

RECEIVED

98 APR -8 PM 3:33

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4058

(By Mr. Speaker, Mr. Kiss, and Delegates Douglas,
Staton, Ashley and Trump)



Passed March 14, 1998

In Effect Ninety Days from Passage

RECEIVED

98 APR -8 PM 3:33

OFFICE OF THE CLERK
SECRETARIAT OF STATE

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4058

(By MR. SPEAKER, MR. KISS, AND DELEGATES DOUGLAS,
STATON, ASHLEY AND TRUMP)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to limiting disciplinary actions against certain health professionals prescribing, administering or dispensing controlled substances in the management of intractable pain.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, all to read as follows:

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

§30-3A-1. Definitions.

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

5 (1) An “accepted guideline” is a care or practice
6 guideline for pain management developed by a nationally
7 recognized clinical or professional association, or a
8 specialty society or government-sponsored agency that
9 has developed practice or care guidelines based on
10 original research or on review of existing research and
11 expert opinion. Guidelines established primarily for
12 purposes of coverage, payment or reimbursement do not
13 qualify as accepted practice or care guidelines when
14 offered to limit treatment options otherwise covered by the
15 provisions of this article.

16 (2) “Board” or “licensing board” means the West
17 Virginia board of medicine, the West Virginia board of
18 osteopathy, the West Virginia board of registered nurses or
19 the West Virginia board of pharmacy.

20 (3) “Intractable pain” means a state of pain having a
21 cause that cannot be removed. Intractable pain exists if an
22 effective relief or cure of the cause of the pain (1) is not
23 possible, or (2) has not been found after reasonable
24 efforts. Intractable pain may be temporary or chronic.

25 (4) “Nurse” means a registered nurse licensed in the
26 state of West Virginia pursuant to the provisions of article
27 seven of this chapter.

28 (5) “Pain-relieving controlled substance” includes
29 but is not limited to an opioid or other drug classified as a
30 schedule II controlled substance and recognized as
31 effective for pain relief, and excludes any drug that has no
32 accepted medical use in the United States or lacks
33 accepted safety for use in treatment under medical
34 supervision, including but not limited to any drug
35 classified as a schedule I controlled substance.

36 (6) “Pharmacist” means a registered pharmacist
37 licensed in the state of West Virginia pursuant to the
38 provisions of article five of this chapter.

39 (7) “Physician” means a physician licensed in the
40 state of West Virginia pursuant to the provisions of article
41 three or article fourteen of this chapter.

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

1 (a) A physician shall not be subject to disciplinary
2 sanctions by a licensing board or criminal punishment by
3 the state for prescribing, administering or dispensing pain-
4 relieving controlled substances for the purpose of
5 alleviating or controlling intractable pain when:

6 (1) In a case of intractable pain involving a dying
7 patient, the physician discharges his or her professional
8 obligation to relieve the dying patient's intractable pain
9 and promote the dignity and autonomy of the dying
10 patient, even though the dosage exceeds the average
11 dosage of a pain-relieving controlled substance; or

12 (2) In the case of intractable pain involving a patient
13 who is not dying, the physician discharges his or her
14 professional obligation to relieve the patient's intractable
15 pain, even though the dosage exceeds the average dosage
16 of a pain-relieving controlled substance, if the physician
17 can demonstrate by reference to an accepted guideline
18 that his or her practice substantially complied with that
19 accepted guideline. Evidence of substantial compliance
20 with an accepted guideline may be rebutted only by the
21 testimony of a clinical expert. Evidence of
22 noncompliance with an accepted guideline is not sufficient
23 alone to support disciplinary or criminal action.

24 (b) A registered nurse shall not be subject to
25 disciplinary sanctions by a licensing board or criminal
26 punishment by the state for administering pain-relieving
27 controlled substances to alleviate or control intractable
28 pain, if administered in accordance with the orders of a
29 licensed physician.

30 (c) A registered pharmacist shall not be subject to
31 disciplinary sanctions by a licensing board or criminal
32 punishment by the state for dispensing a prescription for a
33 pain-relieving controlled substance to alleviate or control
34 intractable pain, if dispensed in accordance with the orders
35 of a licensed physician.

36 (d) For purposes of this section, the term “disciplinary
37 sanctions” includes both remedial and punitive sanctions
38 imposed on a licensee by a licensing board, arising from
39 either formal or informal proceedings.

40 (e) The provisions of this section shall apply to the
41 treatment of all patients for intractable pain, regardless of
42 the patient's prior or current chemical dependency or
43 addiction. The board may develop and issue policies or
44 guidelines establishing standards and procedures for the
45 application of this article to the care and treatment of
46 persons who are chemically dependent or addicted.

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

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

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

8 (2) Writing a false or fictitious prescription for a
9 controlled substance scheduled in article two, chapter
10 sixty-a of this code; or

11 (3) Prescribing, administering, or dispensing a
12 controlled substance in violation of the provisions of the
13 federal Comprehensive Drug Abuse Prevention and
14 Control Act of 1970, 21 U.S.C. §§801, *et seq.* or chapter
15 sixty-a of this code; or

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

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

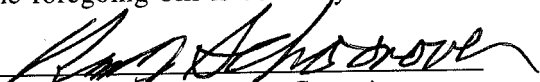
21 (1) Administering or dispensing a controlled sub-
22 stance in violation of the provisions of the federal
23 Comprehensive Drug Abuse Prevention and Control Act
24 of 1970, 21 U.S.C. §§801, *et seq.* or chapter sixty-a of this
25 code; or

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

§30-3A-4. Construction of article.

1 This article may not be construed to legalize, condone,
2 authorize or approve mercy killing or assisted suicide.

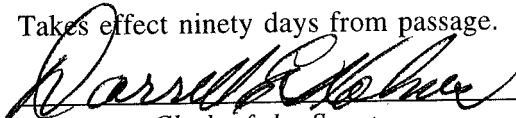
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

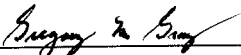

Chairman Senate Committee

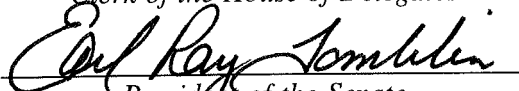

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

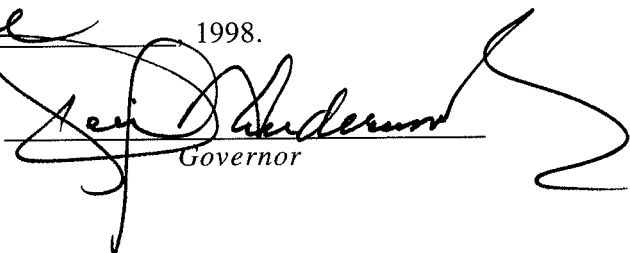

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 8th
day of April 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 11:10 am