WEST VIRGINIA CODE CHAPTER 60a ARTICLE 5

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§60A-5-501. Powers of enforcement personnel.

(a) Any member of the State Police, any sheriff, any deputy sheriff, any municipal police officer and any campus police officer may in the enforcement of the provisions of this act:

(1) Carry firearms;

(2) Execute and serve search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this state;

(3) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony;

(4) Make seizures of property pursuant to this act; or

(5) Perform such other law-enforcement duties as said state Board of Pharmacy or said appropriate department, board or agency, as specified in section 301, designates.

(b) All officers, agents, inspectors, and representatives of the said state Board of Pharmacy and of the said appropriate department, board, or agency, as specified in section 301, and members of the State Police may execute and serve administrative warrants issued incident to the enforcement of the provisions of this act. Any such officer, agent, inspector, and representative of the said state Board of Pharmacy and of the said appropriate department, board, or agency, as specified in said section 301, may:

(1) Execute and serve subpoenas and summonses issued under the authority of this state;

(2) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony; or

(3) Make seizures of property pursuant to this act.

(c) All prosecuting attorneys and the Attorney General, or any of their assistants, shall assist in the enforcement of all provisions of this act and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

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§60A-5-502. Administrative inspections and warrants.

(a) Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of any court of record in this state having criminal jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this act or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this act or rules hereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(i) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(ii) Be directed to a person authorized by section 501 to execute it;

(iii) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(iv) Identify the item or types of property to be seized, if any;

(v) Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all

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papers returnable in connection therewith and file them with the clerk of the court.

(b) Administrative inspections of controlled premises shall be made in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(i) Places where persons registered or exempted from registration requirements under this act are required to keep records; and

(ii) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a), any person authorized in subsection (b), section 501 of this article to execute and serve the same, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, any such person may:

(i) Inspect and copy records required by this act to be kept;

(ii) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b) (5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this act; and

(iii) Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with any pertinent provision of this code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(i) If the owner, operator, or agent in charge of the controlled premises consents;

(ii) In situations presenting imminent danger to health or safety;

(iii) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

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(v) In all other situations in which a warrant is not Constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

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§60A-5-503. Injunctions.

(a) The courts of record of this state have and may exercise jurisdiction to restrain or enjoin violations of this act.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

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§60A-5-504. Cooperative arrangements; confidentiality; treatment of minor without knowledge or consent of parent or guardian.

(a) The state Board of Pharmacy and the appropriate departments, boards, and agencies, as specified in section 301, shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state, and local law enforcement purposes. They shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the bureau relating to the regulatory functions of this chapter, including results of inspections conducted by it may be relied and acted upon by the state Board of Pharmacy in the exercise of its regulatory functions under this chapter.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the state Board of Pharmacy or to the appropriate department, board, or agency by which he is licensed or registered, as specified in section 301, nor may he be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(d) No mental health organization or hospital shall be compelled in any state or local civil, criminal, administrative, legislative or other proceeding to furnish the name or identity of any person voluntarily requesting treatment for or rehabilitation from addiction to or dependency upon the use of a controlled substance as defined in article one of this chapter.

(e) Notwithstanding any other provision of law, any licensed physician or competent medically trained person under his direction may examine, diagnose, and treat any minor at his or her request for any addiction to or dependency upon the use of a controlled substance as defined in article one of this chapter without the knowledge or consent of the minor's parent or guardian. Such physician and such other persons shall not incur any civil or

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criminal liability in connection therewith except for negligence or willful injury.

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§60A-5-505.

Repealed

Acts, 1988 Reg. Sess., Ch. 23.

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§60A-5-506. Burden of proof; liability of officers.

(a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this act, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this act upon any authorized state, county, or municipal officer, engaged in the lawful performance of his duties.

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§60A-5-507. Judicial review.

All final determinations, findings, and conclusions of the said state Board of Pharmacy or the appropriate department, board, or agency, as specified in section 301, made under this act after hearing are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision pursuant to the provisions of articles five and six, chapter twenty-nine-a of this code.

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§60A-5-508. Education and research.

(a) The said state Board of Pharmacy and the appropriate departments, boards, and agencies, as specified in section 301, and the division on alcoholism and drug abuse in the department of mental health (all hereinafter in this section referred to as "such agencies"), shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs they may:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) Assist in the education and training of state and local law-enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) Such agencies shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this act, such agencies may:

(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Makes studies and undertake programs of research to:

(i) Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this act;

(ii) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and,

(3) Enter into contracts with public agencies, institutions of higher education, and private

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organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) Such agencies may enter into contracts for educational and research activities without performance bonds.

(d) Such agencies may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) Such agencies may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

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§60A-5-509. Unlawful retaliation against health care providers.

(a) A health care provider has the right to exercise his or her professional judgment to decline to administer, dispense, or prescribe narcotics without being subject to actual or threatened acts of reprisal.

(b) It shall be unlawful for any person or entity to engage in any form of threats or reprisal, or to engage in, or hire, or conspire with, others to commit acts or activities of any nature, the purpose of which is to punish, embarrass, deny, or reduce privileges or compensation, or cause economic loss or to aid, abet, incite, compel, or coerce any person to engage in such threats or reprisal, against a health care provider as a result of, or in retaliation for, the refusal of that health care provider to administer, dispense, or prescribe narcotics.

(c) Any person or entity who violates the foregoing shall be subject to a private right of action by the affected health care provider and shall be liable in the amount of three times the economic loss sustained as a direct and proximate result of the reprisal.

(d) A health care provider that prevails in an action brought pursuant to this section shall be entitled to an award of costs and attorney fees.

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