WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
COMMITEE SUBSTITUTE
FOR
COMMITEE SUBSTITUTE
FOR

Senate Bill No. 365
(SENATORS JENKINS, STOLLINGS, TOMBLIN (MR. PRESIDENT), EDGELL, FOSTER, PLYMALE AND PREZIOSO, original sponsors)

[Passed March 11, 2010; in effect ninety days from passage.]
AN ACT to amend and reenact §60A-9-5 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Controlled Substances Monitoring Program database; requiring all prescribers or dispensers of Schedule II, III or IV controlled substances to have online access to the West Virginia Controlled Substances Monitoring Program database; authorizing persons or entities with access to the database to delegate access to database to others; limiting liability practitioners for good faith reliance on database; authorizing the Office of the Chief Medical Examiner access to the database; clarifying that practitioners have no duty to access database; authorizing rules for delegation of access; and rulemaking.

Be it enacted by the Legislature of West Virginia:
That §60A-9-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

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

(a) 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 local law-enforcement agencies as a member of a drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services and the Workers' Compensation Commission, duly authorized agents of the Office of the Chief Medical Examiner for use in post-mortem examinations, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules 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
31 compilation of educational, scholarly or statistical pur-
32 poses as long as the identities of persons or entities remain
33 confidential. No individual or entity required to report
34 under section four of this article may be subject to a claim
35 for civil damages or other civil relief for the reporting of
36 information to the Board of Pharmacy as required under
37 and in accordance with the provisions of this article;
38
(b) All practitioners, as that term is defined in section
39 one hundred-one, article two of this chapter who prescribe
40 or dispense schedule II, III or IV controlled substances
41 shall, on or before July 1, 2011 have online or other form
42 of electronic access to the West Virginia Controlled
43 Substances Monitoring Program database;
44
(c) Persons or entities with access to the West Virginia
45 Controlled Substances Monitoring Program database
46 pursuant to this section may, pursuant to rules promul-
47 gated by the Board of Pharmacy, delegate appropriate
48 personnel to have access to said database;
49
(d) Good faith reliance by a practitioner on information
50 contained in the West Virginia Controlled Substances
51 Monitoring Program database in prescribing or dispensing
52 or refusing or declining to prescribe or dispense a schedule
53 II, III or IV controlled substance shall constitute an
54 absolute defense in any civil or criminal action brought
55 due to prescribing or dispensing or refusing or declining to
56 prescribe or dispense; and
57
(e) The Board of Pharmacy is hereby authorized to
58 promulgate an emergency rule under chapter twenty-nine-
59 A to effectuate the amendments to this section enacted
60 during the 2010 Regular Session of the Legislature.
61
(f) Nothing in the article shall be construed to require a
62 practitioner to access the West Virginia Controlled
63 Substances Monitoring Program database.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 22nd Day of        2010.

Governor