

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5192

By Delegates Summers and Tully

[Introduced January 25, 2024; Referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §30-5-7 of the Code of West Virginia, 1931, as amended, relating to
2 requiring the Board of Pharmacy to promulgate rules; permitting the practice of test and
3 treat.

Be it enacted by the Legislature of West Virginia:

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

§30-5-7. Rule-making authority.

1 (a) The board shall propose rules for legislative approval, in accordance with the
2 provisions of §29A-3-1 *et seq.* of this code, to implement the provisions of this article and §60A-2-
3 201 *et seq.*, §60A-3-301 *et seq.*, §60A-8-1 *et seq.*, §60A-9-1 *et seq.*, and §60A-10-1 *et seq.* of this
4 code, including:

- 5 (1) Standards and requirements for a license, permit, and registration;
- 6 (2) Educational and experience requirements;
- 7 (3) Procedures for examinations and reexaminations;
- 8 (4) Requirements for third parties to prepare, administer or prepare, and administer
9 examinations and reexaminations;
- 10 (5) The passing grade on the examination;
- 11 (6) Procedures for the issuance and renewal of a license, permit, and registration;
- 12 (7) A fee schedule;
- 13 (8) Continuing education requirements;
- 14 (9) Set standards for professional conduct;
- 15 (10) Establish equipment and facility standards for pharmacies;
- 16 (11) Approve courses and standards for training pharmacist technicians;
- 17 (12) Regulation of charitable clinic pharmacies;

18 (13) Regulation of mail-order pharmacies: *Provided*, That until the board establishes
19 requirements that provide further conditions for pharmacists who consult with or who provide
20 pharmacist care to patients regarding prescriptions dispensed in this state by a mail-order
21 pharmacy, the pharmacist in charge of the out-of-state mail-order pharmacy shall be licensed in
22 West Virginia and any other pharmacist providing pharmacist care from the mail-order pharmacy
23 shall be licensed in the state where the pharmacy is located;

24 (14) Agreements with organizations to form pharmacist recovery networks;

25 (15) Create an alcohol or chemical dependency treatment program;

26 (16) Establish a ratio of pharmacy technicians to on-duty pharmacist operating in any
27 outpatient, mail order, or institutional pharmacy;

28 (17) Regulation of telepharmacy;

29 (18) The minimum standards for a charitable clinic pharmacy and rules regarding the
30 applicable definition of a pharmacist-in-charge, who may be a volunteer, at charitable clinic
31 pharmacies: *Provided*, That a charitable clinic pharmacy may not be charged any applicable
32 licensing fees and such clinics may receive donated drugs;

33 (19) Establish standards for substituted drug products;

34 (20) Establish the regulations for E-prescribing;

35 (21) Establish the proper use of the automated data processing system;

36 (22) Registration and control of the manufacture and distribution of controlled substances
37 within this state;

38 (23) Regulation of pharmacies;

39 (24) Sanitation and equipment requirements for wholesalers, distributors, and pharmacies;

40 (25) Procedures for denying, suspending, revoking, reinstating, or limiting the practice of a
41 licensee, permittee, or registrant;

42 (26) Regulations on prescription paper as provided in §16-5-27 of this code;

43 (27) Regulations on controlled substances as provided in §60A-2-201 *et seq.* of this code;

44 (28) Regulations on manufacturing, distributing, or dispensing any controlled substance as
45 provided in §60A-3-301 of this code;

46 (29) Regulations on wholesale drug distribution as provided in §60A-8-1 *et seq.* of this
47 code;

48 (30) Regulations on controlled substances monitoring as provided in §60A-9-1 *et seq.* of
49 this code;

50 (31) Regulations on Methamphetamine Laboratory Eradication Act as provided in §60A-
51 10-1 *et seq.* of this code;

52 (32) Establish and maintain an official prescription paper program; and

53 (33) Any other rules necessary to effectuate the provisions of this article.

54 (b) The board may provide an exemption to the pharmacist-in-charge requirement for the
55 opening of a new retail pharmacy or during a declared emergency.

56 (c) The board, the Board of Medicine, and the Board of Osteopathic Medicine shall jointly
57 agree and propose rules concerning collaborative pharmacy practice for legislative approval in
58 accordance with the provisions of §29A-3-1 *et seq.* of this code.

