

1 ENGROSSED

2 **Senate Bill No. 10**

3 (By Senators Jenkins and Plymale)

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5 [Introduced February 13, 2013; referred to the Committee on
6 Government Organization; and then to the Committee on the
7 Judiciary.]
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12 A BILL to amend and reenact §30-3-14 of the Code of West Virginia,
13 1931, as amended; to amend and reenact §30-4-21 of said code;
14 and to amend and reenact §30-14-12a of said code, all relating
15 to the Board of Medicine, Board of Dental Examiners and the
16 Board of Osteopathy; permitting the boards to independently
17 initiate disciplinary proceedings in certain circumstances;
18 permitting the Board of Medicine to approve certain decisions,
19 rather than deciding them directly as a whole; and increasing
20 the number of days within which the Board of Medicine can make
21 certain decisions.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §30-3-14 of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; that §30-4-21 of said code be amended and
2 reenacted; and that §30-14-12a of said code be amended and
3 reenacted, all to read as follows:

4 **ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.**

5 **§30-3-14. Professional discipline of physicians and podiatrists;**
6 **reporting of information to board pertaining to**
7 **medical professional liability and professional**
8 **incompetence required; penalties; grounds for license**
9 **denial and discipline of physicians and podiatrists;**
10 **investigations; physical and mental examinations;**
11 **hearings; sanctions; summary sanctions; reporting by**
12 **the board; reapplication; civil and criminal**
13 **immunity; voluntary limitation of license; probable**
14 **cause determinations.**

15 (a) The board may independently initiate disciplinary
16 proceedings as well as initiate disciplinary proceedings based on
17 information received from medical peer review committees,
18 physicians, podiatrists, hospital administrators, professional
19 societies and others.

20 The board may initiate investigations as to professional
21 incompetence or other reasons for which a licensed physician or
22 podiatrist may be adjudged unqualified based upon criminal

1 convictions; complaints by citizens, pharmacists, physicians,
2 podiatrists, peer review committees, hospital administrators,
3 professional societies or others; or unfavorable outcomes arising
4 out of medical professional liability. The board shall initiate an
5 investigation if it receives notice that three or more judgments or
6 any combination of judgments and settlements resulting in five or
7 more unfavorable outcomes arising from medical professional
8 liability have been rendered or made against the physician or
9 podiatrist within a five-year period. The board may not consider
10 any judgments or settlements as conclusive evidence of professional
11 incompetence or conclusive lack of qualification to practice.

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

23 The chief executive officer of every hospital shall, within

1 sixty days after the completion of the hospital's formal
2 disciplinary procedure and also within sixty days after the
3 commencement of and again after the conclusion of any resulting
4 legal action, report in writing to the board the name of any member
5 of the medical staff or any other physician or podiatrist
6 practicing in the hospital whose hospital privileges have been
7 revoked, restricted, reduced or terminated for any cause, including
8 resignation, together with all pertinent information relating to
9 such action. The chief executive officer shall also report any
10 other formal disciplinary action taken against any physician or
11 podiatrist by the hospital upon the recommendation of its medical
12 staff relating to professional ethics, medical incompetence,
13 medical professional liability, moral turpitude or drug or alcohol
14 abuse. Temporary suspension for failure to maintain records on a
15 timely basis or failure to attend staff or section meetings need
16 not be reported. Voluntary cessation of hospital privileges for
17 reasons unrelated to professional competence or ethics need not be
18 reported.

19 ~~Any~~ A managed care organization operating in this state which
20 provides a formal peer review process shall report in writing to
21 the board, within sixty days after the completion of any formal
22 peer review process and also within sixty days after the
23 commencement of and again after the conclusion of any resulting

1 legal action, the name of any physician or podiatrist whose
2 credentialing has been revoked or not renewed by the managed care
3 organization. The managed care organization shall also report in
4 writing to the board any other disciplinary action taken against a
5 physician or podiatrist relating to professional ethics,
6 professional liability, moral turpitude or drug or alcohol abuse
7 within sixty days after completion of a formal peer review process
8 which results in the action taken by the managed care organization.
9 For purposes of this subsection, "managed care organization" means
10 a plan that establishes, operates or maintains a network of health
11 care providers who have entered into agreements with and been
12 credentialed by the plan to provide health care services to
13 enrollees or insureds to whom the plan has the ultimate obligation
14 to arrange for the provision of or payment for health care services
15 through organizational arrangements for ongoing quality assurance,
16 utilization review programs or dispute resolutions.

