

H. B. 3085

(By Delegates Hunt, Varner, Ferro, Hamilton,
Cann, Barill, Moye, Skaff, Perdue and Miley)

[Introduced February 9, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §30-3-14 of the Code of West Virginia,
1931, as amended; and to amend and reenact §30-14-11 of said
code, all relating to professional discipline of physicians,
podiatrists and osteopathic physicians and surgeons generally;
and including oral or written inquiry of a patient about
possession, ownership or storage of firearms as a reason for
invoking disciplinary proceedings.

Be it enacted by the Legislature of West Virginia:

That §30-3-14 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §30-14-11 of said code be
amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

**§30-3-14. Professional discipline of physicians and podiatrists;
reporting of information to board pertaining to
medical professional liability and professional
incompetence required; penalties; grounds for license**

1 **denial and discipline of physicians and podiatrists;**
2 **investigations; physical and mental examinations;**
3 **hearings; sanctions; summary sanctions; reporting by**
4 **the board; reapplication; civil and criminal**
5 **immunity; voluntary limitation of license; probable**
6 **cause determinations.**

7 (a) The board may independently initiate disciplinary
8 proceedings as well as initiate disciplinary proceedings based on
9 information received from medical peer review committees,
10 physicians, podiatrists, hospital administrators, professional
11 societies and others.

12 The board may initiate investigations as to professional
13 incompetence or other reasons for which a licensed physician or
14 podiatrist may be adjudged unqualified based upon criminal
15 convictions; complaints by citizens, pharmacists, physicians,
16 podiatrists, peer review committees, hospital administrators,
17 professional societies or others; or unfavorable outcomes arising
18 out of medical professional liability. The board shall initiate
19 an investigation if it receives notice that three or more
20 judgments, or any combination of judgments and settlements
21 resulting in five or more unfavorable outcomes arising from medical
22 professional liability, have been rendered or made against the
23 physician or podiatrist within a five-year period. The board may

1 not consider any judgments or settlements as conclusive evidence of
2 professional incompetence or conclusive lack of qualification to
3 practice.

4 (b) Upon request of the board, any medical peer review
5 committee in this state shall report any information that may
6 relate to the practice or performance of any physician or
7 podiatrist known to that medical peer review committee. Copies of
8 the requests for information from a medical peer review committee
9 may be provided to the subject physician or podiatrist if, in the
10 discretion of the board, the provision of such copies will not
11 jeopardize the board's investigation. In the event that copies are
12 provided, the subject physician or podiatrist is allowed fifteen
13 days to comment on the requested information and such comments must
14 be considered by the board.

15 The chief executive officer of every hospital shall, within
16 sixty days after the completion of the hospital's formal
17 disciplinary procedure and also within sixty days after the
18 commencement of and ~~again~~ after the conclusion of any resulting
19 legal action, report in writing to the board the name of any member
20 of the medical staff or any other physician or podiatrist
21 practicing in the hospital whose hospital privileges have been
22 revoked, restricted, reduced or terminated for any cause, including
23 resignation, together with all pertinent information relating to
24 such action. The chief executive officer shall also report any

1 other formal disciplinary action taken against any physician or
2 podiatrist by the hospital upon the recommendation of its medical
3 staff relating to professional ethics, medical incompetence,
4 medical professional liability, moral turpitude or drug or alcohol
5 abuse. Temporary suspension for failure to maintain records on a
6 timely basis or failure to attend staff or section meetings need
7 not be reported. Voluntary cessation of hospital privileges for
8 reasons unrelated to professional competence or ethics need not be
9 reported.

10 Any managed care organization operating in this state which
11 provides a formal peer review process shall report in writing to
12 the board, within sixty days after the completion of any formal
13 peer review process and also within sixty days after the
14 commencement of and ~~again~~ after the conclusion of any resulting
15 legal action, the name of any physician or podiatrist whose
16 credentialing has been revoked or not renewed by the managed care
17 organization. The managed care organization shall also report in
18 writing to the board any other disciplinary action taken against a
19 physician or podiatrist relating to professional ethics,
20 professional liability, moral turpitude or drug or alcohol abuse
21 within sixty days after completion of a formal peer review process
22 which results in the action taken by the managed care organization.
23 For purposes of this subsection, "managed care organization" means
24 a plan that establishes, operates or maintains a network of health

1 care providers who have entered into agreements with and been
2 credentialed by the plan to provide health care services to
3 enrollees or insureds to whom the plan has the ultimate obligation
4 to arrange for the provision of or payment for health care services
5 through organizational arrangements for ongoing quality assurance,
6 utilization review programs or dispute resolutions.