59 (d) The board may propose rules for legislative approval in accordance of §29A-3-1 *et seq.*
60 of this code to order, test, screen, and treat health conditions that includes all of the following:
61 influenza; Group A Streptococcus Pharyngitis; SARS-COV-2 or other respiratory illness,
62 condition, or disease; lice; skin conditions, including ringworm and athlete's foot; and other
63 emerging and existing public health identified by the board if permitted by an order, rule, or
64 regulation. These rules shall provide, at a minimum, for the following:

65 (1) A pharmacist who orders, test, screens, or treats health conditions under this section
66 may use any test that may guide clinical decision making that is waived under the federal Clinical
67 Laboratory Improvement Amendments of 1988, the federal rules adopted thereunder, or any
68 established screening procedure that is established via a statewide protocol.

69 (2) A pharmacist may delegate the administrative and technical tasks of performing a test
70 waived by the federal Clinical Laboratory Improvement Amendments of 1988 to an intern or
71 pharmacy technician acting under the supervision of the pharmacist.

72 ~~(d)~~ (e) The board, with the advice of the Board of Medicine and the Board of Osteopathic
73 Medicine, shall propose rules for legislative approval in accordance with the provisions of §29A-3-
74 1 *et seq.* of this code to perform influenza and pneumonia immunizations on a person of 18 years
75 of age or older. These rules shall provide, at a minimum, for the following:

76 (1) Establishment of a course, or provide a list of approved courses, in immunization
77 administration. The courses shall be based on the standards established for such courses by the
78 Centers for Disease Control and Prevention in the public health service of the United States
79 Department of Health and Human Services;

80 (2) Definitive treatment guidelines which shall include, but not be limited to, appropriate
81 observation for an adverse reaction of an individual following an immunization;

82 (3) Prior to administration of immunizations, a pharmacist shall have completed a board-
83 approved immunization administration course and completed an American Red Cross or
84 American Heart Association basic life-support training, and maintain certification in the same;

85 (4) Continuing education requirements for this area of practice;

86 (5) Reporting requirements for pharmacists administering immunizations to report to the
87 primary care physician or other licensed health care provider as identified by the person receiving
88 the immunization;

89 (6) Reporting requirements for pharmacists administering immunizations to report to the
90 West Virginia Statewide Immunization Information;

91 (7) That a pharmacist may not delegate the authority to administer immunizations to any
92 other person, unless administered by a licensed pharmacy intern or registered pharmacy
93 technician under the direct supervision of a pharmacist of whom the pharmacist, the pharmacist
94 technician and intern have successfully completed all board-required training; and

95 (8) Any other provisions necessary to implement the provisions of this section.

96 ~~(e)~~ (f) The Board of Medicine and the Board of Osteopathic Medicine shall propose joint
97 rules, by July 1, 2023, for legislative approval in accordance with the provisions of §29A-3-1 *et*
98 *seq.* of this code to permit a licensed pharmacist, pharmacy technician or pharmacy intern to
99 administer immunizations in accordance with definitive treatment guidelines for immunizations
100 promulgated by the latest notice from the U.S. Department of Health and Human Services,
101 Centers for Disease Control and Prevention (CDC), including, but not limited to, the CDC's
102 recommended immunization schedule for adults, children, and adolescents. In addition, the joint
103 rules shall permit a licensed pharmacist, pharmacy technician or pharmacy intern to administer
104 immunizations in accordance with definitive treatment guidelines for immunizations promulgated
105 by the latest notice from the CDC, including, but not limited to, the CDC's recommended
106 immunization schedule for adults, children, and adolescents to a person age 3 through 17, with
107 written informed parental consent and there are no contraindications to that patient receiving that
108 vaccine. These rules shall provide, at a minimum, the same provisions contained in subsections
109 ~~(d)(1)~~ (e)(1) through ~~(d)(8)~~ (e)(8), inclusive, of this section.

110 ~~(f)~~ (g) All of the board's rules in effect and not in conflict with these provisions shall remain
111 in effect until they are amended or rescinded.

NOTE: The purpose of this bill is to authorize the Board of Pharmacy to create rules relating to the practice of pharmacy.

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