17 Any professional society in this state comprised primarily of
18 physicians or podiatrists which takes formal disciplinary action
19 against a member relating to professional ethics, professional
20 incompetence, medical professional liability, moral turpitude or
21 drug or alcohol abuse shall report in writing to the board within
22 sixty days of a final decision the name of the member, together
23 with all pertinent information relating to the action.

1 Every person, partnership, corporation, association, insurance
2 company, professional society or other organization providing
3 professional liability insurance to a physician or podiatrist in
4 this state, including the State Board of Risk and Insurance
5 Management, shall submit to the board the following information
6 within thirty days from ~~any~~ a judgment or settlement of a civil or
7 medical professional liability action excepting product liability
8 actions: The name of the insured; the date of ~~any~~ judgment or
9 settlement; whether ~~any~~ an appeal has been taken on the judgment
10 and, if so, by which party; the amount of ~~any~~ settlement or
11 judgment against the insured; and other information required by the
12 board.

13 Within thirty days from the entry of an order by a court in a
14 medical professional liability action or other civil action in
15 which a physician or podiatrist licensed by the board is determined
16 to have rendered health care services below the applicable standard
17 of care, the clerk of the court in which the order was entered
18 shall forward a certified copy of the order to the board.

19 Within thirty days after a person known to be a physician or
20 podiatrist licensed or otherwise lawfully practicing medicine and
21 surgery or podiatry in this state or applying to be licensed is
22 convicted of a felony under the laws of this state or of ~~any~~ a
23 crime under the laws of this state involving alcohol or drugs in

1 any way, including ~~any~~ a controlled substance under state or
2 federal law, the clerk of the court of record in which the
3 conviction was entered shall forward to the board a certified true
4 and correct abstract of record of the convicting court. The
5 abstract shall include the name and address of the physician or
6 podiatrist or applicant, the nature of the offense committed and
7 the final judgment and sentence of the court.

8 Upon a determination of the board that there is probable cause
9 to believe that any person, partnership, corporation, association,
10 insurance company, professional society or other organization has
11 failed or refused to make a report required by this subsection, the
12 board shall provide written notice to the alleged violator stating
13 the nature of the alleged violation and the time and place at which
14 the alleged violator shall appear to show good cause why a civil
15 penalty should not be imposed. The hearing shall be conducted in
16 accordance with the provisions of article five, chapter
17 twenty-nine-a of this code. After reviewing the record of the
18 hearing, if the board determines that a violation of this
19 subsection has occurred, the board shall assess a civil penalty of
20 not less than \$1,000 nor more than \$10,000 against the violator.
21 The board shall notify ~~any~~ the person so assessed of the assessment
22 in writing and the notice shall specify the reasons for the
23 assessment. If the violator fails to pay the amount of the

1 assessment to the board within thirty days, the Attorney General
2 may institute a civil action in the circuit court of Kanawha County
3 to recover the amount of the assessment. In ~~any~~ a civil action,
4 the court's review of the board's action shall be conducted in
5 accordance with the provisions of section four, article five,
6 chapter twenty-nine-a of this code. Notwithstanding any other
7 provision of this article to the contrary, when there are
8 conflicting views by recognized experts as to whether ~~any~~ alleged
9 conduct breaches an applicable standard of care, the evidence must
10 be clear and convincing before the board may find that the
11 physician or podiatrist has demonstrated a lack of professional
12 competence to practice with a reasonable degree of skill and safety
13 for patients.

14 Any person may report to the board relevant facts about the
15 conduct of any physician or podiatrist in this state which in the
16 opinion of that person amounts to medical professional liability or
17 professional incompetence.

18 The board shall provide forms for filing reports pursuant to
19 this section. Reports submitted in other forms shall be accepted
20 by the board.

21 The filing of a report with the board pursuant to ~~any~~ a
22 provision of this article, ~~any~~ an investigation by the board or ~~any~~
23 a disposition of a case by the board does not preclude ~~any~~ an

1 action by a hospital, other health care facility or professional
2 society comprised primarily of physicians or podiatrists to
3 suspend, restrict or revoke the privileges or membership of the
4 physician or podiatrist. Notwithstanding any provision of this
5 code to the contrary, the board may independently initiate
6 disciplinary proceedings based on a report or information from an
7 agent or investigator of the Board of Pharmacy related to data from
8 the Controlled Substances Monitoring Program.