7 Any professional society in this state comprised primarily of
8 physicians or podiatrists which takes formal disciplinary action
9 against a member relating to professional ethics, professional
10 incompetence, medical professional liability, moral turpitude or
11 drug or alcohol abuse shall report in writing to the board within
12 sixty days of a final decision the name of the member, together
13 with all pertinent information relating to the action.

14 Every person, partnership, corporation, association, insurance
15 company, professional society or other organization providing
16 professional liability insurance to a physician or podiatrist in
17 this state, including the state Board of Risk and Insurance
18 Management, shall submit to the board the following information
19 within thirty days from any judgment or settlement of a civil or
20 medical professional liability action excepting product liability
21 actions:

22 (1) The name of the insured;

23 (2) The date of any judgment or settlement;

24 (3) Whether any appeal has been taken on the judgment and, if

1 so, by which party; and

2 (4) The amount of any settlement or judgment against the
3 insured; and other information required by the board.

4 Within thirty days from the entry of an order by a court in a
5 medical professional liability action or other civil action in
6 which a physician or podiatrist licensed by the board is determined
7 to have rendered health care services below the applicable standard
8 of care, the clerk of the court in which the order was entered
9 shall forward a certified copy of the order to the board.

10 Within thirty days after a person known to be a physician or
11 podiatrist licensed or otherwise lawfully practicing medicine and
12 surgery or podiatry in this state or applying to be licensed is
13 convicted of a felony under the laws of this state or of any crime
14 under the laws of this state involving alcohol or drugs in any way,
15 including any controlled substance under state or federal law, the
16 clerk of the court of record in which the conviction was entered
17 shall forward to the board a certified true and correct abstract of
18 record of the convicting court. The abstract shall include the
19 name and address of the physician or podiatrist or applicant, the
20 nature of the offense committed and the final judgment and sentence
21 of the court.

22 Upon a determination of the board that there is probable cause
23 to believe that any person, partnership, corporation, association,
24 insurance company, professional society or other organization has

1 failed or refused to make a report required by this subsection, the
2 board shall provide written notice to the alleged violator stating
3 the nature of the alleged violation and the time and place at which
4 the alleged violator shall appear to show good cause why a civil
5 penalty should not be imposed. The hearing shall be conducted in
6 accordance with the provisions of article five, chapter twenty-
7 nine-a of this code. After reviewing the record of the hearing, if
8 the board determines that a violation of this subsection has
9 occurred, the board shall assess a civil penalty of not less than
10 \$1,000 nor more than \$10,000 against the violator. The board shall
11 notify any person so assessed of the assessment in writing and the
12 notice shall specify the reasons for the assessment. If the
13 violator fails to pay the amount of the assessment to the board
14 within thirty days, the Attorney General may institute a civil
15 action in the circuit court of Kanawha County to recover the amount
16 of the assessment. In any civil action, the court's review of the
17 board's action shall be conducted in accordance with the provisions
18 of section four, article five, chapter twenty-nine-a of this code.
19 Notwithstanding any other provision of this article to the
20 contrary, when there are conflicting views by recognized experts as
21 to whether any alleged conduct breaches an applicable standard of
22 care, the evidence must be clear and convincing before the board
23 may find that the physician or podiatrist has demonstrated a lack
24 of professional competence to practice with a reasonable degree of

1 skill and safety for patients.

2 Any person may report to the board relevant facts about the
3 conduct of any physician or podiatrist in this state which in the
4 opinion of that person amounts to medical professional liability or
5 professional incompetence.

6 The board shall provide forms for filing reports pursuant to
7 this section. Reports submitted in other forms shall be accepted
8 by the board.

9 The filing of a report with the board pursuant to any
10 provision of this article, any investigation by the board or any
11 disposition of a case by the board does not preclude any action by
12 a hospital, other health care facility or professional society
13 comprised primarily of physicians or podiatrists to suspend,
14 restrict or revoke the privileges or membership of the physician or
15 podiatrist.

