

FILED

2009 APR 30 PM 4: 09

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2839**

(By Delegates Perdue, Boggs, Hatfield, Border, Moore,
Moye and Rodighiero)

Passed April 8, 2009

In Effect Ninety Days from Passage

HB 2839

HB

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**(BY DELEGATES PERDUE, BOGGS, HATFIELD, BORDER,
MOORE, MOYE AND RODIGHIERO)**

[Passed April 8, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §30-3A-1 and §30-3A-2 of the Code of West Virginia, 1931, as amended, all relating to the management of pain by physicians; eliminating the definition of "intractable pain" and defining the word "pain"; making conforming amendments to the Management of Pain Act; and expanding the definition of "pain-relieving controlled substance" in the Act.

Be it enacted by the Legislature of West Virginia:

That §30-3A-1 and §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3A. MANAGEMENT OF PAIN ACT.

§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 them.
3 These definitions are applicable unless a different meaning
4 clearly 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
14 over various health care practitioners. Guidelines established
15 primarily for purposes of coverage, payment or
16 reimbursement do not qualify as accepted practice or care
17 guidelines when offered to limit treatment options otherwise
18 covered by the provisions of this article.

19 (2) "Board" or "licensing board" means the West Virginia
20 Board of Medicine, the West Virginia Board of Osteopathy,
21 the West Virginia Board of Registered Nurses or the West
22 Virginia Board of Pharmacy.

23 (3) "Nurse" means a registered nurse licensed in the State
24 of West Virginia pursuant to the provisions of article seven
25 of this chapter.

26 (4) "Pain" means an unpleasant sensory and emotional
27 experience associated with actual or potential tissue damage
28 or described in terms of such damage.

29 (5) "Pain-relieving controlled substance" includes, but is
30 not limited to, an opioid or other drug classified as a
31 Schedule II through V controlled substance and recognized

32 as effective for pain relief, and excludes any drug that has no
33 accepted medical use in the United States or lacks accepted
34 safety for use in treatment under medical supervision
35 including, but not limited to, any drug classified as a
36 Schedule I controlled substance.

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

40 (7) "Physician" means a physician licensed in the State of
41 West Virginia pursuant to the provisions of article three or
42 article fourteen of this chapter.

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

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

6 (1) In the case of a dying patient experiencing pain, the
7 physician practices in accordance with an accepted guideline
8 as defined in section one of this article and discharges his or
9 her professional obligation to relieve the dying patient's pain
10 and promote the dignity and autonomy of the dying patient;
11 or

12 (2) In the case of a patient who is not dying and is
13 experiencing pain, the physician discharges his or her
14 professional obligation to relieve the patient's pain, if the
15 physician can demonstrate by reference to an accepted
16 guideline that his or her practice substantially complied with
17 that accepted guideline. Evidence of substantial compliance

18 with an accepted guideline may be rebutted only by the
19 testimony of a clinical expert. Evidence of noncompliance
20 with an accepted guideline is not sufficient alone to support
21 disciplinary or criminal action.


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

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

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

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

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



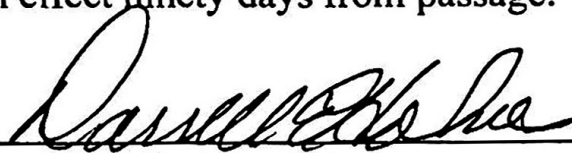
Chairman Senate Committee



Chairman House Committee

Originating in the House.

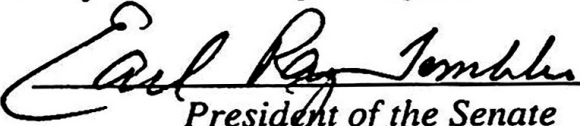
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

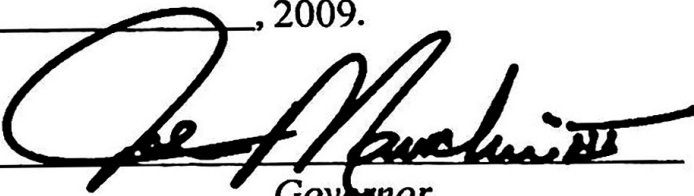


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2009.



Governor

PRESENTED TO THE
GOVERNOR

APR 28 2009

Time 2:14 pm