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

15 (1) Attempting to obtain, obtaining, renewing or attempting to
16 renew a license to practice medicine and surgery or podiatry by
17 bribery, fraudulent misrepresentation or through known error of the
18 board;

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

23 (3) False or deceptive advertising;

1 (4) Aiding, assisting, procuring or advising ~~any~~ an
2 unauthorized person to practice medicine and surgery or podiatry
3 contrary to law;

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

12 (6) Requesting, receiving or paying directly or indirectly a
13 payment, rebate, refund, commission, credit or other form of profit
14 or valuable consideration for the referral of patients to ~~any~~ a
15 person or entity in connection with providing medical or other
16 health care services or clinical laboratory services, supplies of
17 any kind, drugs, medication or ~~any~~ other medical goods, services or
18 devices used in connection with medical or other health care
19 services;

20 (7) Unprofessional conduct by ~~any~~ a physician or podiatrist in
21 referring a patient to ~~any~~ a clinical laboratory or pharmacy in
22 which the physician or podiatrist has a proprietary interest unless
23 the physician or podiatrist discloses in writing ~~such~~ the interest

1 to the patient. The written disclosure shall indicate that the
2 patient may choose any clinical laboratory for purposes of having
3 ~~any~~ laboratory work or assignment performed or any pharmacy for
4 purposes of purchasing ~~any~~ a prescribed drug or ~~any~~ other medical
5 goods or devices used in connection with medical or other health
6 care services;

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

12 (8) Exercising influence within a patient-physician
13 relationship for the purpose of engaging a patient in sexual
14 activity;

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

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

19 (11) Failing to keep written records justifying the course of
20 treatment of a patient including, but not limited to, patient
21 histories, examination and test results and treatment rendered, if
22 any;

23 (12) Exercising influence on a patient in such a way as to

1 exploit the patient for financial gain of the physician or
2 podiatrist or of a third party. Any influence includes, but is not
3 limited to, the promotion or sale of services, goods, appliances or
4 drugs;

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

17 (14) Performing ~~any~~ a procedure or prescribing ~~any~~ a therapy
18 that, by the accepted standards of medical practice in the
19 community, would constitute experimentation on human subjects
20 without first obtaining full, informed and written consent;

21 (15) Practicing or offering to practice beyond the scope
22 permitted by law or accepting and performing professional
23 responsibilities ~~that~~ the person knows or has reason to know he or

1 she is not competent to perform;

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

6 (17) Violating ~~any~~ a provision of this article or a rule or
7 order of the board or failing to comply with a subpoena or subpoena
8 duces tecum issued by the board;

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

13 (19) Gross negligence in the use and control of prescription
14 forms;

15 (20) Professional incompetence; or

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

1 proceeding under this subdivision, neither the record of
2 proceedings nor any orders entered by the board shall be used
3 against the physician or podiatrist in any other proceeding.

4 (d) The board shall deny ~~any~~ an application for a license or
5 other authorization to practice medicine and surgery or podiatry in
6 this state ~~to any applicant who,~~ and shall revoke the license of
7 ~~any~~ a physician or podiatrist licensed or otherwise lawfully
8 practicing within this state who is found guilty by ~~any~~ a court of
9 competent jurisdiction of ~~any~~ a felony involving prescribing,
10 selling, administering, dispensing, mixing or otherwise preparing
11 ~~any~~ a prescription drug, including ~~any~~ a controlled substance under
12 state or federal law, for other than generally accepted therapeutic
13 purposes. Presentation to the board of a certified copy of the
14 guilty verdict or plea rendered in the court is sufficient proof
15 ~~thereof~~ for the purposes of this article. A plea of nolo
16 contendere has the same effect as a verdict or plea of guilt. Upon
17 application of a physician that has had his or her license revoked
18 because of a drug related felony conviction, upon completion of any
19 sentence of confinement, parole, probation or other court-ordered
20 supervision and full satisfaction of ~~any~~ fines, judgments or other
21 fees imposed by the sentencing court, the board may issue the
22 applicant a new license upon a finding that the physician is,
23 except for the underlying conviction, otherwise qualified to

1 practice medicine. ~~Provided, That~~ The board may place whatever
2 terms, conditions or limitations it deems appropriate upon a
3 physician licensed pursuant to this subsection.

