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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



ENROLLED

House Bill No. 4275

(By Mr. Speaker, Mr. Kiss and Delegates Douglas,
Staton, Leach, Amores, Compton and Stalnaker)



Passed March 8, 2002

In Effect Ninety Days from Passage

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H. B. 4275

(BY MR. SPEAKER, MR. KISS AND DELEGATES DOUGLAS,
STATON, LEACH, AMORES, COMPTON AND STALNAKER)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections one and two, article three-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to end of life pain management; providing that any board, governed by chapter thirty that licenses health care practitioners, may develop guidelines for pain management.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article three-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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 defined
- 2 in this section have the meanings ascribed to them. These
- 3 definitions are applicable unless a different meaning clearly
- 4 appears from the context.

5 (1) An “accepted guideline” is a care or practice guideline
6 for pain management developed by a nationally recognized
7 clinical or professional association or a specialty society or
8 government-sponsored agency that has developed practice or
9 care guidelines based on original research or on review of
10 existing research and expert opinion. An accepted guideline
11 also includes policy or position statements relating to pain
12 management issued by any West Virginia board included in
13 chapter thirty of the West Virginia code with jurisdiction over
14 various health care practitioners. Guidelines established
15 primarily for purposes of coverage, payment or reimbursement
16 do not qualify as accepted practice or care guidelines when
17 offered to limit treatment options otherwise covered by the
18 provisions of this article.

19 (2) “Board” or “licensing board” means the West Virginia
20 board of medicine, the West Virginia board of osteopathy, the
21 West Virginia board of registered nurses or the West Virginia
22 board of pharmacy.

23 (3) “Intractable pain” means a state of pain having a cause
24 that cannot be removed. Intractable pain exists if an effective
25 relief or cure of the cause of the pain: (1) Is not possible; or (2)
26 has not been found after reasonable efforts. Intractable pain
27 may be temporary or chronic.

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

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

36 under medical supervision including, but not limited to, any
37 drug classified as a schedule I controlled substance.

38 (6) "Pharmacist" means a registered pharmacist licensed in
39 the state of West Virginia pursuant to the provisions of article
40 five of this chapter.

41 (7) "Physician" means a physician licensed in the state of
42 West Virginia pursuant to the provisions of article three or
43 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 sanctions
2 by a licensing board or criminal punishment by the state for
3 prescribing, administering or dispensing pain-relieving controlled substances for the purpose of alleviating or controlling
4 intractable pain when:
5

6 (1) In a case of intractable pain involving a dying patient,
7 in practicing in accordance with an accepted guideline as
8 defined in section one of this article, the physician discharges
9 his or her professional obligation to relieve the dying patient's
10 intractable pain and promote the dignity and autonomy of the
11 dying patient, even though the dosage exceeds the average
12 dosage of a pain-relieving controlled substance; or

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

21 rebutted only by the testimony of a clinical expert. Evidence of
22 noncompliance with an accepted guideline is not sufficient
23 alone to support disciplinary or criminal action.

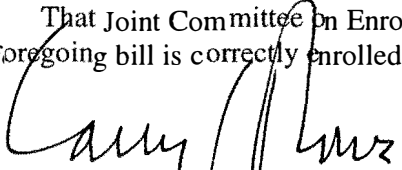
24 (b) A registered nurse shall not be subject to disciplinary
25 sanctions by a licensing board or criminal punishment by the
26 state for administering pain-relieving controlled substances to
27 alleviate or control intractable pain, if administered in accor-
28 dance with the orders of a licensed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

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

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

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

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



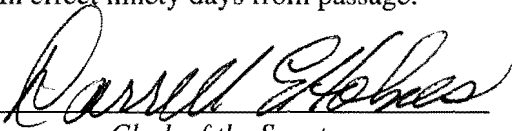
Chairman Senate Committee



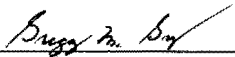
Chairman House Committee

Originating in the House.

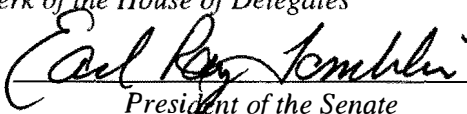
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 18th
day of March, 2002.



Governor

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