WEST VIRGINIA CODE CHAPTER 30 ARTICLE 3A

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§30-3A-1. Definitions.

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

"Accepted guideline" is a care or practice guideline for pain management developed by a nationally recognized clinical or professional association or a specialty society or government-sponsored agency that has developed practice or care guidelines based on original research or on review of existing research and expert opinion. An accepted guideline also includes policy or position statements relating to pain management issued by any West Virginia board included in §30-1-1 et seq. of this code with jurisdiction over various health care practitioners. Guidelines established primarily for purposes of coverage, payment, or reimbursement do not qualify as accepted practice or care guidelines when offered to limit treatment options otherwise covered by the provisions of this article.

"Board" or "licensing board" means the West Virginia Board of Medicine, the West Virginia Board of Osteopathy, the West Virginia Board of Registered Nurses, the West Virginia Board of Pharmacy, the West Virginia Board of Optometry, or the West Virginia Board of Dentistry.

"Nurse" means a registered nurse licensed in the State of West Virginia pursuant to the provisions of §30-7-1 et seq. of this code.

"Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

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

"Pharmacist" means a registered pharmacist licensed in the State of West Virginia pursuant to the provisions of §30-5-1 et seq. of this code.

"Prescriber" shall mean:

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

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

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

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(4) An optometrist licensed pursuant to the provisions of §30-8-1 et seq. of this code.

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

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

(1) In the case of a dying patient experiencing pain, the prescriber practices in accordance with an accepted guideline as defined in §30-3A-1 of this code and discharges his or her professional obligation to relieve the dying patient's pain and promote the dignity and autonomy of the dying patient; or

(2) In the case of a patient who is not dying and is experiencing pain, the prescriber discharges his or her professional obligation to relieve the patient's pain, if the prescriber can demonstrate by reference to an accepted guideline that his or her practice substantially complied with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

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

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

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

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

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

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

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

(a) Nothing in this article shall prohibit disciplinary action or criminal prosecution of a prescriber for:

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

(2) Writing a false or fictitious prescription for a controlled substance scheduled in §60A-2-201 et seq. of this code; or

(3) Prescribing, administering, or dispensing a controlled substance in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, et seq. or chapter §60A-1-101 et seq. of this code;

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

(5) Abnormal or unusual prescribing or dispensing patterns, or both as identified by the Controlled Substance Monitoring Program set forth in §60A-9-1 et seq. of this code. These prescribing and dispensing patterns may be discovered in the report filed with the appropriate board as required by section §60A-9-1 et seq. of this code.

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

(1) Administering or dispensing a controlled substance in violation of the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801, et seq. or §60A-1-101 of this code; or

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

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§30-3A-4. Abnormal or unusual prescribing practices.

(a) Upon receipt of the quarterly report set forth in §60A-9-1 et seq. of this code, the licensing board shall notify the prescriber that he or she has been identified as a potentially unusual or abnormal prescriber. The board may take appropriate action, including, but not limited to, an investigation or disciplinary action based upon the findings provided in the report.

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

(c) The licensing boards and prescribers shall have all rights and responsibilities in their practice acts.

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