4 (e) The board may refer ~~any~~ cases coming to its attention to
5 an appropriate committee of an appropriate professional
6 organization for investigation and report. Except for complaints
7 related to obtaining initial licensure to practice medicine and
8 surgery or podiatry in this state by bribery or fraudulent
9 misrepresentation, ~~any~~ a complaint filed more than two years after
10 the complainant knew or, in the exercise of reasonable diligence,
11 should have known of the existence of grounds for the complaint,
12 shall be dismissed. ~~Provided, That~~ In cases of conduct alleged to
13 be part of a pattern of similar misconduct or professional
14 incapacity that, if continued, would pose risks of a serious or
15 substantial nature to the physician's or podiatrist's current
16 patients, the investigating body may conduct a limited
17 investigation related to the physician's or podiatrist's current
18 capacity and qualification to practice and may recommend
19 conditions, restrictions or limitations on the physician's or
20 podiatrist's license to practice that it considers necessary for
21 the protection of the public. Any report shall contain
22 recommendations for any necessary disciplinary measures and shall
23 be filed with the board within ninety days of any referral. The

1 recommendations shall be considered by the board and the case may
2 be further investigated by the board. The board, after full
3 investigation, shall take whatever action it considers appropriate,
4 as provided in this section.

5 (f) The investigating body, as provided in subsection (e) of
6 this section, may request and the board, under any circumstances,
7 may require a physician or podiatrist or person applying for
8 licensure or other authorization to practice medicine and surgery
9 or podiatry in this state to submit to a physical or mental
10 examination by a physician or physicians approved by the board. A
11 physician or podiatrist submitting to an examination has the right,
12 at his or her expense, to designate another physician to be present
13 at the examination and make an independent report to the
14 investigating body or the board. The expense of the examination
15 shall be paid by the board. ~~Any~~ An individual who applies for or
16 accepts the privilege of practicing medicine and surgery or
17 podiatry in this state is considered to have given his or her
18 consent to submit to all examinations when requested to do so in
19 writing by the board and to have waived all objections to the
20 admissibility of the testimony or examination report of any
21 examining physician on the ground that the testimony or report is
22 privileged communication. If a person fails or refuses to submit
23 to an examination under circumstances which the board finds are not

1 beyond his or her control, failure or refusal is prima facie
2 evidence of his or her inability to practice medicine and surgery
3 or podiatry competently and in compliance with the standards of
4 acceptable and prevailing medical practice.

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

8 (h) In every disciplinary or licensure denial action, the
9 board shall furnish the physician or podiatrist or applicant with
10 written notice setting out with particularity the reasons for its
11 action. Disciplinary and licensure denial hearings shall be
12 conducted in accordance with the provisions of article five,
13 chapter twenty-nine-a of this code. However, hearings shall be
14 heard upon sworn testimony and the rules of evidence for trial
15 courts of record in this state shall apply to all hearings. A
16 transcript of all hearings under this section shall be made and the
17 respondent may obtain a copy of the transcript at his or her
18 expense. The physician or podiatrist has the right to defend
19 against ~~any~~ a charge by the introduction of evidence, the right to
20 be represented by counsel, the right to present and cross-examine
21 witnesses and the right to have subpoenas and subpoenas duces tecum
22 issued on his or her behalf for the attendance of witnesses and the
23 production of documents. The board shall make all its final

1 actions public. The order shall contain the terms of all action
2 taken by the board.

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

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

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

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

19 (2) Administer a public reprimand;

20 (3) Suspend, limit or restrict his or her license or other
21 authorization to practice medicine and surgery or podiatry for not
22 more than five years, including limiting the practice of that
23 person to, or by the exclusion of, one or more areas of practice,

1 including limitations on practice privileges;

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

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

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

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

15 (8) Assess a civil fine of not less than \$1,000 nor more than
16 \$10,000.

17 (k) Notwithstanding the provisions of section eight, article
18 one, chapter thirty of this code, if the board determines the
19 evidence in its possession indicates that a physician's or
20 podiatrist's continuation in practice or unrestricted practice
21 constitutes an immediate danger to the public, the board may take
22 any of the actions provided in subsection (j) of this section on a
23 temporary basis and without a hearing if institution of proceedings

1 for a hearing ~~before~~ approved by the board are initiated
2 simultaneously with the temporary action and begin within fifteen
3 days of the action. The board shall render its decision within
4 ~~five~~ ten days of the conclusion of a hearing under this subsection.