16 (c) The board may deny an application for license or other
17 authorization to practice medicine and surgery or podiatry in this
18 state and may discipline a physician or podiatrist licensed or
19 otherwise lawfully practicing in this state who, after a hearing,
20 has been adjudged by the board as unqualified due to any of the
21 following reasons:

22 (1) Attempting to obtain, obtaining, renewing or attempting to
23 renew a license to practice medicine and surgery or podiatry by
24 bribery, fraudulent misrepresentation or through known error of the

1 board;

2 (2) Being found guilty of a crime in any jurisdiction, which
3 offense is a felony, involves moral turpitude or directly relates
4 to the practice of medicine. Any plea of nolo contendere is a
5 conviction for the purposes of this subdivision;

6 (3) False or deceptive advertising;

7 (4) Aiding, assisting, procuring or advising ~~any~~ an
8 unauthorized person to practice medicine and surgery or podiatry
9 contrary to law;

10 (5) Making or filing a report that the person knows to be
11 false; intentionally or negligently failing to file a report or
12 record required by state or federal law; willfully impeding or
13 obstructing the filing of a report or record required by state or
14 federal law; or inducing another person to do any of the foregoing.
15 The reports and records covered in this subdivision mean only those
16 that are signed in the capacity as a licensed physician or
17 podiatrist;

18 (6) Requesting, receiving or paying directly or indirectly a
19 payment, rebate, refund, commission, credit or other form of profit
20 or valuable consideration for the referral of patients to any
21 person or entity in connection with providing medical or other
22 health care services or clinical laboratory services, supplies of
23 any kind, drugs, medication or any other medical goods, services or
24 devices used in connection with medical or other health care

1 services;

2 (7) Unprofessional conduct by any physician or podiatrist in
3 referring a patient to any clinical laboratory or pharmacy in which
4 the physician or podiatrist has a proprietary interest unless the
5 physician or podiatrist discloses in writing such interest to the
6 patient. The written disclosure shall indicate that the patient
7 may choose any clinical laboratory for purposes of having any
8 laboratory work or assignment performed or any pharmacy for
9 purposes of purchasing any prescribed drug or any other medical
10 goods or devices used in connection with medical or other health
11 care services;

12 As used in this subdivision, "proprietary interest" does not
13 include an ownership interest in a building in which space is
14 leased to a clinical laboratory or pharmacy at the prevailing rate
15 under a lease arrangement that is not conditional upon the income
16 or gross receipts of the clinical laboratory or pharmacy;

17 (8) Exercising influence within a patient-physician
18 relationship for the purpose of engaging a patient in sexual
19 activity;

20 (9) Making a deceptive, untrue or fraudulent representation in
21 the practice of medicine and surgery or podiatry;

22 (10) Soliciting patients, either personally or by an agent,
23 through the use of fraud, intimidation or undue influence;

24 (11) Failing to keep written records justifying the course of

1 treatment of a patient, including, but not limited to, patient
2 histories, examination and test results and treatment rendered, if
3 any;

4 (12) Exercising influence on a patient in such a way as to
5 exploit the patient for financial gain of the physician or
6 podiatrist or of a third party. Any influence includes, but is not
7 limited to, the promotion or sale of services, goods, appliances or
8 drugs;

9 (13) Prescribing, dispensing, administering, mixing or
10 otherwise preparing a prescription drug, including any controlled
11 substance under state or federal law, other than in good faith and
12 in a therapeutic manner in accordance with accepted medical
13 standards and in the course of the physician's or podiatrist's
14 professional practice. ~~Provided, That~~ A physician who discharges
15 his or her professional obligation to relieve the pain and
16 suffering and promote the dignity and autonomy of dying patients in
17 his or her care and, in so doing, exceeds the average dosage of a
18 pain relieving controlled substance, as defined in Schedules II and
19 III of the Uniform Controlled Substance Act, does not violate this
20 article;

21 (14) Performing any procedure or prescribing any therapy that,
22 by the accepted standards of medical practice in the community,
23 would constitute experimentation on human subjects without first
24 obtaining full, informed and written consent;

1 (15) Practicing or offering to practice beyond the scope
2 permitted by law or accepting and performing professional
3 responsibilities that the person knows or has reason to know he or
4 she is not competent to perform;

