation of section four hundred
8 ten, article four of this chapter, based on information obtained and reviewed from the controlled
9 substances monitoring database. A prescribing or dispensing practitioner who makes a notification
10 pursuant to this subsection is immune from any civil, administrative or criminal liability that
11 otherwise might be incurred or imposed because of the notification if the notification is made in
12 good faith.

13 (i) Nothing in the article may be construed to require a practitioner to access the West
14 Virginia Controlled Substances Monitoring Program database except as provided in section five-a
15 of this article.

16 (j) The board shall provide an annual report on the West Virginia Controlled Substance
17 Monitoring Program to the Legislative Oversight Commission on Health and Human Resources
18 Accountability with recommendations for needed legislation no later than January 1 of each year.

19 **ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.**

20 **§60A-10-16. Expiration of enactments made during 2012 regular session.**

21 The provisions of this article enacted during the 2012 regular legislative session establishing
22 the Multi-State Real-Time Tracking System shall expire on June 30,2017.

2015R3003