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

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

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

19 A person may not practice medicine and surgery or podiatry or
20 deliver health care services in violation of ~~any~~ a disciplinary
21 order revoking, suspending or limiting his or her license while ~~any~~
22 an appeal is pending. Within sixty days, the board shall report
23 its 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 a~~
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~~ A person against whom disciplinary action has been
11 taken 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

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

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

20 (p) In every case considered by the board under this article
21 regarding discipline or licensure, whether initiated by the board
22 or upon complaint or information from ~~any~~ a person or organization,
23 the board shall make a preliminary determination as to whether

1 probable cause exists to substantiate charges of disqualification
2 due to any reason set forth in subsection (c) of this section. If
3 probable cause is found to exist, all proceedings on the charges
4 shall be open to the public who are entitled to all reports,
5 records and nondeliberative materials introduced at the hearing
6 including the record of the final action taken: *Provided*, That any
7 medical records, which were introduced at the hearing and which
8 pertain to a person who has not expressly waived his or her right
9 to the confidentiality of the records, may not be open to the
10 public nor is the public entitled to the records.

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

19 (r) Notwithstanding any other provisions of this article, the
20 board may, at any time, ~~or~~ either on its own motion, ~~or upon~~
21 by the complainant, ~~or upon~~ motion by the physician or podiatrist
22 or by stipulation of the parties, refer the matter to mediation.
23 The board shall obtain a list from the West Virginia State Bar's

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

20 **ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.**

21 **§30-4-21. Complaints; investigations.**

22 (a) Upon receipt of a written complaint filed against ~~any~~ a
23 dentist or dental hygienist, the board shall provide a copy of the

1 complaint to the dentist or dental hygienist as specified by
2 legislative rule promulgated by the board.

3 (b) The board may investigate the complaint. If the board
4 finds upon investigation that probable cause exists that the
5 dentist or dental hygienist has violated ~~any~~ a provision of this
6 article or the rules, the board shall serve the dentist or dental
7 hygienist with a written statement of charges and a notice
8 specifying the date, time and place of hearing. The hearing shall
9 be held in accordance with section twenty-two of this article.

10 (c) Notwithstanding any provision of this code to the
11 contrary, the board may independently initiate disciplinary
12 proceedings based on a report or information from an agent or
13 investigator of the Board of Pharmacy related to data from the
14 Controlled Substance Monitoring Program.

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

16 **§30-14-12a. Initiation of suspension or revocation proceedings**
17 **allowed and required; reporting of information to**
18 **board pertaining to professional malpractice and**
19 **professional incompetence required; penalties;**
20 **probable cause determinations.**

21 (a) The board may independently initiate suspension or
22 revocation proceedings as well as initiate suspension or revocation

1 proceedings based on information received from any person.

2 The board shall initiate investigations as to professional
3 incompetence or other reasons for which a licensed osteopathic
4 physician and surgeon may be adjudged unqualified if the board
5 receives notice that three or more judgments or any combination of
6 judgments and settlements resulting in five or more unfavorable
7 outcomes arising from medical professional liability have been
8 rendered or made against such osteopathic physician within a
9 five-year period.

10 (b) Upon request of the board, ~~any~~ a medical peer review
11 committee in this state shall report any information that may
12 relate to the practice or performance of ~~any~~ an osteopathic
13 physician known to that medical peer review committee. Copies of
14 such requests for information from a medical peer review committee
15 may be provided to the subject osteopathic physician if, in the
16 discretion of the board, the provision of such copies will not
17 jeopardize the board's investigation. In the event that copies are
18 provided, the subject osteopathic physician has fifteen days to
19 comment on the requested information and ~~such~~ the comments must be
20 considered by the board.

21 After the completion of a hospital's formal disciplinary
22 procedure and after any resulting legal action, the chief executive
23 officer of ~~such~~ the hospital shall report in writing to the board

1 within sixty days the name of any member of the medical staff or
2 ~~any~~ other osteopathic physician practicing in the hospital whose
3 hospital privileges have been revoked, restricted, reduced or
4 terminated for any cause, including resignation, together with all
5 pertinent information relating to such action. The chief executive
6 officer shall also report any other formal disciplinary action
7 taken against ~~any~~ an osteopathic physician by the hospital upon the
8 recommendation of its medical staff relating to professional
9 ethics, medical incompetence, medical malpractice, moral turpitude
10 or drug or alcohol abuse. Temporary suspension for failure to
11 maintain records on a timely basis or failure to attend staff or
12 section meetings need not be reported.