5 (16) Delegating professional responsibilities to a person when
6 the physician or podiatrist delegating the responsibilities knows
7 or has reason to know that the person is not qualified by training,
8 experience or licensure to perform them;

9 (17) Violating any provision of this article or a rule or
10 order of the board or failing to comply with a subpoena or subpoena
11 duces tecum issued by the board;

12 (18) Conspiring with any other person to commit an act or
13 committing an act that would tend to coerce, intimidate or preclude
14 another physician or podiatrist from lawfully advertising his or
15 her services;

16 (19) Gross negligence in the use and control of prescription
17 forms;

18 (20) Professional incompetence; ~~or~~

19 (21) The inability to practice medicine and surgery or
20 podiatry with reasonable skill and safety due to physical or mental
21 impairment, including deterioration through the aging process, loss
22 of motor skill or abuse of drugs or alcohol. A physician or
23 podiatrist adversely affected under this subdivision shall be
24 afforded an opportunity at reasonable intervals to demonstrate that

1 he or she may resume the competent practice of medicine and surgery
2 or podiatry with reasonable skill and safety to patients. In any
3 proceeding under this subdivision, neither the record of
4 proceedings nor any orders entered by the board shall be used
5 against the physician or podiatrist in any other proceeding; or

6 (22) Making an oral or written inquiry of a patient concerning
7 the possession, ownership, or storage of firearms, where the
8 inquiry has no relationship to the practice of medicine or the
9 medical condition of the patient and is for the purpose of
10 gathering statistics or to justify patient counseling, unless the
11 inquiry is the subject of a request or related to a medical
12 complaint made by the patient.

13 (d) The board shall deny any application for a license or
14 other authorization to practice medicine and surgery or podiatry in
15 this state to any applicant who, and shall revoke the license of
16 any physician or podiatrist licensed or otherwise lawfully
17 practicing within this state who, is found guilty by any court of
18 competent jurisdiction of any felony involving prescribing,
19 selling, administering, dispensing, mixing or otherwise preparing
20 any prescription drug, including any controlled substance under
21 state or federal law, for other than generally accepted therapeutic
22 purposes. Presentation to the board of a certified copy of the
23 guilty verdict or plea rendered in the court is sufficient proof
24 ~~thereof~~ for the purposes of this article. A plea of nolo

1 contendere has the same effect as a verdict or plea of guilt. Upon
2 application of a physician that has had his or her license revoked
3 because of a drug related felony conviction, upon completion of any
4 sentence of confinement, parole, probation or other court-ordered
5 supervision and full satisfaction of any fines, judgments or other
6 fees imposed by the sentencing court, the board may issue the
7 applicant a new license upon a finding that the physician is,
8 except for the underlying conviction, otherwise qualified to
9 practice medicine ~~Provided, That The board~~ and may place whatever
10 terms, conditions or limitations it deems appropriate upon a
11 physician licensed pursuant to this subsection.

12 (e) The board may refer any cases coming to its attention to
13 an appropriate committee of an appropriate professional
14 organization for investigation and report. Except for complaints
15 related to obtaining initial licensure to practice medicine and
16 surgery or podiatry in this state by bribery or fraudulent
17 misrepresentation, any complaint filed more than two years after
18 the complainant knew, or in the exercise of reasonable diligence
19 should have known, of the existence of grounds for the complaint
20 shall be dismissed: *Provided*, That in cases of conduct alleged to
21 be part of a pattern of similar misconduct or professional
22 incapacity that, if continued, would pose risks of a serious or
23 substantial nature to the physician's or podiatrist's current
24 patients, the investigating body may conduct a limited

1 investigation related to the physician's or podiatrist's current
2 capacity and qualification to practice and may recommend
3 conditions, restrictions or limitations on the physician's or
4 podiatrist's license to practice that it considers necessary for
5 the protection of the public. Any report shall contain
6 recommendations for any necessary disciplinary measures and shall
7 be filed with the board within ninety days of any referral. The
8 recommendations shall be considered by the board and the case may
9 be further investigated by the board. The board after full
10 investigation shall take whatever action it considers appropriate
11 as provided in this section.

