Enrolled

Senate Bill 627

By Senators Takubo, Maynard, Mullins, Stollings, Trump and Plymale

[Passed March 10, 2016; in effect 90 days from passage]
Enr. SB 627

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

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BY SENATORS TAKUBO, MAYNARD, MULLINS, Stollings, Trump and Plymale

[Passed March 10, 2016; in effect 90 days from passage]
AN ACT to amend and reenact §30-3A-2 of the Code of West Virginia, 1931, as amended; and
to amend and reenact §55-7-23 of said code, all relating to permitting physicians to decline
prescribing controlled substance in certain circumstances; limiting disciplinary action by a
licensing board on a health care provider with prescriptive authority for declining to
prescribe, or declining to continue to prescribe, any controlled substance in certain
circumstances; and providing that a health care provider with prescriptive authority is not
liable to a patient or third party for declining to prescribe, or declining to continue to
prescribe, any controlled substance in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §30-3A-2 of the Code of West Virginia, 1931, as amended, be amended and
reenacted; and that §55-7-23 of said code be amended and reenacted, all to read as follows:

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3A. MANAGEMENT OF INTRACTABLE PAIN.

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

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

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

(2) In the case of a patient who is not dying and is experiencing pain, the physician
discharges his or her professional obligation to relieve the patient’s pain, if the physician can
demonstrate by reference to an accepted guideline that his or her practice substantially complied
with that accepted guideline. Evidence of substantial compliance with an accepted guideline may be rebutted only by the testimony of a clinical expert. Evidence of noncompliance with an accepted guideline is not sufficient alone to support disciplinary or criminal action.

(b) A health care provider, as defined in section two, article seven-b, chapter fifty-five of this code, with prescriptive authority is not subject to disciplinary sanctions by a licensing board or criminal punishment by the state for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

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

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

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

(f) The provisions of this section apply to the treatment of all patients for pain, regardless of the patient’s prior or current chemical dependency or addiction. The board may develop and issue policies or guidelines establishing standards and procedures for the application of this article to the care and treatment of persons who are chemically dependent or addicted.
CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-23. Prescription drugs and medical devices; limiting health care providers’ liability exposure.

(a) No health care provider, as defined in section two, article seven-b of this chapter, is liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription drug or use of a medical device that was prescribed or used by the health care provider in accordance with instructions approved by the U. S. Food and Drug Administration regarding the dosage and administration of the drug, the indications for which the drug should be taken or device should be used, and the contraindications against taking the drug or using the device: Provided, that the provisions of this section do not apply if: (1) The health care provider had actual knowledge that the drug or device was inherently unsafe for the purpose for which it was prescribed or used; or (2) a manufacturer of the drug or device publicly announces changes in the dosage or administration of the drug or changes in contraindications against taking the drug or using the device and the health care provider fails to follow the publicly announced changes and the failure proximately caused or contributed to the plaintiff’s injuries or damages.

(b) A health care provider with prescriptive authority is not liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

(c) The provisions of this section are not intended to create a new cause of action.
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 90 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 23rd Day of March, 2016.

Governor
PRESENTED TO THE GOVERNOR

MAR 22 2015

Time  2:19 pm