13 Any professional society in this state comprised primarily of
14 osteopathic physicians or physicians and surgeons of other schools
15 of medicine which takes formal disciplinary action against a member
16 relating to professional ethics, professional incompetence,
17 professional malpractice, moral turpitude or drug or alcohol abuse,
18 shall report in writing to the board within sixty days of a final
19 decision the name of such member, together with all pertinent
20 information relating to such action.

21 Every person, partnership, corporation, association, insurance
22 company, professional society or other organization providing
23 professional liability insurance to an osteopathic physician in

1 this state shall submit to the board the following information
2 within thirty days from any judgment, dismissal or settlement of a
3 civil action or of any claim involving the insured: The date of
4 ~~any~~ judgment, dismissal or settlement; whether ~~any~~ an appeal has
5 been taken on the judgment, and, if so, by which party; the amount
6 of ~~any~~ settlement or judgment against the insured; and ~~such~~ other
7 information required by the board.

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

20 Upon a determination of the board that there is probable cause
21 to believe that ~~any~~ a person, partnership, corporation,
22 association, insurance company, professional society or other
23 organization has failed or refused to make a report required by

1 this subsection, the board shall provide written notice to the
2 alleged violator stating the nature of the alleged violation and
3 the time and place at which the alleged violator shall appear to
4 show good cause why a civil penalty should not be imposed. The
5 hearing shall be conducted in accordance with the provisions of
6 article five, chapter twenty-nine-a of this code. After reviewing
7 the record of such hearing, if the board determines that a
8 violation of this subsection has occurred, the board shall assess
9 a civil penalty of not less than \$1,000 nor more than \$10,000
10 against such violator. The board shall notify anyone assessed of
11 the assessment in writing and the notice shall specify the reasons
12 for the assessment. If the violator fails to pay the amount of the
13 assessment to the board within thirty days, the Attorney General
14 may institute a civil action in the circuit court of Kanawha County
15 to recover the amount of the assessment. In any such civil action,
16 the court's review of the board's action shall be conducted in
17 accordance with the provisions of section four, article five,
18 chapter twenty-nine-a of this code.

19 Any person may report to the board relevant facts about the
20 conduct of any osteopathic physician in this state which in the
21 opinion of such person amounts to professional malpractice or
22 professional incompetence.

23 The board shall provide forms for filing reports pursuant to

1 this section. Reports submitted in other forms shall be accepted
2 by the board.

3 The filing of a report with the board pursuant to ~~any~~ a
4 provision of this article, ~~any~~ an investigation by the board or ~~any~~
5 a disposition of a case by the board does not preclude any action
6 by a hospital, other health care facility or professional society
7 comprised primarily of osteopathic physicians or physicians and
8 surgeons of other schools of medicine to suspend, restrict or
9 revoke the privileges or membership of such osteopathic physician.
10 Notwithstanding any provision of this code to the contrary, the
11 board may independently initiate disciplinary proceedings based on
12 a report or information from an agent or investigator of the Board
13 of Pharmacy related to data from the Controlled Substances
14 Monitoring Program.

15 (c) In every case considered by the board under this article
16 regarding suspension, revocation or issuance of a license, whether
17 initiated by the board or upon complaint or information from any
18 person or organization, the board shall make a preliminary
19 determination as to whether probable cause exists to substantiate
20 charges of cause to suspend, revoke or refuse to issue a license as
21 set forth in subsection (a), section eleven of this article. If
22 ~~such~~ probable cause is found to exist, all proceedings on ~~such~~ the
23 charges ~~shall be~~ are open to the public who are entitled to all

1 reports, records and nondeliberative materials introduced at such
2 hearing, including the record of the final action taken: *Provided,*
3 That any medical records, which were introduced at ~~such~~ the hearing
4 and ~~which~~ pertain to a person who has not expressly waived his or
5 her right to the confidentiality of ~~such~~ the records, shall not be
6 open to the public nor is the public entitled to such records. If
7 a finding is made that probable cause does not exist, the public
8 has a right of access to the complaint or other document setting
9 forth the charges and the findings of fact and conclusions
10 supporting ~~such finding that probable cause does not exist, if the~~
11 finding so long as the subject osteopathic physician consents to
12 such access.

13 (d) If the board receives notice that an osteopathic physician
14 has been subjected to disciplinary action or has had his or her
15 credentials suspended or revoked by the board, a medical peer
16 review committee, a hospital or professional society, as defined in
17 subsection (b) of this section, for three or more incidents in a
18 five-year period, the board shall require the osteopathic physician
19 to practice under the direction of another osteopathic physician
20 for a specified period to be established by the board.