12 (f) The investigating body, as provided in subsection (e) of
13 this section, may request and the board, under any circumstances,
14 may require a physician or podiatrist or person applying for
15 licensure or other authorization to practice medicine and surgery
16 or podiatry in this state to submit to a physical or mental
17 examination by a physician or physicians approved by the board. A
18 physician or podiatrist submitting to an examination has the right,
19 at his or her expense, to designate another physician to be present
20 at the examination and make an independent report to the
21 investigating body or the board. The expense of the examination
22 shall be paid by the board. Any individual who applies for or
23 accepts the privilege of practicing medicine and surgery or
24 podiatry in this state is considered to have given his or her

1 consent to submit to all examinations when requested to do so in
2 writing by the board and to have waived all objections to the
3 admissibility of the testimony or examination report of any
4 examining physician on the ground that the testimony or report is
5 privileged communication. If a person fails or refuses to submit
6 to an examination under circumstances which the board finds are not
7 beyond his or her control, failure or refusal is prima facie
8 evidence of his or her inability to practice medicine and surgery
9 or podiatry competently and in compliance with the standards of
10 acceptable and prevailing medical practice.

11 (g) In addition to any other investigators it employs, the
12 board may appoint one or more licensed physicians to act for it in
13 investigating the conduct or competence of a physician.

14 (h) In every disciplinary or licensure denial action, the
15 board shall furnish the physician or podiatrist or applicant with
16 written notice setting out with particularity the reasons for its
17 action. Disciplinary and licensure denial hearings shall be
18 conducted in accordance with the provisions of article five,
19 chapter twenty-nine-a of this code. However, hearings shall be
20 heard upon sworn testimony and the rules of evidence for trial
21 courts of record in this state shall apply to all hearings. A
22 transcript of all hearings under this section shall be made and the
23 respondent may obtain a copy of the transcript at his or her
24 expense. The physician or podiatrist has the right to defend

1 against any charge by the introduction of evidence, the right to be
2 represented by counsel, the right to present and cross-examine
3 witnesses and the right to have subpoenas and subpoenas duces tecum
4 issued on his or her behalf for the attendance of witnesses and the
5 production of documents. The board shall make all its final
6 actions public. The order shall contain the terms of all action
7 taken by the board.

8 (i) In disciplinary actions in which probable cause has been
9 found by the board, the board shall, within twenty days of the date
10 of service of the written notice of charges or sixty days prior to
11 the date of the scheduled hearing, whichever is sooner, provide the
12 respondent with the complete identity, address and telephone number
13 of any person known to the board with knowledge about the facts of
14 any of the charges; provide a copy of any statements in the
15 possession of or under the control of the board; provide a list of
16 proposed witnesses with addresses and telephone numbers with a
17 brief summary of his or her anticipated testimony; provide
18 disclosure of any trial expert pursuant to the requirements of Rule
19 26(b)(4) of the West Virginia Rules of Civil Procedure; provide
20 inspection and copying of the results of any reports of physical
21 and mental examinations or scientific tests or experiments; and
22 provide a list and copy of any proposed exhibit to be used at the
23 hearing. ~~Provided, That~~ The board shall not be required to furnish
24 or produce any materials which contain opinion work product

1 information or would be a violation of the attorney-client
2 privilege. Within twenty days of the date of service of the
3 written notice of charges, the board shall disclose any exculpatory
4 evidence with a continuing duty to do so throughout the
5 disciplinary process. Within thirty days of receipt of the board's
6 mandatory discovery, the respondent shall provide the board with
7 the complete identity, address and telephone number of any person
8 known to the respondent with knowledge about the facts of any of
9 the charges; provide a list of proposed witnesses with addresses
10 and telephone numbers, to be called at hearing, with a brief
11 summary of his or her anticipated testimony; provide disclosure of
12 any trial expert pursuant to the requirements of Rule 26(b)(4) of
13 the West Virginia Rules of Civil Procedure; provide inspection and
14 copying of the results of any reports of physical and mental
15 examinations or scientific tests or experiments; and provide a list
16 and copy of any proposed exhibit to be used at the hearing.

