WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2002

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4419

(By Delegates Border, Perdue, Michael,
Douglas, Compton, H. White and Kominar)

Passed March 7, 2002
In Effect September 1, 2002
AN ACT to amend article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred ten; and to amend and reenact sections one, two, three, four, five, six and seven, article nine of said chapter, all relating to monitoring controlled substances generally; creating the criminal offense of withholding information from a practitioner that a patient has obtained a prescription for a controlled substance from another practitioner; establishing of a controlled substance monitoring program; and establishing criminal penalties for the misuse of information or the submission of false information.

Be it enacted by the Legislature of West Virginia:
That article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four hundred ten; and that sections one, two, three, four, five, six and seven, article nine of said chapter be amended and reenacted, all to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-410. Prohibited acts — Withholding information from practitioner; additional controlled substances; penalties.

(a) It is unlawful for a patient, with the intent to deceive and obtain a prescription for a controlled substance, to withhold information from a practitioner that the patient has obtained a prescription for a controlled substance of a similar therapeutic use in a concurrent time period from another practitioner.

(b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in the county or regional jail for not more than six months, or fined not more than one thousand dollars, or both fined and imprisoned.

(c) The offense established by this section is in addition to and a separate and distinct offense from any other offense set forth in this code.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-1. Short title.

This article shall be referred to as the West Virginia controlled substances monitoring act.

§60A-9-2. Establishment of program; purpose.
There is hereby established a West Virginia controlled substances monitoring act the purpose of which is to require the recordation and retention in a single repository of information regarding the prescribing, dispensing and consumption of certain controlled substances.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

(a) On or before the first day of September, two thousand two, the board of pharmacy shall implement a program wherein a central repository is established and maintained which shall contain such information as is required by the provisions of this article regarding Schedule II, III and IV controlled substance prescriptions written or filled in this state. In implementing this program, the board of pharmacy shall consult with the West Virginia state police, the licensing boards of practitioners affected by this article and affected practitioners.

(b) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The state board of pharmacy shall allow reporting of the required information by electronic data transfer where feasible, and where not feasible, on reporting forms promulgated by the board of pharmacy. The information required to be submitted by the provisions of this article shall be required to be filed no more frequently than once a week.

(c)(1) The state board of pharmacy shall provide for the electronic transmission of the information required to be provided by this article by and through the use of a toll-free telephone line.

(2) A dispenser, who does not have an automated recordkeeping system capable of producing an electronic report
in the established format may request a waiver from electronic reporting. The request for a waiver shall be made to the state board of pharmacy in writing and shall be granted if the dispenser agrees in writing to report the data by submitting a completed “Pharmacy Universal Claim Form” as defined by legislative rule.

§60A-9-4. Required information.

(a) Whenever a medical services provider dispenses a controlled substance listed in the provisions of section two hundred six, article two of this chapter, or whenever a prescription for the controlled substance is filled by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist, licensed by the board of pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the board of pharmacy under this article, report the following information, as applicable:

1. The name, address, pharmacy prescription number and DEA controlled substance registration number of the dispensing pharmacy;

2. The name, address and birth date of the person for whom the prescription is written;

3. The name, address and drug enforcement administration controlled substances registration number of the practitioner writing the prescription;

4. The name and national drug code number of the Schedule II, III and IV controlled substance dispensed;
(5) The quantity and dosage of the Schedule II, III and IV controlled substance dispensed;

(6) The date the prescription was filled; and

(7) The number of refills, if any, authorized by the prescription.

(b) The board of pharmacy may prescribe by rule promulgated under this article the form to be used in prescribing a Schedule II, III and IV substance if, in the determination of the board, the administration of the requirements of this section would be facilitated.

(c) Reporting required by this section is not required for a drug administered directly to a patient or a drug dispensed by a practitioner at a facility licensed by the state: Provided, That the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of seventy-two hours with no greater than two seventy-two hour cycles in any fifteen day period of time.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

The information required by this article to be kept by the state board of pharmacy is confidential and is open to inspection only by inspectors and agents of the state board of pharmacy, members of the West Virginia state police expressly authorized by the superintendent of the West Virginia state police, to have access to the information, authorized agents of the federal drug enforcement agency, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedule II, III and IV controlled substances, prescribing practitioners and pharmacists and persons with an enforceable court order or regulatory agency administrative subpoena: Provided, That all information
released by the state board of pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe controlled substances may request specific data related to their drug enforcement administration controlled substance registration number or for the purpose of providing treatment to a patient. The board shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential. No individual or entity required to report under section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information to the board of pharmacy as required under and in accordance with the provisions of this article.

§60A-9-6. Promulgation of rules.

The state board of pharmacy shall promulgate legislative rules to effectuate the purposes of this article in accordance with the provisions of chapter twenty-nine-a of this code.

§60A-9-7. Criminal penalties.

(a) Any person who is required to submit information to the state board of pharmacy pursuant to the provisions of this article who fails to do so as directed by the board shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

(b) Any person who is required to submit information to the state board of pharmacy pursuant to the provisions of this article who knowingly and willfully refuses to submit to the information required by this article shall be guilty of a misde-
meanor and, upon conviction thereof, shall be confined in a county or regional jail not more than six months or fined not more than one thousand dollars, or both.

(c) Any person who is required by the provisions of this article to submit information to the state board of pharmacy who knowingly submits thereto information known to that person to be false or fraudulent shall be guilty of a misde-meanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year or fined not more than five thousand dollars, or both.

(d) Any person granted access to the information required by the provisions of this article to be maintained by the state board of pharmacy, who shall willfully disclose the information required to be maintained by this article in a manner inconsistent with a legitimate law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a court order or as otherwise expressly authorized by the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months or fined not more than one thousand dollars, or both.
Enr. Com. Sub. for H. B. 4419

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 September 1, 2002.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within [date] approved this the _15_ day of __March__, 2002.

Governor