17 (j) Whenever it finds any person unqualified because of any of
18 the grounds set forth in subsection (c) of this section, the board
19 may enter an order imposing one or more of the following:

20 (1) Deny his or her application for a license or other
21 authorization to practice medicine and surgery or podiatry;

22 (2) Administer a public reprimand;

23 (3) Suspend, limit or restrict his or her license or other
24 authorization to practice medicine and surgery or podiatry for not

1 more than five years, including limiting the practice of that
2 person to, or by the exclusion of, one or more areas of practice,
3 including limitations on practice privileges;

4 (4) Revoke his or her license or other authorization to
5 practice medicine and surgery or podiatry or to prescribe or
6 dispense controlled substances for a period not to exceed ten
7 years;

8 (5) Require him or her to submit to care, counseling or
9 treatment designated by the board as a condition for initial or
10 continued licensure or renewal of licensure or other authorization
11 to practice medicine and surgery or podiatry;

12 (6) Require him or her to participate in a program of
13 education prescribed by the board;

14 (7) Require him or her to practice under the direction of a
15 physician or podiatrist designated by the board for a specified
16 period of time; and

17 (8) Assess a civil fine of not less than \$1000 nor more than
18 \$10,000.

19 (k) Notwithstanding the provisions of section eight, article
20 one, chapter thirty of this code, if the board determines the
21 evidence in its possession indicates that a physician's or
22 podiatrist's continuation in practice or unrestricted practice
23 constitutes an immediate danger to the public, the board may take
24 any of the actions provided in subsection (j) of this section on a

1 temporary basis and without a hearing if institution of proceedings
2 for a hearing before the board are initiated simultaneously with
3 the temporary action and begin within fifteen days of the action.
4 The board shall render its decision within five days of the
5 conclusion of a hearing under this subsection.

6 (1) Any person against whom disciplinary action is taken
7 pursuant to the provisions of this article has the right to
8 judicial review as provided in articles five and six, chapter
9 twenty-nine-a of this code: *Provided*, That a circuit judge may
10 also remand the matter to the board if it appears from competent
11 evidence presented to it in support of a motion for remand that
12 there is newly discovered evidence of such a character as ought to
13 produce an opposite result at a second hearing on the merits before
14 the board and:

15 (1) The evidence appears to have been discovered since the
16 board hearing; and

17 (2) The physician or podiatrist exercised due diligence in
18 asserting his or her evidence and that due diligence would not have
19 secured the newly discovered evidence prior to the appeal.

20 A person may not practice medicine and surgery or podiatry or
21 deliver health care services in violation of any disciplinary order
22 revoking, suspending or limiting his or her license while any
23 appeal is pending. Within sixty days, the board shall report its
24 final action regarding restriction, limitation, suspension or

1 revocation of the license of a physician or podiatrist, limitation
2 on practice privileges or other disciplinary action against any
3 physician or podiatrist to all appropriate state agencies,
4 appropriate licensed health facilities and hospitals, insurance
5 companies or associations writing medical malpractice insurance in
6 this state, the American Medical Association, the American Podiatry
7 Association, professional societies of physicians or podiatrists in
8 the state and any entity responsible for the fiscal administration
9 of Medicare and Medicaid.

10 (m) Any person against whom disciplinary action has been taken
11 under the provisions of this article shall, at reasonable
12 intervals, be afforded an opportunity to demonstrate that he or she
13 can resume the practice of medicine and surgery or podiatry on a
14 general or limited basis. At the conclusion of a suspension,
15 limitation or restriction period the physician or podiatrist may
16 resume practice if the board has so ordered.

17 (n) Any entity, organization or person, including the board,
18 any member of the board, its agents or employees and any entity or
19 organization or its members referred to in this article, any
20 insurer, its agents or employees, a medical peer review committee
21 and a hospital governing board, its members or any committee
22 appointed by it acting without malice and without gross negligence
23 in making any report or other information available to the board or
24 a medical peer review committee pursuant to law and any person

1 acting without malice and without gross negligence who assists in
2 the organization, investigation or preparation of any such report
3 or information or assists the board or a hospital governing body or
4 any committee in carrying out any of its duties or functions
5 provided by law is immune from civil or criminal liability, except
6 that the unlawful disclosure of confidential information possessed
7 by the board is a misdemeanor as provided in this article.

8 (o) A physician or podiatrist may request in writing to the
9 board a limitation on or the surrendering of his or her license to
10 practice medicine and surgery or podiatry or other appropriate
11 sanction as provided in this section. The board may grant the
12 request and, if it considers it appropriate, may waive the
13 commencement or continuation of other proceedings under this
14 section. A physician or podiatrist whose license is limited or
15 surrendered or against whom other action is taken under this
16 subsection may, at reasonable intervals, petition for removal of
17 any restriction or limitation on or for reinstatement of his or her
18 license to practice medicine and surgery or podiatry.

19 (p) In every case considered by the board under this article
20 regarding discipline or licensure, whether initiated by the board
21 or upon complaint or information from any person or organization,
22 the board shall make a preliminary determination as to whether
23 probable cause exists to substantiate charges of disqualification
24 due to any reason set forth in subsection (c) of this section. If

1 probable cause is found to exist, all proceedings on the charges
2 shall be open to the public who are entitled to all reports,
3 records and nondeliberative materials introduced at the hearing,
4 including the record of the final action taken: *Provided*, That any
5 medical records, which were introduced at the hearing and which
6 pertain to a person who has not expressly waived his or her right
7 to the confidentiality of the records, may not be open to the
8 public nor is the public entitled to the records.

9 (q) If the board receives notice that a physician or
10 podiatrist has been subjected to disciplinary action or has had his
11 or her credentials suspended or revoked by the board, a hospital or
12 a professional society, as defined in subsection (b) of this
13 section, for three or more incidents during a five-year period, the
14 board shall require the physician or podiatrist to practice under
15 the direction of a physician or podiatrist designated by the board
16 for a specified period of time to be established by the board.

17 (r) Notwithstanding any other provisions of this article, the
18 board may, at any time, on its own motion, or upon motion by the
19 complainant, or upon motion by the physician or podiatrist, or by
20 stipulation of the parties, refer the matter to mediation. The
21 board shall obtain a list from the West Virginia State Bar's
22 mediator referral service of certified mediators with expertise in
23 professional disciplinary matters. The board and the physician or
24 podiatrist may choose a mediator from that list. If the board and

1 the physician or podiatrist are unable to agree on a mediator, the
 2 board shall designate a mediator from the list by neutral rotation.
 3 The mediation ~~shall not be considered~~ is not a proceeding open to
 4 the public and any reports and records introduced at the mediation
 5 ~~shall not become~~ are not part of the public record. The mediator
 6 and all participants in the mediation shall maintain and preserve
 7 the confidentiality of all mediation proceedings and records. The
 8 mediator may not be subpoenaed or called to testify or otherwise be
 9 subject to process requiring disclosure of confidential information
 10 in any proceeding relating to or arising out of the disciplinary or
 11 licensure matter mediated: *Provided*, That any confidentiality
 12 agreement and any written agreement made and signed by the parties
 13 as a result of mediation may be used in any proceedings
 14 subsequently instituted to enforce the written agreement. The
 15 agreements may be used in other proceedings if the parties agree in
 16 writing.

17 **ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.**

18 **§30-14-11. Refusal, suspension or revocation of license;**
 19 **suspension or revocation of certificate of**
 20 **authorization.**

21 (a) The board may either refuse to issue or may suspend or
 22 revoke any license for any one or more of the following causes:

23 (1) Conviction of a felony, as shown by a certified copy of

1 the record of the trial court;

2 (2) Conviction of a misdemeanor involving moral turpitude;

3 (3) Violation of any provision of this article regulating the
4 practice of osteopathic physicians and surgeons;

5 (4) Fraud, misrepresentation or deceit in procuring or
6 attempting to procure admission to practice;

7 (5) Gross malpractice;

8 (6) Advertising by means of knowingly false or deceptive
9 statements;

10 (7) Advertising, practicing or attempting to practice under a
11 name other than one's own;

12 (8) Habitual drunkenness or habitual addiction to the use of
13 morphine, cocaine or other habit-forming drugs;

14 (9) Making an oral or written inquiry of a patient concerning
15 the possession, ownership, or storage of firearms, where the
16 inquiry has no relationship to the practice of osteopathic medicine
17 or the medical condition of the patient and is for the purpose of
18 gathering statistics or to justify patient counseling unless the
19 inquiry is the subject of a request or related to a medical
20 complaint made by the patient.

21 (b) The board shall also have the power to suspend or revoke
22 for cause any certificate of authorization issued by it. It shall
23 have the power to reinstate any certificate of authorization
24 suspended or revoked by it.

NOTE: The purpose of this bill is to include oral or written inquiry of a patient about possession, ownership or storage of firearms as a reason for invoking disciplinary proceedings against physicians, podiatrists and osteopathic physicians and surgeons.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.